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BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS (R19-1201)

Title 4, Chapter 33, Article 2, Nursing Care Institution Administrator Licensing and Article 4, Assisted Living Facility Manager Certification

Amend: R4-33-202, R4-33-203, R4-33-204, R4-33-206, R4-33-401, R4-33-402,
R4-33-403, R4-33-405



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: December 3, 2019

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

FROM: Council Staff

DATE: November 7, 2019

**SUBJECT: BOARD OF EXAMINERS OF NURSING CARE INSTITUTION
ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS
(R19-1201)**

Title 4, Chapter 33, Article 2, Nursing Care Institution Administrator Licensing and Article 4, Assisted Living Facility Manager Certification

Amend: R4-33-202, R4-33-203, R4-33-204, R4-33-206, R4-33-401, R4-33-402, R4-33-403, R4-33-405

Summary:

This regular rulemaking from the Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers (Board) seeks to amend rules in Title 4, Chapter 33, Articles 2 (Nursing Care Institution Administrator Licensing) and Article 4 (Assisted Living Facility Manager Certification).

The Board states that it is amending these rules to clarify that an applicant for licensure by reciprocity is required to have been licensed in another jurisdiction for at least two years and removing the requirement of two years of employment as a nursing care institution administrator; to remove the requirement for notarization of a signature in a renewal application; to add a requirement to submit a certificate of training completed with an initial application for certification; and correcting some typographical errors.

The Board received an exemption from the rulemaking moratorium to conduct this rulemaking on June 21, 2019.

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

Yes. The Board cites to both general and specific 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 Board did not review or rely on any study in conducting this rulemaking.

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

The Board states that the rulemaking will have a positive impact on stakeholders by effectively clarifying requirements and removing unnecessary burdens and administrative costs for compliance.

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?

Yes. The Board states that the benefits of clarifying requirements and deleting an unnecessary administrative burden outweigh any minimal costs. The Board further states that because the benefits of the rulemaking are positive for licensees and applicants, no less intrusive or less costly alternative method was considered.

6. What are the economic impacts on stakeholders?

The Board and businesses functioning as licensees or applicants will benefit from the rulemaking. The general public, private persons, consumers, or political subdivisions will not be directly affected by the rulemaking.

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

No. The Board did not make any changes to these rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

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

The Board 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?

No. These rules do not require a permit.

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

The Board is conducting this rulemaking to clarify requirements for applicants for licensure by reciprocity, to remove a regulatory burden of providing a notarized signature on a renewal application, to add a requirement that an applicant submit a certificate of training completed with an initial application for certification, and to correct some typographical errors. The amended rules will be more clear, concise, understandable, and effective. The Board accepts the usual 60-day delayed effective date for these rules. Council staff recommends approval of this rulemaking.



**BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND
ASSISTED LIVING FACILITY MANAGERS**

Douglas A. Ducey
Governor

1740 W. Adams, Suite 2490 Phoenix, Arizona 85007
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Email: allen.imig@aznciaboard.us Website: www.aznciaboard.us

Allen Imig
Executive Director

October 9, 2019

Ms. Nicole Sornsin, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 305
Phoenix, AZ 85007

**Re: A.A.C. Title 4. Professions and Occupations
Chapter 33. Board of Examiners for Nursing Care Institution Administrators and
Assisted Living Facility Managers**

Dear Ms. Sornsin:

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

- A. Close of record date: The rulemaking record was closed on October 9, 2019, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).
- B. Relation of the rulemaking to a five-year-review report: The rulemaking does not relate to a five-year-review report.
- C. New fee: The rulemaking does not establish a new fee.
- D. Fee increase: The rulemaking does not increase an existing fee.
- E. Immediate effective date: An immediate effective date is not requested.
- F. Certification regarding studies: I certify the preamble accurately discloses the Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.
- G. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.
- H. List of documents enclosed:
 1. Cover letter signed by the Executive Director;
 2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
 3. Economic, Small Business, and Consumer Impact Statement

Sincerely,

A handwritten signature in black ink, appearing to read "Allen Imig".

Allen Imig
Executive Director

NOTICE OF FINAL RULEMAKING
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 33. BOARD OF EXAMINERS FOR NURSING CARE INSTITUTION
ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS

PREAMBLE

- | <u>1. Articles, Parts, and Sections Affected</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| R4-33-202 | Amend |
| R4-33-203 | Amend |
| R4-33-204 | Amend |
| R4-33-206 | Amend |
| R4-33-401 | Amend |
| R4-33-402 | Amend |
| R4-33-403 | Amend |
| R4-33-405 | Amend |
- 2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**
- Authorizing statute: A.R.S. § 36-446.03(A)
- Implementing statute: A.R.S. §§ 36-446, 36-446.03, 36-446.04, 36-446.05, and 36-446.06
- 3. The effective date for the rules:**
- As specified under A.R.S. § 41-1032(A), the rule will be effective 60 days after the rule package is filed with the Office of the Secretary of State.
- a. If the agency selected a date earlier than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**
- Not applicable
- b. If the agency selected a date later than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**
- Not applicable
- 4. Citation to all related notices published in the *Register* to include the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**
- Notice of Rulemaking Docket Opening: 25 A.A.R. 2093, August 16, 2019

Notice of Proposed Rulemaking: 25 A.A.R. 2176, August 30, 2019

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

Name: Allen Imig, Executive Director

Address: Board of Examiners for Nursing Care Administrators and Assisted Living Facility Managers

1740 West Adams Street, Suite 2490
Phoenix, AZ 85007

Telephone: (602) 364-2273

Fax: (602) 542-8316

E-mail: allen.imig@nciabd.state.az.us

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

The Board is clarifying that an applicant for licensure by reciprocity is required to have been licensed in another jurisdiction for at least two years and removing the requirement of two years of employment as a nursing care institution administrator; removing the requirement for notarization; adding a requirement to submit a certificate of training completed with an initial application for certification; and correcting some typographical errors. An exemption from Executive Order 2019-01 for this rulemaking was provided by Emily Rajakovich, of the Governor's Office, in an e-mail dated June 21, 2019.

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

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

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

Not applicable

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

The Board concluded the benefits of clarifying requirements and deleting an unnecessary administrative burden outweigh any minimal costs.

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

No changes were made between the proposed and final rulemakings.

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

The Board received no comments regarding the rulemaking. No one attended the oral proceeding on October 7, 2019.

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

None

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

The Board does not issue general permits. Rather, the Board issues individual licenses as required by the Board's statutes to each person that is qualified by statute (See A.R.S. §§ 36-446.01 and 36-446.04) and rule.

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

There is no federal law specifically applicable to this rulemaking. Federal law makes receipt of federal funding contingent on a state licensing and regulating nursing care institution administrators. The specifics of the licensure and regulation are matters of state law.

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

No analysis was submitted.

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

None

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

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

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 33. BOARD OF EXAMINERS FOR NURSING CARE INSTITUTION
ADMINISTRATORS
AND ASSISTED LIVING FACILITY MANAGERS

ARTICLE 2. NURSING CARE INSTITUTION ADMINISTRATOR LICENSING

Section

- R4-33-202. Requirements for Initial License by Reciprocity
- R4-33-203. Requirements for Temporary License
- R4-33-204. Initial Application
- R4-33-206. Renewal Application

ARTICLE 4. ASSISTED LIVING FACILITY MANAGER CERTIFICATION

Section

- R4-33-401. Requirements for Initial Certification by Examination
- R4-33-402. Requirements for a Temporary Certificate
- R4-33-403. Initial Application
- R4-33-405. Renewal Application

ARTICLE 2. NURSING CARE INSTITUTION ADMINISTRATOR LICENSING

R4-33-202. Requirements for Initial License by Reciprocity

To be eligible for an initial license by reciprocity as a nursing care institution administrator, an individual shall:

1. No change
 - a. No change
 - b. No change
2. No change
 - a. Hold a valid and current license as a nursing care institution administrator:
 - i. Issued at least two years ago,
 - ii. issued Issued by a state or territory, and which was obtained
 - iii. Obtained by passing the NAB examination; or
 - b. No change
 - c. No change
3. ~~Be employed full time as a nursing care institution administrator of record for the last two years in a state or territory with a licensing authority;~~
- 4.3. No change
- 5.4. No change
- 6.5. No change
 - a. No change
 - b. ~~Submit evidence of being employed full time as a nursing care institution administrator of record for the last two years in a state or territory with a licensing authority,~~
 - e.b. No change
 - d.c. No change
 - i. No change
 - ii. No change

R4-33-203. Requirements for Temporary License

A. To be eligible for a temporary license as a nursing care institution administrator, an individual shall:

1. Meet the requirements specified in R4-33-201 or R4-33-202 except for the requirement at R4-33-201(2) or ~~R4-33-202(2)(b)~~ R4-33-202(2)(c);
2. No change
 - a. No change
 - b. No change

- c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. ~~Notarized signature~~ Signature of the owner of the nursing care institution affirming the information provided is true and complete;
- 3. No change
 - 4. No change
- B.** No change
- C.** No change
- D.** No change

R4-33-204. Initial Application

- A. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. No change
 - 8. No change
 - 9. No change
 - 10. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - 11. No change
 - a. No change
 - b. No change
 - c. No change

- d. No change
 - e. No change
12. No change
13. No change
14. No change
15. No change
16. No change
17. No change
18. No change
19. No change
20. No change
- B.** In addition to the application form required under ~~subsection subsection~~ (A), an applicant shall have the following submitted directly to the Board on the applicant's behalf:
- 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- C.** No change
- 1. No change
 - 2. No change
 - 3. No change
 - 4. ~~Passport size, color, full face Full-face~~ photograph of the applicant taken within the last ~~180 days~~ and signed on the back by the applicant ~~six months~~;
 - 5. No change
 - a. No change
 - b. No change
 - c. No change
 - 6. No change
 - 7. ~~Signed and notarized affidavit affirming~~ Affirm the information provided in the application is true and complete and ~~authorizing~~ authorize others to release information regarding the applicant to the Board; and
 - 8. No change
- D.** No change
- E.** No change

F. No change

R4-33-206. Renewal Application

- A. No change
- B. No change
- C. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. The licensee's dated ~~and notarized~~ signature affirming the information provided is true and complete.
- D. No change
 - 1. No change
 - 2. Documentation described in A.R.S. § 41-1080(A) unless the documentation previously submitted under ~~R4-36-204(C)(6)~~ R4-33-204(C)(6) established U.S. citizenship or was a non-expiring work authorization issued by the federal government; and
 - 3. No change
- E. No change
 - 1. No change
 - 2. No change
 - 3. No change
- F. No change

ARTICLE 4. ASSISTED LIVING FACILITY MANAGER CERTIFICATION

R4-33-401. Requirements for Initial Certification by Examination

- A. Except as provided in subsection (B), an individual who wishes to receive an initial certificate by examination as an assisted living facility manager shall:
 - 1. Education:
 - a. Earn a high school diploma or G.E.D., ~~and~~ or hold a license in good standing issued under A.R.S. Title 32, Chapter 13, 15, or 17 or 4 A.A.C. 33, Article 2;

- b. Complete an assisted living facility caregiver training program that is approved by the Board under ~~A.A.C. R4-33-701~~, Article 7 of this Chapter; and
 - c. Complete an assisted living facility manager training program that is approved by the Board under ~~A.A.C. R4-33-601~~, or Article 6 of this Chapter;
 - d. ~~Hold a license in good standing issued under A.R.S. Title 32, Chapter 13, 15, or 17 or 4 A.A.C. 33, Article 2~~;
- 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
- B.** No change

R4-33-402. Requirements for a Temporary Certificate

- A.** No change
 - 1. No change
 - 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. Notarized signature Signature of the owner of the assisted living facility affirming the information provided is true and complete;
 - 3. No change
 - 4. No change
- B.** No change
- C.** No change
- D.** No change

R4-33-403. Initial Application

- A.** No change
 - 1. No change

2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
 - a. No change
 - b. No change
 - c. No change
9. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
10. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
11. No change
12. No change
13. No change
14. No change
15. No change
16. No change
17. No change
18. No change
19. No change

B. No change

1. Education:

- a. Copy of the applicant's high school diploma or G.E.D., and certificates of completion issued from the training courses described under R4-33-401(A)(1)(b) and (c); or
- b. ~~Certificate of completion issued within a year before the date of application from the training course described under R4-33-401(A)(1)(b), or~~
- e.b. Copy of the applicant's license issued under A.R.S. Title 32, Chapter 13, 15, or 17 or 4 A.A.C. 33, Article 2~~½~~, and certificate of completion issued from the training course described under R4-33-401(A)(1)(c);

2. No change

3. No change

4. No change

5. No change

6. No change

7. No change

8. ~~Passport size, color, full face~~ Full-faced photograph of the applicant taken within the last ~~180~~ days and signed on the back by the applicant six months;

9. No change

a. No change

b. No change

c. No change

10. ~~A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, which is a form available from the Board Documentation, as described in A.R.S. § 41-1080(A), of U.S. citizenship or alien status indicating presence in the U.S. is authorized under federal law;~~

11. ~~Signed and notarized affidavit affirming that~~ Affirm the information provided in the application is true and complete and authorizing others to release information regarding the applicant to the Board; and

12. No change

C. No change

D. No change

E. No change

R4-33-405. Renewal Application

A. No change

- B.** No change
- C.** No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. The certificate holder's dated ~~and notarized~~ signature affirming ~~that~~ the information provided is true and complete.
- D.** No change
 - 1. No change
 - 2. ~~A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, which is a form available from the Board Documentation described in A.R.S. § 41-1080(A) unless the documentation previously submitted under R4-33-403(B)(10) established U.S. citizenship or was a non-expiring work authorization issued by the federal government; and~~
 - 3. No change
- E.** No change
 - 1. No change
 - 2. No change
 - 3. No change
- F.** No change

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT1

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 33. BOARD OF EXAMINERS FOR NURSING CARE INSTITUTION

ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS

1. Identification of the rulemaking:

The Board is clarifying that an applicant for licensure by reciprocity is required to have been licensed in another jurisdiction for at least two years and removing the requirement of two years of employment as a nursing care institution administrator; removing the requirement for notarization; adding a requirement to submit a certificate of training completed with an initial application for certification; and correcting some typographical errors. An exemption from Executive Order 2019-01 for this rulemaking was provided by Emily Rajakovich, of the Governor's Office, in an e-mail dated June 21, 2019.

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

Until the rulemaking is completed, the Board will continue to have rules that are unclear or impose unnecessary administrative burdens on licensees and applicants.

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

It reflects poorly on the Board and the state to have rules that are unclear or impose unnecessary administrative burdens on licensees and applicants.

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

When the rulemaking is completed, the Board's rules will be clear and no longer impose an unnecessary administrative burden on licensees and applicants.

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

The Board concluded the benefits of clarifying requirements and deleting an unnecessary administrative burden outweigh any minimal costs.

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: Allen Imig, Executive Director

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

Address: Board of Examiners for Nursing Care Administrators and Assisted Living
Facility Managers
1740 West Adams Street, Suite 2490
Phoenix, AZ 85007

Telephone: (602) 364-2273

Fax: (602) 542-8316

E-mail: allen.imig@nciabd.state.az.us

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

Licensees, applicants, and the Board will be directly affected by, bear the costs of, or directly benefit from the rulemaking.

There are currently 358 licensed administrators of nursing care institutions. During the last year, 42 individuals applied for licensure. Fourteen of the 42 applicants for licensure were by reciprocity and would have benefitted from the clarification in this rulemaking.

There are currently 2,108 certified managers of assisted living facilities. During the last year, 317 individuals applied for certification and would have benefitted from the clarification in this rulemaking.

All applications to the Board are currently submitted electronically. However, removing the requirement for notarization will simplify the process for everyone.

The Board incurred the cost of completing this rulemaking and will incur the cost of implementing and enforcing it. However, the Board will have the benefit of rules that are clear and not burdensome. The Board currently has four FTEs and an appropriation of \$455,000.

5. Cost-benefit analysis:

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

The Board is the only state agency directly affected by the rulemaking. The Board will not need additional FTEs to implement and enforce the rules.

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

No political subdivision is directly affected by the rulemaking.

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

Licensees and applicants 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 believes the rulemaking will have no impact on private or public employment.

7. Impact on small businesses²:

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

Licensees and applicants are small businesses directly affected by the rulemaking.

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

The rulemaking removes rather than adds administrative and other costs for compliance.

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

The rulemaking clarifies requirements and removes an unnecessary burden. There is no need to reduce the impact of these beneficial changes on businesses.

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

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

9. Probable effects on state revenues:

There will be no effect on state revenues.

10. Less intrusive or less costly alternative methods considered:

Because the benefits of the rulemaking are positive for licensees and applicants, no less intrusive or less costly alternative method was considered.

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

CHAPTER 33. BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS

Historical Note

Adopted effective October 12, 1976 (Supp. 76-5). Former Section R4-33-27 renumbered and amended as Section R4-33-127 (Supp. 82-1). Section R4-33-127 renumbered to R4-33-212 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Repealed effective August 6, 1991 (Supp. 91-3). Emergency expired. Section R4-33-127 renumbered to R4-33-213 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-127 renumbered to R4-33-213 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-127 renumbered to R4-33-213 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-127 renumbered to R4-33-213 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-127 renumbered to R4-33-213 effective November 25, 1992 (Supp. 92-4).

R4-33-128. Renumbered

Historical Note

Adopted effective October 12, 1976 (Supp. 76-5). Former Section R4-33-28 renumbered as Section R4-33-128 (Supp. 82-1). Section R4-33-128 renumbered to R4-33-213 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Section R4-33-128 renumbered to R4-33-214 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-128 renumbered to R4-33-214 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-128 renumbered to R4-33-214 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-128 renumbered to R4-33-214 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-128 renumbered to R4-33-214 effective November 25, 1992 (Supp. 92-4).

R4-33-129. Renumbered

Historical Note

Adopted effective October 12, 1976 (Supp. 76-5). Former Section R4-33-29 renumbered as Section R4-33-129 and repealed effective February 10, 1982 (Supp. 82-1). Section R4-33-129 renumbered to R4-33-214 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Section R4-33-129 renumbered to R4-33-215 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-129 renumbered to R4-33-215 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-129 renumbered to R4-33-215 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-129 renumbered to R4-33-215 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-4).

(Supp. 92-3). Section R4-33-129 renumbered to R4-33-215 effective November 25, 1992 (Supp. 92-4).

R4-33-130. Renumbered

Historical Note

Adopted effective July 24, 1989 (Supp. 78-4). Former Section R4-33-30 renumbered as Section R4-33-130 and repealed, new Section R4-33-130 adopted effective February 10, 1982 (Supp. 82-1). Amended effective August 6, 1991 (Supp. 91-3). Section R4-33-130 renumbered to R4-33-215 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Amended effective August 6, 1991 (Supp. 91-3). Emergency expired. Section R4-33-130 renumbered to R4-33-216 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-130 renumbered to R4-33-216 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-130 renumbered to R4-33-216 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-130 renumbered to R4-33-216 effective November 25, 1992 (Supp. 92-4).

ARTICLE 2. NURSING CARE INSTITUTION ADMINISTRATOR LICENSING

Article 2, consisting of Sections R4-33-201 through R4-33-207 and R4-33-209 through R4-33-215, renumbered from R4-33-115 through R4-33-124 and R4-33-127 through R4-33-130 effective November 25, 1992 (Supp. 92-3).

Article 2, consisting of Sections R4-33-201 through R4-33-207 and R4-33-209 through R4-33-215, renumbered by emergency action from R4-33-115 through R4-33-124 and R4-33-127 through R4-33-130 effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2).

Article 2, consisting of Sections R4-33-201 through R4-33-215, renumbered by emergency action from R4-33-114 through R4-33-124 and R4-33-127 through R4-33-130 effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2).

R4-33-201. Requirements for Initial License by Examination

To be eligible to receive an initial license by examination as a nursing care institution administrator, an individual shall:

1. Education and training.
 - a. Hold a minimum of a baccalaureate degree from an accredited college or university and successfully complete an AIT program;
 - b. Hold a minimum of a master's degree in either a health-related field or business administration from an accredited college or university; or
 - c. Hold a minimum of an associate of arts degree in nursing from an accredited college or university and:
 - i. Be currently licensed as a registered nurse under A.R.S. § 32-1632,
 - ii. Have worked as a registered nurse for five of the last seven years, and
 - iii. Successfully complete an AIT program.
2. Examination.
 - a. Obtain the scaled passing scores on both the NAB core of knowledge and line of service examinations

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- or qualify with NAB as a Health Services Executive, and
- b. Obtain a score of at least 80 percent on the Arizona examination;
- 3. Fingerprint clearance card. Have a valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1; and
- 4. Application. Submit all applicable information required under R4-33-204.

Historical Note

Adopted effective October 12, 1976 (Supp. 76-5). Former Section R4-33-15 renumbered and amended as Section R4-33-115 (Supp. 82-1). Section R4-33-202 renumbered from R4-33-115 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Amended effective August 6, 1991 (Supp. 91-3). Emergency expired. New Section R4-33-201 renumbered from R4-33-115 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). New Section R4-33-201 renumbered from R4-33-115 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). New Section R4-33-201 renumbered from R4-33-115 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. New Section R4-33-201 renumbered from R4-33-115 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-201 renumbered from R4-33-115 effective November 25, 1992 (Supp. 92-4). Text corrected to include amendments adopted effective August 6, 1991, which were inadvertently omitted (Supp. 95-2). Amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Former R4-33-201 renumbered to R4-33-204; new R4-33-201 renumbered from R4-33-204 and amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 2734, effective November 10, 2018 (Supp. 18-3).

R4-33-202. Requirements for Initial License by Reciprocity

To be eligible for an initial license by reciprocity as a nursing care institution administrator, an individual shall:

- 1. Substantially equivalent educational requirement.
 - a. Hold a minimum of a baccalaureate degree from an accredited college or university, or
 - b. Hold ACHCA certification;
- 2. Substantially equivalent examination requirement.
 - a. Hold a valid and current license as a nursing care institution administrator issued by a state or territory, which was obtained by passing the NAB examination; or
 - b. Have evidence of qualification by NAB as a Health Services Executive; and
 - c. Obtain a score of at least 80 percent on the Arizona examination;
- 3. Be employed full-time as a nursing care institution administrator of record for the last two years in a state or territory with a licensing authority;
- 4. Never have had a nursing care administrator license suspended, revoked, or otherwise restricted by any state or territory;

- 5. Fingerprint clearance card. Have a valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1; and
- 6. Application.
 - a. Submit all applicable information required under R4-33-204,
 - b. Submit evidence of being employed full-time as a nursing care institution administrator of record for the last two years in a state or territory with a licensing authority,
 - c. Have submitted directly to the Board a certified copy of the valid and current license issued by a state or territory, and
 - d. Have submitted directly to the Board by NAB:
 - i. The examination score referenced under subsection (2)(a), or
 - ii. Evidence of qualification as a Health Services Executive.

Historical Note

Adopted effective October 12, 1976 (Supp. 76-5). Former Section R4-33-16 renumbered as Section R4-33-116 (Supp. 82-1). Section R4-33-203 renumbered from R4-33-116 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Amended as Section R4-33-116 effective August 6, 1991 (Supp. 91-3). Section R4-33-202 renumbered from R4-33-116 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-202 renumbered from R4-33-116 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-202 renumbered from R4-33-116 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-202 renumbered from R4-33-116 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-202 renumbered from R4-33-116 effective November 25, 1992 (Supp. 92-4). Text corrected to include amendments adopted effective August 6, 1991, which were inadvertently omitted (Supp. 95-2). Amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Former R4-33-202 renumbered to R4-33-205; new R4-33-202 renumbered from R4-33-203 and amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 2734, effective November 10, 2018 (Supp. 18-3).

R4-33-203. Requirements for Temporary License

- A. To be eligible for a temporary license as a nursing care institution administrator, an individual shall:
 - 1. Meet the requirements specified in R4-33-201 or R4-33-202 except for the requirement at R4-33-201(2) or R4-33-202(2)(b);
 - 2. Have the owner of a nursing care institution that intends to appoint the applicant as administrator if the applicant is successful in obtaining a temporary license submit to the Board a Letter of Intent to Appoint on a form that is available from the Board. The owner of the nursing care institution shall include the following in the Letter of Intent to Appoint:
 - a. Name of the owner of the nursing care institution,

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- b. Name and address of the nursing care institution;
- c. Name of the applicant;
- d. An affirmation of intent to appoint the applicant;
- e. Reason for requesting a temporary license for the applicant;
- f. License number of the nursing care institution, and
- g. Notarized signature of the owner of the nursing care institution;
- 3. Not have held an Arizona temporary license as a nursing care institution administrator within the past three years; and
- 4. Not have failed the Arizona or NAB examination before applying for a temporary license.
- B. At the Board's request, an applicant for a temporary license shall appear or be available by telephone for an interview with the Board.
- C. A temporary license is valid for 150 days and is not renewable. Before expiration of the temporary license, the temporary licensee shall become licensed under A.R.S. § 36-446.04 and this Article or discontinue as administrator of the nursing care institution.
- D. If a temporary licensee fails the Arizona or NAB examination during the term of the temporary license, the temporary license is automatically revoked and the former licensee shall discontinue as administrator of the nursing care institution.

Historical Note

Adopted effective October 12, 1976 (Supp. 76-5). Former Section R4-33-17 renumbered and amended as Section R4-33-117 (Supp. 82-1). Section R4-33-204 renumbered from R4-33-117 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Amended as Section R4-33-117 effective August 6, 1991 (Supp. 91-3). Section R4-33-203 renumbered from R4-33-117 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-203 renumbered from R4-33-117 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-203 renumbered from R4-33-117 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-203 renumbered from R4-33-117 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-203 renumbered from R4-33-117 effective November 25, 1992 (Supp. 92-4). Text corrected to include amendments adopted effective August 6, 1991, which were inadvertently omitted (Supp. 95-2). Amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Former R4-33-203 renumbered to R4-33-202; new R4-33-203 renumbered from R4-33-212 and amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 21 A.A.R. 543, effective June 6, 2015 (Supp. 15-2).

R4-33-204. Initial Application

- A. An individual who desires to be licensed as a nursing care institution administrator shall submit the following information to the Board on an application form, which is available from the Board:
 - 1. Full name of the applicant;
 - 2. Other names that the applicant has used;
 - 3. Mailing address of the applicant;
- 4. E-mail address of the applicant;
- 5. Home, work, and mobile telephone numbers of the applicant;
- 6. Applicant's date and place of birth;
- 7. Applicant's Social Security number;
- 8. Address of every residence at which the applicant has lived in the last five years;
- 9. Name and address of every accredited college or university attended, dates of attendance, date of graduation, and degree or certificate received;
- 10. Information regarding professional licenses or certifications currently or previously held by the applicant, including:
 - a. Name of issuing agency;
 - b. License or certificate number;
 - c. Issuing jurisdiction;
 - d. Date on which the license or certificate was first issued;
 - e. Whether the license or certificate is current; and
 - f. Whether the license or certificate is in good standing and if not, an explanation;
- 11. Information regarding the applicant's employment record for the last five years, including:
 - a. Name, address, and telephone number of each employer;
 - b. Title of position held by the applicant;
 - c. Name of applicant's supervisor;
 - d. Dates of employment; and
 - e. Reason for employment termination;
- 12. Whether the applicant was ever denied a professional license or certificate and if so, the kind of license or certificate denied, licensing authority making the denial, and date;
- 13. Whether the applicant ever voluntarily surrendered a professional license or certificate and if so, the kind of license or certificate surrendered, licensing authority, date, and reason for the surrender;
- 14. Whether the applicant ever allowed a professional license or certificate to lapse and if so, the kind of license or certificate that lapsed, licensing authority, date, reason for lapse, and whether the license or certificate was reinstated;
- 15. Whether the applicant ever had a limitation imposed on a professional license or certificate and if so, the kind of license or certificate limited, licensing authority, date, nature of limitation, reason for limitation, and whether the limitation was removed;
- 16. Whether the applicant ever had a professional license or certificate suspended or revoked and if so, the kind of license or certificate suspended or revoked, licensing authority, date, and reason for the suspension or revocation;
- 17. Whether the applicant ever was subject to disciplinary action with regard to a professional license or certificate and if so, the kind of license or certificate involved, licensing authority, date, and reason for and nature of the disciplinary action;
- 18. Whether any unresolved complaint against the applicant is pending with a licensing authority, professional association, health care facility, or nursing care institution and if so, the nature of and where the complaint is pending;
- 19. Whether the applicant ever was charged with or convicted of a felony or a misdemeanor, other than a minor traffic violation, in any court and if so, the nature of the offense, jurisdiction, and date of discharge; and

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20. Whether the applicant ever was pardoned from or had expunged the record of a felony conviction and if so, the nature of the offense, jurisdiction, and date of pardon or expunging.
- B. In addition to the application form required under subsection (A), an applicant shall have the following submitted directly to the Board on the applicant's behalf:
 1. Official transcript submitted by each accredited college or university attended by the applicant;
 2. Verification of license that is signed, authenticated by seal or notarization, and submitted by each agency that ever issued a professional license to the applicant;
 3. "Character Certification" form submitted by two individuals who have known the applicant for at least three years and are not related to, employed by, or employing the applicant; and
 4. If the applicant is certified by ACHCA, verification of certification submitted by ACHCA;
- C. In addition to complying with subsections (A) and (B), an applicant shall submit:
 1. If the applicant completed an AIT program, a photocopy of the certificate issued upon completion;
 2. For every felony or misdemeanor charge listed under subsection (A)(19), a copy of documents from the appropriate court showing the disposition of each charge;
 3. For every felony or misdemeanor conviction listed under subsection (A)(19), a copy of documents from the appropriate court showing whether the applicant met all judicially imposed sentencing terms;
 4. Passport-size, color, full-face photograph of the applicant taken within the last 180 days and signed on the back by the applicant;
 5. Fingerprint clearance card.
 - a. Photocopy of the front and back of the applicant's fingerprint clearance card,
 - b. Proof of submission of an application for a fingerprint clearance card, or
 - c. If denied a fingerprint clearance card, proof the applicant qualifies for a good-cause exception hearing under A.R.S. § 41-619.55;
 6. Documentation, as described in A.R.S. § 41-1080(A), of U.S. citizenship or alien status indicating presence in the U.S. is authorized under federal law;
 7. Signed and notarized affidavit affirming the information provided in the application is true and complete and authorizing others to release information regarding the applicant to the Board; and
 8. Fees required under R4-33-104(A)(1) and (A)(2).
- D. If required by the Board under A.R.S. § 36-446.03(D), an applicant shall appear before the Board.
- E. When the information required under subsections (A) through (C) is received and following an appearance before the Board required under subsection (D), the Board shall provide notice regarding whether the applicant may take the licensing examinations required under R4-33-201 or R4-33-202.
- F. Because of the time required for the Board to perform an administrative completeness review under R4-33-103, an applicant shall ensure the information required under subsections (A) through (C) is submitted at least 30 days before the applicant expects to take the Arizona examination.

Historical Note

Adopted effective October 12, 1976 (Supp. 76-5). Former Section R4-33-18 renumbered as Section R4-33-118 and repealed effective February 10, 1982 (Supp. 82-1). Section R4-33-205 renumbered from R4-33-118 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Section R4-33-204 renumbered from R4-33-118 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-204 renumbered from R4-33-118 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-204 renumbered from R4-33-118 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-204 renumbered from R4-33-118 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-204 renumbered from R4-33-118 effective November 25, 1992 (Supp. 92-4). Final amendment at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Former R4-33-204 renumbered to R4-33-201; new R4-33-204 renumbered from R4-33-201 and amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 2734, effective November 10, 2018 (Supp. 18-3).

R4-33-205. Administration of Examinations; License Issuance

- A. The Board shall administer the Arizona examination at least twice each year at times and places specified by the Board.
- B. An applicant shall make arrangements directly with NAB to take the NAB examination.
- C. The Board shall provide written notice to an applicant regarding whether the applicant passed a required examination.
- D. An applicant for licensure under R4-33-201 is not required to take or pass both examinations at the same time. An applicant who passes one of the examinations listed in R4-33-201(2) but fails the other is required to retake only the examination failed.
- E. When an applicant passes the examinations required under R4-33-201 or R4-33-202, the Board shall send the applicant a written notice that the Board will issue a license to the applicant when the applicant submits to the Board the fee required under R4-33-104(A)(4). If the applicant fails to submit the fee within six months of the Board's notice, the Board shall administratively close the applicant's file. An individual whose file is administratively closed may receive further consideration only by submitting a new application under R4-33-201 or R4-33-202.

Historical Note

Adopted effective October 12, 1976 (Supp. 76-5). Amended effective July 24, 1978 (Supp. 78-4). Former Section R4-33-19 renumbered as Section R4-33-119 and repealed, new Section R4-33-119 adopted effective February 10, 1982 (Supp. 82-1). Amended effective May 2, 1984 (Supp. 84-3). Amended as an emergency effective October 2, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency expired. Emergency amendments readopted without change effective January 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Emergency amendments adopted again without change effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days; amended effective June 14, 1990 (Supp. 90-2). Section R4-33-206 renumbered from R4-33-119 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-

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1026, valid for only 90 days (Supp. 91-2). Amended as R4-33-119 effective August 6, 1991 (Supp. 91-3). Emergency expired. Section R4-33-206 renumbered from R4-33-119 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-205 renumbered from R4-33-119 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-205 renumbered from R4-33-119 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-205 renumbered from R4-33-119 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-205 renumbered from R4-33-119 effective November 25, 1992 (Supp. 92-4). Text corrected to include amendments adopted effective August 6, 1991, which were inadvertently omitted (Supp. 95-2). Amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Section repealed by final rulemaking at 10 A.A.R. 805, effective April 13, 2004 (Supp. 04-1). Section R4-33-205 renumbered from R4-33-202 and amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

R4-33-206. Renewal Application

- A. The Board shall provide a licensee with notice of the need for license renewal. Failure to receive notice of the need for license renewal does not excuse a licensee's failure to renew timely.
- B. An administrator license expires at midnight on June 30 of each even-numbered year.
- C. To renew an administrator license, the licensee shall submit the following information to the Board, on or before June 30, on a renewal application, which is available from the Board:
 - 1. Current address;
 - 2. Current e-mail address;
 - 3. Current home and business telephone numbers;
 - 4. Whether within the last 24 months the licensee was convicted of or pled guilty or no contest to a criminal offense, other than a minor traffic violation, in any court and if so, attach a copy of the original arrest record and final court judgment;
 - 5. Whether within the last 24 months the licensee was denied a professional license or had a professional license revoked, suspended, placed on probation, limited, or restricted in any way by a state or federal regulatory authority and if so, the kind of license, license number, issuing authority, nature of the regulatory action, and date;
 - 6. An affirmation that the number of hours of continuing education required under R4-33-501 has been completed; and
 - 7. The licensee's dated and notarized signature affirming the information provided is true and complete.
- D. In addition to the renewal application required under subsection (C), a licensee shall submit:
 - 1. A photocopy of the front and back of the licensee's fingerprint clearance card;
 - 2. Documentation described in A.R.S. § 41-1080(A) unless the documentation previously submitted under R4-36-204(C)(6) established U.S. citizenship or was a non-expiring work authorization issued by the federal government; and
 - 3. The license renewal fee required under R4-33-104.

- E. An individual whose license expires because of failure to renew timely may apply for renewal by complying with subsections (C) and (D) if:
 - 1. The individual complies with subsections (C) and (D) on or before July 31,
 - 2. The individual pays the late renewal fee prescribed under R4-33-104, and
 - 3. The individual affirms the individual has not acted as a nursing care institution administrator since the license expired.
- F. An individual whose license expires because of failure to renew timely and who does not comply with subsection (E) may become licensed as a nursing care institution administrator only by complying with R4-33-201 or R4-33-202.

Historical Note

Adopted effective October 12, 1976 (Supp. 76-5). Amended effective July 24, 1978 (Supp. 78-4). Former Section R4-33-20 renumbered and amended as Section R4-33-120 (Supp. 82-1). Section R4-33-207 renumbered from R4-33-120 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Amended as R4-33-120 effective August 6, 1991 (Supp. 91-3). Section R4-33-207 renumbered from R4-33-120 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-207 renumbered from R4-33-120 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-207 renumbered from R4-33-120 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-207 renumbered from R4-33-120 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-206 renumbered from R4-33-120 effective November 25, 1992 (Supp. 92-4). Text corrected to include amendments adopted effective August 6, 1991, which were inadvertently omitted (Supp. 95-2). Amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1). Amended by final rulemaking at 15 A.A.R. 1975, effective November 3, 2009 (Supp. 09-4). Amended by final rulemaking at 24 A.A.R. 2734, effective November 10, 2018 (Supp. 18-3).

R4-33-207. Inactive Status

- A. The Board shall place an administrator's license on inactive status if the administrator:
 - 1. Is in good standing in Arizona,
 - 2. Submits a written request to the Board to be placed on inactive status, and
 - 3. Submits evidence that complies with R4-33-501(D) showing that the administrator completed two hours of continuing education for each month in the current biennial period before the request to be placed on inactive status.
- B. Within seven days after receiving a request to be placed on inactive status, the Board shall provide the administrator written confirmation of inactive status.
- C. An administrator whose license is on inactive status is not required to comply with R4-33-501.

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- D. An inactive license expires under R4-33-206 unless the administrator timely submits a renewal application and the fee required under R4-33-104(A)(7).
- E. To resume active licensure status, an administrator shall:
 - 1. Submit evidence that complies with R4-33-501(D) showing that the administrator completed 25 hours of continuing education within the six months before requesting to resume active licensure status, and
 - 2. Submit a written request to the Board to resume active licensure status.
- F. The Board shall grant a request to resume active licensure status if the requirements of subsection (E) are met. Within seven days after receiving the written request to resume active licensure status, the Board shall send written notice to the administrator granting or denying active status.

Historical Note

Adopted effective October 12, 1976 (Supp. 76-5). Former Section R4-33-21 renumbered and amended as Section R4-33-121 (Supp. 82-1). Section R4-33-208 renumbered from R4-33-121 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Section R4-33-208 renumbered from R4-33-121 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-208 renumbered from R4-33-121 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-208 renumbered from R4-33-121 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

Section R4-33-208 renumbered from R4-33-121 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-207 renumbered from R4-33-121 effective November 25, 1992 (Supp. 92-4). Section R4-33-207 renumbered to R4-33-208, new Section adopted by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

R4-33-208. Standards of Conduct; Disciplinary Action

- A. An administrator shall know and comply with all federal and state laws applicable to operation of a nursing care institution.
- B. An administrator shall not:
 - 1. Engage in unprofessional conduct as defined at A.R.S. § 36-446;
 - 2. Be addicted to or dependent on the use of narcotics or other drugs, including alcohol;
 - 3. Directly or indirectly permit an owner, officer, or employee of a nursing care institution to solicit, offer, or receive any premium, rebate, or other valuable consideration in connection with furnishing goods or services to patients of the institution unless the resulting economic benefit is directly passed to the patients;
 - 4. Directly or indirectly permit an owner, officer, or employee of a nursing care institution to solicit, offer, or receive any premium, rebate, or other valuable consideration for referring a patient to another person or place unless the resulting economic benefit is directly passed to the patient;
 - 5. Willfully permit the unauthorized disclosure of information relating to a patient or a patient's records;
 - 6. Discriminate against a patient or employee on the basis of race, sex, age, religion, disability, or national origin;

- 7. Misrepresent the administrator's qualifications, education, or experience;
 - 8. Aid or abet another person to misrepresent that person's qualifications, education, or experience;
 - 9. Defend, support, or ignore unethical conduct of an employee, owner, or other administrator;
 - 10. Engage in any conduct or practice contrary to recognized community standards or ethics of a nursing care institution administrator;
 - 11. Engage in any conduct or practice that is or might constitute incompetence, gross negligence, repeated negligence, or negligence that might constitute a danger to the health, welfare, or safety of a patient or the public;
 - 12. Procure or attempt to procure by fraud or misrepresentation a license or renewal of a license as a nursing care institution administrator;
 - 13. Violate a formal order, condition of probation, or stipulation issued by the Board;
 - 14. Commit an act of sexual abuse, misconduct, harassment, or exploitation;
 - 15. Retaliate against any person who reports in good faith to the Board alleged incompetence or illegal or unethical conduct of any administrator; or
 - 16. Accept an appointment as administrator of a nursing care institution in violation of R4-33-212.
- C. The Board shall consider a final judgment or conviction for a felony, an offense involving moral turpitude, or direct or indirect elder abuse as grounds for disciplinary action under A.R.S. § 36-446.07 including denial of a license or license renewal.
 - D. An administrator who violates any provision of A.R.S. Title 36, Chapter 4, Article 6 or this Chapter is subject to discipline under A.R.S. § 36-446.07.

Historical Note

Adopted effective July 24, 1978 (Supp. 78-4). Former Section R4-33-22 renumbered as Section R4-33-122 (Supp. 82-1). Section R4-33-209 renumbered from R4-33-122 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Section R4-33-209 renumbered from R4-33-122 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-209 renumbered from R4-33-122 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-209 renumbered from R4-33-122 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-209 renumbered from R4-33-122 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-208 renumbered from R4-33-122 effective November 25, 1992 (Supp. 92-4). Section R4-33-208 renumbered to R4-33-209, new Section R4-33-208 renumbered from R4-33-207 and amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 21 A.A.R. 543, effective June 6, 2015 (Supp. 15-2).

R4-33-209. Renumbered

Historical Note

Adopted effective October 12, 1976 (Supp. 76-5). Former Section R4-33-23 renumbered as Section R4-33-123

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(Supp. 82-1). Section R4-33-210 renumbered from R4-33-123 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Section R4-33-210 renumbered from R4-33-123 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-210 renumbered from R4-33-123 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-210 renumbered from R4-33-123 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-210 renumbered from R4-33-123 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-209 renumbered from R4-33-123 effective November 25, 1992 (Supp. 92-4). Section R4-33-209 renumbered to R4-33-210, new Section R4-33-209 renumbered from R4-33-208 and amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Section R4-33-209 renumbered to R4-33-106 by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

R4-33-210. Licensure Following Revocation

An individual who wishes to be licensed after the individual's license as a nursing care institution administrator is revoked shall:

1. Not apply for licensure until at least 12 months have passed since the revocation; and
2. Apply for licensure under R4-33-201 or R4-33-202.

Historical Note

Adopted effective October 12, 1976 (Supp. 76-5). Former Section R4-33-24 renumbered as Section R4-33-124 (Supp. 82-1). Section R4-33-211 renumbered from R4-33-124 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Section R4-33-212 renumbered from R4-33-124 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-210 renumbered from R4-33-124 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-210 renumbered from R4-33-124 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-210 renumbered from R4-33-124 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-210 renumbered from R4-33-124 effective November 25, 1992 (Supp. 92-4). Section R4-33-210 renumbered to R4-33-211, new Section R4-33-210 renumbered from R4-33-209 and amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

R4-33-211. Notice of Appointment

- A. An administrator shall provide written notice to the Board, within 30 days, of being appointed administrator of a nursing care institution or terminating an appointment.
- B. An administrator shall include the following, as applicable, in a notice regarding the administrator's appointment:
 1. Administrator's name,
 2. Administrator's license number,

3. Name and address of the nursing care institution to which the administrator is appointed,
4. Date of appointment,
5. Name and address of the nursing care institution at which the administrator's appointment is terminated, and
6. Date of termination.

Historical Note

Section R4-33-211 renumbered from R4-33-125 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1).

Section R4-33-211 renumbered from R4-33-125 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-211 renumbered from R4-33-125 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-211 renumbered from R4-33-125 effective November 25, 1992 (Supp. 92-4). New Section R4-33-211 renumbered from R4-33-210 and amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

R4-33-212. Appointment as Administrator of Multiple Nursing Care Institutions

- A. Except as provided in subsection (B), an individual licensed under R4-33-201 or R4-33-202 shall not be appointed as administrator of more than one nursing care institution.
- B. An individual licensed under R4-33-201 or R4-33-202 may be appointed as administrator of a second nursing care institution if:
 1. Neither nursing care institution is operating under a provisional license;
 2. The two nursing care institutions are no more than 25 miles apart; and
 3. The appointment at the second institution is for no more than 90 days.
- C. A licensed administrator who is appointed as administrator of a second nursing care institution under subsection (B) shall:
 1. For both nursing care institutions, designate in writing an individual who is on the nursing care institution premises and accountable for the services provided at the nursing care institution when the licensed administrator is not on the nursing care institution premises. The designated individual shall:
 - a. Be at least 21 years old;
 - b. Be qualified through education and experience to fulfill the responsibilities of a nursing care institution administrator; and
 - c. Never have had licensure or certification suspended or revoked by the Board;
 2. Ensure that the name of the designated individual is conspicuously displayed at all times in a manner that informs those seeking assistance who is accountable for the services provided;
 3. Place the written notice of designation required under subsection (C)(1) in the personnel file of the individual designated; and
 4. Be available to the individual designated under subsection (C)(1) by telephone or electronically within 60 minutes.

Historical Note

Adopted effective August 6, 1991 (Supp. 91-3). Section R4-33-211 renumbered from R4-33-126 by emergency

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action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-212 renumbered from R4-33-126 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-212 renumbered from R4-33-126 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-212 renumbered from R4-33-126 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-212 renumbered from R4-33-126 effective November 25, 1992 (Supp. 92-4). Section R4-33-212 amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Section R4-33-212 renumbered to R4-33-203 by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). New Section made by final rulemaking at 21 A.A.R. 543, effective June 6, 2015 (Supp. 15-2).

R4-33-213. Repealed**Historical Note**

Adopted effective October 12, 1976 (Supp. 76-5). Former Section R4-33-27 renumbered and amended as Section R4-33-127 (Supp. 82-1). Section R4-33-212 renumbered from R4-33-127 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Repealed as R4-33-127 effective August 6, 1991 (Supp. 91-3). Emergency expired. Section R4-33-213 renumbered from R4-33-127 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4).

Section R4-33-213 renumbered from R4-33-127 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1).

Section R4-33-213 renumbered from R4-33-127 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-213 renumbered from R4-33-127 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-213 renumbered from R4-33-127 effective November 25, 1992 (Supp. 92-4).

Section R4-33-213 renumbered from R4-33-214 and amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Section repealed by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

R4-33-214. Repealed**Historical Note**

Adopted effective October 12, 1976 (Supp. 76-5). Former Section R4-33-28 renumbered as Section R4-33-128 (Supp. 82-1). Section R4-33-213 renumbered from R4-33-128 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Section R4-33-214 renumbered from R4-33-128 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-214 renumbered from R4-33-128 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-214 renumbered from R4-33-128 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2).

only 90 days (Supp. 92-2). Emergency expired. Section R4-33-214 renumbered from R4-33-128 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-214 renumbered from R4-33-128 effective November 25, 1992 (Supp. 92-4). Section R4-33-214 renumbered from R4-33-216 and amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Section repealed by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

R4-33-215. Renumbered**Historical Note**

Adopted effective October 12, 1976 (Supp. 76-5). Former Section R4-33-29 renumbered as Section R4-33-129 and repealed effective February 10, 1982 (Supp. 82-1). Section R4-33-214 renumbered from R4-33-129 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Section R4-33-214 renumbered from R4-33-129 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-215 renumbered from R4-33-129 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-215 renumbered from R4-33-129 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-215 renumbered from R4-33-129 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-215 renumbered from R4-33-129 effective November 25, 1992 (Supp. 92-4).

R4-33-216. Renumbered**Historical Note**

Adopted effective July 24, 1989 (Supp. 78-4). Former Section R4-33-30 renumbered as Section R4-33-130 and repealed, new Section R4-33-130 adopted effective February 10, 1982 (Supp. 82-1). Section R4-33-215 renumbered from R4-33-130 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Amended as R4-33-130 effective August 6, 1991 (Supp. 91-3). Emergency expired.

Section R4-33-216 renumbered from R4-33-130 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4).

Section R4-33-216 renumbered from R4-33-130 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1).

Section R4-33-216 renumbered from R4-33-130 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-216 renumbered from R4-33-130 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3).

Section R4-33-216 renumbered from R4-33-130 by emergency action effective November 25, 1992 (Supp. 92-4).

Text corrected to include amendments adopted effective August 6, 1991, which were inadvertently omitted (Supp. 95-2). Section R4-33-216 renumbered to R4-33-214 by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1).

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Emergency adoption effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. R4-33-312 renumbered from emergency rule R4-33-311 and adopted with changes effective November 25, 1992 (Supp. 92-4). Section R4-33-312 renumbered to R4-33-412 by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1).

ARTICLE 4. ASSISTED LIVING FACILITY MANAGER CERTIFICATION**R4-33-401. Requirements for Initial Certification by Examination**

- A. Except as provided in subsection (B), an individual who wishes to receive an initial certificate by examination as an assisted living facility manager shall:
1. Education:
 - a. Earn a high school diploma or G.E.D., and
 - b. Complete an assisted living facility caregiver training program that is approved by the Board under A.A.C. R4-33-701, and
 - c. Complete an assisted living facility manager training program that is approved by the Board under A.A.C. R4-33-601, or
 - d. Hold a license in good standing issued under A.R.S. Title 32, Chapter 13, 15, or 17 or 4 A.A.C. 33, Article 2;
 2. Work experience. Complete at least 2,080 hours of paid work experience in a health-related field within the five years before application;
 3. Examination. Obtain a score of at least 75 percent on the Arizona examination;
 4. Training. Complete an adult cardiopulmonary resuscitation and basic first-aid training program;
 5. Fingerprint clearance card. Have a valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1; and
 6. Submit all applicable information required under R4-33-403.
- B. An individual who holds a license in good standing issued under A.R.S. Title 32, Chapter 13, 15, or 17 or 4 A.A.C. 33, Article 2 is exempt from the requirements specified in subsections (A)(1)(b) and (4).

Historical Note

Section R4-33-401 renumbered from R4-33-301 by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 3897, effective July 31, 2004 (Supp. 04-3).

Section R4-33-401 renumbered from R4-33-402 and amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1). Amended by final rulemaking at 21 A.A.R. 543, effective June 6, 2015 (Supp. 15-2).

R4-33-402. Requirements for a Temporary Certificate

- A. To be eligible for a temporary certificate as an assisted living facility manager, an individual shall:
1. Meet the requirements under R4-33-401 except for the requirement at R4-33-401(3);
 2. Have the owner of an assisted living facility that intends to appoint the applicant as manager if the applicant is successful in obtaining a temporary certificate submit to the Board a Letter of Intent to Appoint on a form that is avail-

able from the Board. The owner of the assisted living facility shall include the following in the Letter of Intent to Appoint:

- a. Name of the owner of the assisted living facility;
 - b. Name and address of the assisted living facility;
 - c. Name of the applicant;
 - d. An affirmation of intent to appoint the applicant;
 - e. Reason for requesting a temporary certificate for the applicant;
 - f. License number of the assisted living facility; and
 - g. Notarized signature of the owner of the assisted living facility;
3. Not have held an Arizona temporary certificate as an assisted living facility manager within the past three years; and
 4. Not have failed the Arizona examination before applying for the temporary certificate.
- B. At the Board's request, an applicant for a temporary certificate shall appear or be available by telephone for an interview with the Board.
- C. A temporary certificate is valid for 150 days and is not renewable. Before expiration of the temporary certificate, the temporary certificate holder shall obtain a certificate under A.R.S. § 36-446.04 and this Article or discontinue as manager of the assisted living facility.
- D. If a temporary certificate holder fails the Arizona examination during the term of the temporary certificate, the temporary certificate is automatically revoked and the former temporary certificate holder shall discontinue as manager of the assisted living facility.

Historical Note

Section R4-33-402 renumbered from R4-33-302 by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Former R4-33-402 renumbered to R4-33-401; new R4-33-402 renumbered from R4-33-410 and amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). R4-33-402(A)(1) citation to R4-33-401(A)(3) corrected to R4-33-401(3) at the request of the Department, see Office File No. M10-416 filed October 18, 2010 (Supp. 09-4). Amended by final rulemaking at 21 A.A.R. 543, effective June 6, 2015 (Supp. 15-2).

R4-33-403. Initial Application

- A. An individual who desires to be certified as a manager of an assisted living facility shall submit the following information to the Board on an application form, which is available from the Board:
1. Full name of the applicant;
 2. Other names that the applicant has used;
 3. Mailing address of the applicant;
 4. Home, work, and mobile telephone numbers of the applicant;
 5. Applicant's date and place of birth;
 6. Applicant's Social Security number;
 7. Address of every residence at which the applicant has lived in the last five years;
 8. Education information regarding the applicant, including:
 - a. Name and location of last high school attended;
 - b. Date of high school graduation or date on which a G.E.D. was earned; and
 - c. Name and address of every accredited college or university attended, dates of attendance, date of graduation, and degree or certificate earned;

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9. Information regarding professional licenses or certifications currently or previously held by the applicant, including:
 - a. Name of issuing agency;
 - b. License or certificate number;
 - c. Issuing jurisdiction;
 - d. Date on which the license or certificate was first issued;
 - e. Whether the license or certificate is current; and
 - f. Whether the license or certificate is in good standing and if not, an explanation;
 10. Information regarding the applicant's employment record for the last five years, including:
 - a. Name, address, and telephone number of each employer;
 - b. Title of position held by the applicant;
 - c. Name of applicant's supervisor;
 - d. Dates of employment;
 - e. Number of hours worked each week;
 - f. Whether the employment was full or part time; and
 - g. Reason for termination;
 11. Whether the applicant was ever denied a professional license or certificate and if so, the kind of license or certificate denied; licensing authority making the denial, and date;
 12. Whether the applicant ever voluntarily surrendered a professional license or certificate and if so, the kind of license or certificate surrendered, licensing authority, date, and reason for the surrender;
 13. Whether the applicant ever allowed a professional license or certificate to lapse and if so, the kind of license or certificate that lapsed, licensing authority, date, reason for lapse, and whether the license or certificate was reinstated;
 14. Whether the applicant ever had a limitation imposed on a professional license or certificate and if so, the kind of license or certificate limited, licensing authority, date, nature of limitation, reason for limitation, and whether the limitation was removed;
 15. Whether the applicant ever had a professional license or certificate suspended or revoked and if so, the kind of license or certificate suspended or revoked, licensing authority, date, and reason for suspension or revocation;
 16. Whether the applicant ever was subject to disciplinary action with regard to a professional license or certificate and if so, the kind of license or certificate involved, licensing authority, date, and reason for and nature of the disciplinary action;
 17. Whether any unresolved complaint against the applicant is pending with a licensing authority, professional association, health care facility, or assisted living facility and if so, the nature of and where the complaint is pending;
 18. Whether the applicant ever was charged with or convicted of a felony or a misdemeanor, other than a minor traffic violation, in any court and if so, the nature of the offense, jurisdiction, and date of discharge; and
 19. Whether the applicant ever was pardoned from or had the record expunged of a felony conviction and if so, the nature of the offense, jurisdiction, and date of pardon or expunging.
- B.** In addition to the application form required under subsection (A), an applicant shall submit or have submitted on the applicant's behalf:
1. Education:
- a. Copy of the applicant's high school diploma or G.E.D., and
 - b. Certificate of completion issued within a year before the date of application from the training course described under R4-33-401(1)(b), or
 - c. Copy of the applicant's license issued under A.R.S. Title 32, Chapter 13, 15, or 17 or 4 A.A.C. 33, Article 2;
 2. Documentation of 2,080 hours of paid work experience in a health-related field;
 3. Copy of current certification in adult cardiopulmonary resuscitation and first aid;
 4. Verification of license that is signed, authenticated by seal or notarization, and submitted directly to the Board by each agency that ever issued a professional license to the applicant;
 5. "Character Certification" form submitted directly to the Board by two individuals who have known the applicant for at least three years and are not related to, employed by, or employing the applicant;
 6. For every felony or misdemeanor charge listed under subsection (A)(18), a copy of documents from the appropriate court showing the disposition of each charge;
 7. For every felony or misdemeanor conviction listed under subsection (A)(18), a copy of documents from the appropriate court showing whether the applicant met all judicially imposed sentencing terms;
 8. Passport-size, color, full-face photograph of the applicant taken within the last 180 days and signed on the back by the applicant;
 9. Fingerprint clearance card.
 - a. Photocopy of the front and back of the applicant's fingerprint clearance card;
 - b. Proof of submission of an application for a fingerprint clearance card; or
 - c. If denied a fingerprint clearance card, proof that the applicant qualifies for a good-cause exception hearing under A.R.S. § 41-619.55;
 10. A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, which is a form available from the Board;
 11. Signed and notarized affidavit affirming that the information provided in the application is true and complete and authorizing others to release information regarding the applicant to the Board; and
 12. Fees required under R4-33-104(B)(1) and (B)(2).
- C. If required by the Board under A.R.S. § 36-446.03(D), an applicant shall appear before the Board.
- D. When the information required under subsections (A) and (B) is received and following an appearance before the Board required under subsection (C), the Board shall provide notice regarding whether the applicant may take the Arizona examination required under R4-33-401(3).
- E. Because of the time required for the Board to perform an administrative completeness review under R4-33-103, an applicant shall submit the information required under subsections (A) and (B) at least 30 days before the applicant expects to take the Arizona examination.

Historical Note

Section R4-33-403 renumbered from R4-33-303 by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

Amended by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1).

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R4-33-404. Administration of Examination; Certificate Issuance

- A. The Board shall administer the Arizona examination at least twice each year at times and places specified by the Board.
- B. The Board shall provide written notice to an applicant regarding whether the applicant passed the Arizona examination.
- C. When an applicant passes the Arizona examination, the Board shall send the applicant a written notice that the Board will issue a certificate to the applicant when the applicant submits to the Board the fee required under R4-33-104(B)(4). If the applicant fails to submit the fee within six months of the Board's notice, the Board shall administratively close the applicant's file. An individual whose file is administratively closed may receive further consideration only by submitting a new application under R4-33-401.

Historical Note

Section R4-33-404 renumbered from R4-33-304 by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). R4-33-404 corrected by adding a subsection (C) at the request of the Department, Office File No. M10-416 filed October 18, 2010 (Supp. 09-4).

R4-33-405. Renewal Application

- A. The Board shall provide a certificate holder with notice of the need for certificate renewal. Failure to receive notice of the need for certificate renewal does not excuse a certificate holder's failure to renew timely.
- B. A manager certificate expires at midnight on June 30 of each odd-numbered year.
- C. To renew a manager certificate, the certificate holder shall submit the following information to the Board, on or before June 30, on a renewal application, which is available from the Board:
 1. Current address;
 2. Current home and business telephone numbers;
 3. Whether within the last 24 months the certificate holder was convicted of or pled guilty or no contest to a criminal offense, other than a minor traffic violation, in any court and if so, attach a copy of the original arrest record and final court judgment;
 4. Whether within the last 24 months the certificate holder was denied a professional license or had a professional license revoked, suspended, placed on probation, limited, or restricted in any way by a state or federal regulatory authority and if so, the kind of license, license number, issuing authority, nature of the regulatory action, and date;
 5. An affirmation that the number of hours of continuing education required under R4-33-501 has been completed;
 6. An affirmation that the certificate holder complies with the disclosure requirements under R4-33-408; and
 7. The certificate holder's dated and notarized signature affirming that the information provided is true and complete.
- D. In addition to the renewal application required under subsection (C), a certificate holder shall submit:
 1. A photocopy of the front and back of the certificate holder's fingerprint clearance card;
 2. A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, which is a form available from the Board; and
 3. The renewal fee required under R4-33-104.

- E. An individual whose certificate expires because of failure to renew timely may apply for renewal by complying with subsections (C) and (D) if:
 1. The individual complies with subsections (C) and (D) on or before July 31,
 2. The individual pays the late renewal fee prescribed under R4-33-104, and
 3. The individual affirms that the individual has not acted as an assisted living facility manager since the certificate expired.
- F. An individual whose certificate expires because of failure to renew timely and who does not comply with subsection (E) may obtain a manager certificate only by complying with R4-33-401.

Historical Note

Section R4-33-405 renumbered from R4-33-305 by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Section repealed by final rulemaking at 10 A.A.R. 805, effective April 13, 2004 (Supp. 04-1). Section R4-33-405 renumbered from R4-33-406 and amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1). Amended by final rulemaking at 15 A.A.R. 1975, effective November 3, 2009 (Supp. 09-4).

R4-33-406. Inactive Status

- A. The Board shall place a manager's certificate on inactive status if the manager:
 1. Is in good standing in Arizona,
 2. Submits a written request to the Board to be placed on inactive status, and
 3. Submits evidence that complies with R4-33-501(D) showing that the manager completed one hour of continuing education for each month in the current biennial period before the request to be placed on inactive status.
- B. Within seven days after receiving a request to be placed on inactive status, the Board shall provide the manager written confirmation of inactive status.
- C. A manager whose certificate is on inactive status is not required to comply with R4-33-501.
- D. An inactive certificate expires under R4-33-405 unless the manager timely submits a renewal application and the fee required under R4-33-104(B)(7).
- E. To resume active certificate status, a manager shall:
 1. Submit evidence that complies with R4-33-501(D) showing that the manager completed 12 hours of continuing education within the six months before requesting to resume active certificate status,
 2. Submit a written request to the Board to resume active certificate status, and
 3. Submit the fee required under R4-33-104(B)(4).
- F. The Board shall grant a request to resume active certificate status if the requirements of subsection (E) are met. Within seven days after receiving the written request to resume active certificate status, the Board shall send written notice to the manager granting or denying active status.

Historical Note

New Section R4-33-406 renumbered from R4-33-306 by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Former R4-33-406 renumbered to R4-33-405; new R4-33-406 made by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

R4-33-407. Standards of Conduct; Disciplinary Action

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- A. A manager shall know and comply with all federal and state laws applicable to the operation of an assisted living facility.
- B. A manager shall not:
 - 1. Engage in unprofessional conduct as defined at A.R.S. § 36-446;
 - 2. Be addicted to or dependent on the use of narcotics or other drugs, including alcohol;
 - 3. Directly or indirectly permit an owner, officer, or employee of an assisted living facility to solicit, offer, or receive any premium, rebate, or other valuable consideration in connection with furnishing goods or services to residents unless the resulting economic benefit is directly passed to the residents;
 - 4. Directly or indirectly permit an owner, officer, or employee of an assisted living facility to solicit, offer, or receive any premium, rebate, or other valuable consideration for referring a resident to another person or place unless the resulting economic benefit is directly passed to the resident;
 - 5. Willfully permit the unauthorized disclosure of information relating to a resident or a resident's records;
 - 6. Discriminate against a resident or employee on the basis of race, sex, age, religion, disability, or national origin;
 - 7. Misrepresent the manager's qualifications, education, or experience;
 - 8. Aid or abet another person to misrepresent that person's qualifications, education, or experience;
 - 9. Defend, support, or ignore unethical conduct of an employee, owner, or other manager;
 - 10. Engage in any conduct or practice contrary to recognized community standards or ethics of an assisted living facility manager;
 - 11. Engage in any conduct or practice that is or might constitute incompetence, gross negligence, repeated negligence, or negligence that might constitute a danger to the health, welfare, or safety of a resident or the public;
 - 12. Procure or attempt to procure by fraud or misrepresentation a certificate or renewal of a certificate as an assisted living facility manager;
 - 13. Violate a formal order, condition of probation, or stipulation issued by the Board;
 - 14. Commit an act of sexual abuse, misconduct, harassment, or exploitation;
 - 15. Retaliate against any person who reports in good faith to the Board alleged incompetence or illegal or unethical conduct of any manager;
 - 16. Allow the manager's certificate to be displayed as required under R4-33-108(B) unless the manager has been appointed as specified in R4-33-410; or
 - 17. Manage an assisted living facility in violation of R4-33-411.
- C. The Board shall consider a final judgment or conviction for a felony, an offense involving moral turpitude, or direct or indirect elder abuse as grounds for disciplinary action under A.R.S. § 36-446.07, including denial of a certificate or certificate renewal.
- D. A manager who violates any provision of A.R.S. Title 36, Chapter 4, Article 6 or this Chapter is subject to discipline under A.R.S. § 36-446.07.

Historical Note

Section R4-33-407 renumbered from R4-33-307 by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 21 A.A.R. 543, effective June 6, 2015 (Supp. 15-2).

June 6, 2015 (Supp. 15-2).

R4-33-408. Referral Requirements

- A. A manager who is appointed by an assisted living facility that pays a fee to an individual or entity for referral of a resident to the assisted living facility shall ensure that the assisted living facility:
 - 1. Has on file a contract with the individual or entity making the referral;
 - 2. Maintains a file of the names of the residents referred by the individual or entity; and
 - 3. Obtains at the time of admission and maintains a statement, signed by the resident or the resident's representative or legal guardian, which discloses that:
 - a. A fee was paid for referring the resident to the assisted living facility;
 - b. The resident or the resident's representative or legal guardian was informed of the fee arrangement; and
 - c. The resident or the resident's representative or legal guardian was informed of any ownership interest between the assisted living facility and the individual or entity making the referral.
- B. A manager shall maintain the records required under subsection (A)(1) for five years and shall maintain the records required under subsections (A)(2) and (A)(3) for five years after the resident ceases to reside in the assisted living facility.
- C. A manager shall make the records required under this Section available for review upon request by the Board.

Historical Note

Section R4-33-408 renumbered from R4-33-308 by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 21 A.A.R. 543, effective June 6, 2015 (Supp. 15-2).

R4-33-409. Certification Following Revocation

An individual who wishes to be certified after the individual's certificate as an assisted living facility manager is revoked shall:

- 1. Not apply for certification until at least 12 months have passed since the revocation, and
- 2. Apply for certification under R4-33-401.

Historical Note

Section R4-33-409 renumbered from R4-33-309 by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Section repealed by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). New Section made by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1).

R4-33-410. Notice of Appointment

- A. A manager shall provide written notice to the Board, within 30 days, of being appointed manager of an assisted living facility or terminating an appointment.
- B. A manager shall include the following, as applicable, in a notice regarding the manager's appointment:
 - 1. Manager's name,
 - 2. Manager's certificate number,
 - 3. Name and address of the assisted living facility to which the manager is appointed,
 - 4. Date of appointment,
 - 5. Name and address of the assisted living facility at which the manager's appointment is terminated, and
 - 6. Date of termination.

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Section R4-33-410 renumbered from R4-33-310 by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Section R4-33-410 renumbered to R4-33-402 by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). New Section made by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1).

R4-33-411. Appointment as Manager of Multiple Assisted Living Facilities

- A. An individual certified under R4-33-401 shall not be appointed to manage more than two assisted living facilities at one time.
- B. A individual certified under R4-33-401 who is appointed to manage two assisted living facilities shall:
 1. Ensure that the two assisted living facilities are no more than 25 miles apart;
 2. Designate in writing one or more individuals who are on the assisted living facility premises and accountable for the services provided at the assisted living facility when the appointed certified manager is not on the assisted living facility premises. A designated individual shall:
 - a. Be at least 21 years old;
 - b. Be a caregiver with at least three years' experience as a caregiver or hold a temporary certificate issued under R4-33-402; and
 - c. Never have had licensure or certification suspended or revoked by the Board;
 3. Ensure that the name of the designated individual is conspicuously displayed at all times in a manner that informs those seeking assistance who is accountable for the services provided;
 4. Place the written notice of designation required under subsection (B)(2) in the personnel file of the individual designated; and
 5. Be available to the individual designated under subsection (B)(2) by telephone or electronically within 60 minutes.

Historical Note

Section R4-33-411 renumbered from R4-33-311 by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Section repealed by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). New Section made by final rulemaking at 21 A.A.R. 543, effective June 6, 2015 (Supp. 15-2).

R4-33-412. Repealed**Historical Note**

Section R4-33-412 renumbered from R4-33-312 by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Section repealed by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

ARTICLE 5. CONTINUING EDUCATION**R4-33-501. Continuing Education Requirement**

- A. Continuing education is a prerequisite of license or certificate renewal.
 1. A licensed administrator shall obtain 50 credit hours of Board-approved continuing education during each biennial period. During the biennial period in which an administrator is initially licensed, the administrator shall obtain two credit hours of Board-approved continuing education for each month or part of a month remaining in the biennial period.

- 2. A certified manager shall obtain 24 credit hours of Board-approved continuing education during each biennial period. During the biennial period in which a manager is initially certified, the manager shall obtain one credit hour of Board-approved continuing education for each month or part of a month remaining in the biennial period.

- B. The Board shall award credit hours in an approved continuing education as follows:

1. Seminar or workshop. One credit hour of continuing education for each contact hour;
2. Course at an accredited educational institution. Fifteen credit hours of continuing education for each course hour;
3. Attendance at a business meeting of a national health care organization or of a state association affiliated with a national health care organization. One-half credit hour of continuing education for each business meeting attended;
4. Self-study, online, or correspondence course. Approved credit hours of continuing education requested by the course provider;
5. Serving as a preceptor. Two credit hours of continuing education for each month that an administrator serves as an AIT preceptor; and
6. Teaching a Board-approved continuing education. One credit hour of continuing education for each hour taught.

- C. The Board shall limit the number of credit hours of Board-approved continuing education awarded as follows:

1. No more than 40 percent of the required credit hours may be obtained using self-study, online, or correspondence courses;
2. No more than 50 percent of the required credit hours may be obtained from serving as an AIT preceptor;
3. Hours may be obtained for teaching a particular continuing education only once during each biennial period; and
4. Hours that exceed the minimum required for a biennial period may not be carried over to a subsequent biennial period.

- D. An administrator or manager shall obtain a certificate or other evidence of attendance from the provider of each continuing education attended that includes the following:

1. Name of the administrator or manager;
2. License or certificate number of the administrator or manager;
3. Name of the continuing education;
4. Name of the continuing education provider;
5. Date, time, and location of the continuing education; and
6. Number of credit hours in the continuing education.

- E. An administrator or manager shall maintain the evidence of attendance described in subsection (D) for three years and make the evidence available to the Board under R4-33-503 and as otherwise required under this Chapter.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

Amended by final rulemaking at 15 A.A.R. 1975, effective November 3, 2009 (Supp. 09-4).

R4-33-502. Approval of Continuing Education

- A. The Board shall approve any continuing education approved by NAB or the ACHCA.
- B. The Board shall approve a continuing education only if it is taught by a qualified instructor and addresses at least one of the following subject areas:
 1. Laws regarding environmental health and safety,
 2. Principles of management,

36-446. Definitions

In this article, unless the context otherwise requires:

1. "Administrator" or "nursing care institution administrator" means a person who is charged with the general administration of a nursing care institution, whether or not that person has an ownership interest in the institution and whether or not the person's functions and duties are shared with others.
2. "Assisted living facility" has the same meaning prescribed in section 36-401.
3. "Assisted living facility manager" means a person who has responsibility for the administration or management of an assisted living facility, whether or not that person has an ownership interest in the institution and whether or not the person's functions and duties are shared with others.
4. "Assisted living facility training program" includes:
 - (a) Training required for assisted living facility manager certification.
 - (b) Training required by the department for assisted living facility caregivers.
5. "Board" means the board of examiners of nursing care institution administrators and assisted living facility managers.
6. "Department" means the department of health services.
7. "Directed care services" has the same meaning prescribed in section 36-401.
8. "Director" means the director of the department of health services.
9. "Nursing care institution" means an institution or other place, however named, whether for profit or not, including facilities operated by the state or a subdivision of the state, that is advertised, offered, maintained or operated for the express or implied purpose of providing care to persons who need nursing services on a continuing basis but who do not require hospital care or care under the daily direction of a physician. Nursing care institution does not include an institution for the care and treatment of the sick that is operated only for those who rely solely on treatment by prayer or spiritual means in accordance with the tenets of a recognized religious denomination. Nursing care institution also does not include nursing care services that are an integral part of a hospital licensed pursuant to this chapter.
10. "Unprofessional conduct" includes:
 - (a) Dishonesty, fraud, incompetency or gross negligence in the performance of administrative duties.

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(b) Gross immorality or proselytizing religious views on patients without their consent.

(c) Other abuses of official responsibilities, which may include intimidation or neglect of patients.

36-446.01. Licensure or certification requirements

A. A nursing care institution shall not operate in this state except under the supervision of an administrator licensed pursuant to this article.

B. An assisted living facility shall not operate in this state except under the supervision of a manager certified pursuant to this article.

C. It is unlawful for any person who does not have a license or certificate, or whose license or certificate has lapsed or has been suspended or revoked, to practice or offer to practice skilled nursing facility administration or assisted living facility management or use any title, sign, card or device indicating that such person is an administrator or manager.

36-446.02. Board of examiners; terms; meetings; quorum; effect of vacancies; compensation

A. The board of examiners of nursing care institution administrators and assisted living facility managers is established consisting of nine members appointed by the governor.

B. The board shall include:

1. One administrator who holds an active license issued pursuant to this article.

2. One manager who holds an active license issued pursuant to this article.

3. One administrator of a nonprofit or faith-based skilled nursing facility.

4. One administrator of a proprietary skilled nursing facility.

5. Two managers of an assisted living center as defined in section 36-401.

6. One manager of an assisted living home as defined in section 36-401.

7. Two public members who are not affiliated with a nursing care institution or an assisted living facility.

C. Board members who are not affiliated with a nursing care institution or an assisted living facility shall not have a direct financial interest in nursing care institutions or assisted living facilities.

D. A board member shall not serve on any other board relating to long-term care during the member's term with the board.

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E. The term of a board member automatically ends when that member no longer meets the qualifications for appointment to the board. The board shall notify the governor of the board vacancy.

F. Board members who are not affiliated with a nursing care institution or an assisted living facility shall be appointed for two year terms. Board members who are the administrator of a nursing care institution or the manager of an assisted living facility shall be appointed for three year terms.

G. A board member shall not serve for more than two consecutive terms.

H. The board shall meet at least twice a year.

I. A majority of the board members constitutes a quorum.

J. Board members are eligible to receive compensation as determined pursuant to section 38-611 for each day actually spent performing their duties under this chapter.

K. A board member who is absent from three consecutive regular meetings or who fails to attend more than fifty per cent of board meetings over the course of one calendar year vacates the board member's position. The board shall notify the governor of the vacancy.

36-446.02. Board of examiners; terms; meetings; quorum; effect of vacancies; compensation

A. The board of examiners of nursing care institution administrators and assisted living facility managers is established consisting of nine members appointed by the governor.

B. The board shall include:

1. One administrator who holds an active license issued pursuant to this article.
2. One manager who holds an active license issued pursuant to this article.
3. One administrator of a nonprofit or faith-based skilled nursing facility.
4. One administrator of a proprietary skilled nursing facility.
5. Two managers of an assisted living center as defined in section 36-401.
6. One manager of an assisted living home as defined in section 36-401.
7. Two public members who are not affiliated with a nursing care institution or an assisted living facility.

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- C. Board members who are not affiliated with a nursing care institution or an assisted living facility shall not have a direct financial interest in nursing care institutions or assisted living facilities.
- D. A board member shall not serve on any other board relating to long-term care during the member's term with the board.
- E. The term of a board member automatically ends when that member no longer meets the qualifications for appointment to the board. The board shall notify the governor of the board vacancy.
- F. Board members who are not affiliated with a nursing care institution or an assisted living facility shall be appointed for two year terms. Board members who are the administrator of a nursing care institution or the manager of an assisted living facility shall be appointed for three year terms.
- G. A board member shall not serve for more than two consecutive terms.

H. The board shall meet at least twice a year.

I. A majority of the board members constitutes a quorum.

J. Board members are eligible to receive compensation as determined pursuant to section 38-611 for each day actually spent performing their duties under this chapter.

K. A board member who is absent from three consecutive regular meetings or who fails to attend more than fifty per cent of board meetings over the course of one calendar year vacates the board member's position. The board shall notify the governor of the vacancy.

36-446.03. Powers and duties of the board; fees

- A. The board may adopt, amend or repeal reasonable and necessary rules and standards for the administration of this article in compliance with title XIX of the social security act, as amended.
- B. The board by rule may adopt nonrefundable fees for the following:
 1. Initial application for certification as an assisted living facility manager.
 2. Examination for certification as an assisted living facility manager.
 3. Issuance of a certificate as an assisted living facility manager, prorated monthly.
 4. Biennial renewal of a certificate as an assisted living facility manager.
 5. Issuance of a temporary certificate as an assisted living facility manager.

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6. Readministering an examination for certification as an assisted living facility manager.
7. Issuance of a duplicate certificate as an assisted living facility manager.
8. Reviewing the sponsorship of continuing education programs, for each credit hour.
9. Late renewal of an assisted living facility manager certificate.

10. Reviewing an individual's request for continuing education credit hours, for each credit hour.
11. Reviewing initial applications for assisted living facility training programs.
12. Annual renewal of approved assisted living facility training programs.

C. The board may elect officers it deems necessary.

D. The board shall apply appropriate techniques, including examinations and investigations, to determine if a person meets the qualifications prescribed in section 36-446.04.

E. On its own motion or in response to any complaint against or report of a violation by an administrator of a nursing care institution, or a manager of an assisted living facility, the board may conduct investigations, hearings and other proceedings concerning any violation of this article or of rules adopted by the board or by the department.

F. In connection with an investigation or administrative hearing, the board may administer oaths and affirmations, subpoena witnesses, take evidence and require by subpoena the production of documents, records or other information in any form concerning matters the board deems relevant to the investigation or hearing. If any subpoena issued by the board is disobeyed, the board may invoke the aid of any court in this state in requiring the attendance and testimony of witnesses and the production of evidence.

G. Subject to title 41, chapter 4, article 4, the board may employ persons to provide investigative, professional and clerical assistance as required to perform its powers and duties under this article. Compensation for board employees shall be as determined pursuant to section 38-611. The board may contract with other state or federal agencies as required to carry out this article.

H. The board may appoint review committees to make recommendations concerning enforcement matters and the administration of this article.

I. The board by rule may establish a program to monitor licensees and certificate holders who are chemically dependent and who enroll in rehabilitation programs that meet board requirements. The board may take disciplinary action if a licensee or a certificate holder refuses to enter into an agreement to enroll in and complete a board approved rehabilitation program or fails to abide by that agreement.

J. The board shall adopt and use an official seal.

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K. The board shall adopt rules for the examination and licensure of nursing care institution administrators and the examination and certification of assisted living facility managers.

L. The board shall adopt rules governing payment to a person for the direct or indirect solicitation or procurement of assisted living facility patronage.

M. The board must provide the senate and the house of representatives health committee chairmen with copies of all board minutes and executive decisions.

N. The board by rule shall limit by percentage the amount it may increase a fee above the amount of a fee previously prescribed by the board pursuant to this section.

O. The board by rule shall prescribe standards for assisted living facility training programs.

P. The board may:

1. Grant, deny, suspend or revoke approval of, or place on probation, an assisted living facility training program.

2. Impose a civil penalty on an assisted living facility training program that violates this chapter or rules adopted pursuant to this chapter.

36-446.04. Qualifications; period of validity; exemption

A. The board shall issue a license as a nursing care institution administrator pursuant to its rules to any person who meets the following qualifications:

1. Is of good character.

2. Has satisfactorily completed a course of instruction and training approved by the board that:

(a) Is designed and sufficiently administered to give the applicant knowledge of the proper needs to be served by nursing care institutions.

(b) Includes a thorough background in the laws and rules governing the operation of nursing care institutions and the protection of the interests of the patients in nursing care institutions.

(c) Includes thorough training in elements of good health care facilities administration.

3. Has passed an examination administered by the board designed to test for competency in the subject matter referred to in this subsection.

4. Has met one of the following fingerprinting requirements:

(a) Has a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.

(b) Has provided proof of the submission of an application for a fingerprint clearance card. An applicant who has been denied a fingerprint clearance card must also provide proof that the applicant qualifies for a good cause exception hearing pursuant to section 41-619.55.

B. A person who is licensed pursuant to this section must maintain a valid fingerprint clearance card during the valid period of the person's license.

C. The board shall issue a certificate as an assisted living facility manager pursuant to its rules to a person who meets the following qualifications:

1. Is of good character.
2. Has satisfactorily completed a course of instruction and training approved by the board that:

(a) Is designed and sufficiently administered to give the applicant knowledge of the proper needs to be served by an assisted living facility.

(b) Includes a thorough background in the laws governing the operation of assisted living facilities and the protection of the interests of the patients in assisted living facilities.

(c) Includes thorough training in elements of assisted living facility administration.

3. Has passed an examination administered by the board that is designed to test for competency in the subject matter prescribed in this subsection.

4. Provides documentation satisfactory to the board that the applicant has completed two thousand eighty hours of paid work experience in a health related field within the preceding five years as prescribed by board rule.

5. Has met one of the following fingerprinting requirements:

(a) Has a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.

(b) Has provided proof of the submission of an application for a fingerprint clearance card. An applicant who has been denied a fingerprint clearance card must also provide proof that the applicant qualifies for a good cause exception hearing pursuant to section 41-619.55.

D. A person who is certified pursuant to this section must maintain a valid fingerprint clearance card during the valid period of the person's certificate.

E. In lieu of the requirements contained in subsection A, paragraph 2 or subsection C, paragraph 2, an applicant may present satisfactory evidence to the board of sufficient education and training in the areas listed in that paragraph.

F. A license is nontransferable and remains in effect until the following June 30 of an even numbered year, at which time the license may be renewed if the licensee otherwise complies with this article and unless the license has been surrendered, suspended or revoked.

G. A certificate is nontransferable and remains in effect until the following June 30 of an odd numbered year, at which time the certificate may be renewed if the certificate holder otherwise complies with this article and the certificate has not been surrendered, suspended or revoked.

H. This section does not apply to managers of adult foster care homes as defined in section 36-401.

36-446.05. Reciprocity; present administrators

The board may issue a nursing care institution administrator's license, without examination or with partial examination, to any person who holds a current license from another state or territory of the United States provided the standards for licensure in such other state or territory of the United States are at least substantially equivalent to those prevailing in this state, and provided that the applicant is otherwise qualified.

36-446.06. Temporary licenses and certificates

A. The board may issue a temporary nursing care institution administrator's license or assisted living facility manager's certificate to individuals determined to meet standards established by the board and revoke or suspend temporary licenses or certificates previously issued by the board in any case where the individual holding a license or certificate is determined to have substantially failed to conform to the requirements of such standards during the term of the temporary license or certificate.

B. A temporary license or certificate is automatically revoked if the licensee or certificate holder fails either the state or national examination during the term of the license.

C. Temporary licenses or certificates may be issued without examination, for a single nonrenewable period of one hundred fifty days, to a qualified individual for the purpose of enabling the individual to fill a nursing care administrator or assisted living facility manager position. Qualifications for a temporary license or certificate shall include good character and the ability to meet such other standards as are established by the board.

D. An applicant for a temporary license or certificate shall not have failed a state or national examination either before or after applying for the temporary license or certificate.

36-446.07. Disciplinary actions; grounds for disciplinary action; renewal; continuing education; inactive status; hearings; settlement; judicial review; admission by default; military members

A. The board may suspend or revoke the license of any nursing care institution administrator, censure or place on probation any licensed nursing care institution administrator or deny a license as a nursing care institution administrator to any person for any of the following reasons:

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1. Conviction of a felony or conviction of any misdemeanor involving moral turpitude.
 2. Obtaining or renewing a license by fraud or deceit.
 3. Unprofessional conduct.
 4. Practicing without biennial licensure.
 5. Addiction to or dependency on drugs or alcohol.
 6. Wrongful transfer of a license or falsely impersonating another licensee.
 7. Unauthorized disclosure of information relating to a patient or a patient's records.
 8. Payment to any person for solicitation or procurement, either directly or indirectly, of nursing home patronage.
 9. Violation of this article or a rule adopted pursuant to this article.
- B. The board may suspend or revoke the certificate of an assisted living facility manager, censure or place on probation an assisted living facility manager or deny a certificate as an assisted living facility manager to a person for any of the following reasons:
1. Conviction of a felony or conviction of a misdemeanor involving moral turpitude.
 2. Obtaining or renewing a certificate by fraud or deceit.
 3. Unprofessional conduct.
 4. Practicing without biennial certification.
 5. Addiction to or dependency on drugs or alcohol.
 6. Wrongful transfer of a certificate or falsely impersonating another certificate holder.
 7. Unauthorized disclosure of information relating to a resident or a resident's records.
 8. Violation of this article or a rule adopted pursuant to this article.
- C. The board may impose a civil penalty in an amount of not to exceed five hundred dollars on any nursing care institution administrator or assisted living facility manager who violates this article or any rule adopted pursuant to this article. Actions to enforce the collection of these penalties shall be brought in the name of this state by the attorney general or the county attorney in the justice court or the superior court in the county in which the violation occurred. Penalties imposed under this section are in addition to and not in limitation of other penalties imposed pursuant to this article.

D. The board may file a letter of concern if, in the opinion of the board, while there is insufficient evidence to support direct action against the license of the administrator or the certificate of the manager, there is sufficient evidence for the board to notify the administrator or manager of its concern.

E. Every holder of a nursing care institution administrator's license shall renew it biennially by making application to the board. The renewals shall be granted as a matter of course if the holder has successfully completed at least fifty hours of continuing education every two years as established by the board in its rules, unless the applicant has acted or failed to act in such a manner or under such circumstances as would constitute grounds for taking any of the disciplinary actions permitted by this section. The board shall maintain a log of each complaint substantiated by the board or deficiency report concerning an administrator and shall retain in the administrator's file a copy of each such complaint or report and the action taken on it, if any. The board shall review and consider the administrator's file in determining whether to renew the administrator's license.

F. Except as provided in subsection R of this section, every holder of an assisted living facility manager's certificate shall renew it biennially by making application to the board. The renewals shall be granted as a matter of course if the holder has successfully completed continuing education every two years as established by the board in its rules, unless the applicant has acted or failed to act in a manner or under circumstances that constitute grounds for taking disciplinary action permitted by this section. The board shall maintain a log of each complaint substantiated by the board or deficiency report concerning a manager and shall retain in the manager's file a copy of each complaint or report and the action taken on it, if any. The board shall review and consider the manager's file in determining whether to renew the manager's certificate.

G. Except as provided in subsection R of this section, failure on the part of any licensed nursing care institution administrator or certified assisted living facility manager to furnish evidence of having attended the required continuing education hours during the preceding two years shall preclude renewal of the license or certificate unless the continuing education requirement is fulfilled within one hundred twenty days.

H. On written request to the board, a nursing care institution administrator in good standing may cause the administrator's name and license to be transferred to an inactive list. Any nursing care institution administrator on inactive license status shall pay a license renewal fee. On written request to the board, and subsequent approval by the board, a nursing care institution administrator on inactive license status may resume active license status on meeting twenty-five hours of continuing education requirements within six months and payment of the current fee.

I. On written request to the board, the board shall transfer an assisted living facility manager in good standing to an inactive list. An assisted living facility manager on inactive certificate status shall pay a certificate renewal fee prescribed by the board of not more than one hundred dollars every two years. On written request to the board, and subsequent approval by the board, an assisted living facility manager on inactive certificate status may resume active certificate status on meeting requirements for six hours of continuing education within six months and payment of the current fee.

J. Suspension, revocation or denial of renewal of a license or certificate or censure or probation of a licensee or certificate holder by the board becomes effective only on the board's first giving the licensee or certificate holder prior written notice and affording the licensee or certificate holder the right to request a hearing within thirty-five days of the receipt of notice. A hearing is not required before the denial of an original application for a license or a certificate. All hearings shall be conducted pursuant to title 41, chapter 6, article 10.

K. Any person wishing to make a complaint against a licensee or certificate holder under this article shall file a written complaint with the board within one year from the date of the action causing the complaint. If the board determines that the charges made in the complaint are sufficient, if true, to warrant suspension or revocation of a license or certificate issued under this article or censure or probation of a licensee or certificate holder under this article, it shall issue an order fixing the time and place for a hearing and requiring the licensee or certificate holder complained against to appear and answer the complaint. The order shall have affixed to it a copy of the complaint, and both shall be served on the licensee or certificate holder either personally or by certified mail sent to the licensee's or the certificate holder's last known address at least thirty-five days before the date set for the hearing. All hearings shall be conducted pursuant to title 41, chapter 6, article 10.

L. The board and an administrator or manager may enter into a settlement of any matter under investigation either before or after a notice of the hearing has been issued if the board determines that the proposed settlement adequately protects the public safety, health and welfare. The board shall record the terms of each settlement entered into and shall make the record available for public inspection.

M. 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.

N. If the board has initiated an investigation pursuant to this section, the board may continue the investigation and discipline the person under investigation even if that person resigns from practice after the board has initiated the investigation.

O. A licensee or certificate holder shall respond in writing to the board within thirty-five days after the board serves the complaint and notice of a formal hearing by certified mail. Service is complete on the date the board places the notice in the mail. The board shall consider a licensee's or certificate holder's failure to respond to the notice within thirty-five days as an admission by default to the allegations stated in the complaint. The board may then take disciplinary action against the licensee or certificate holder without conducting a formal hearing.

P. The board may set aside an admission by default if a licensee or certificate holder shows good cause. A licensee or certificate holder who applies to the board to set aside an admission by default shall demonstrate the following to the satisfaction of the board:

1. The failure to respond to the notice of the board was due to excusable neglect.
2. The licensee or certificate holder has a meritorious defense.

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3. The licensee or certificate holder made prompt application to the board for relief.

Q. The board shall not consider an application to set aside an admission by default filed later than one hundred eighty days after the board's entry of the admission by default.

R. A license or certificate issued pursuant to this chapter to any member of the Arizona national guard or the United States armed forces reserves shall not expire while the member is serving on federal active duty and shall be extended one hundred eighty days after the member returns from federal active duty, provided that the member, or the legal representative of the member, notifies the board of the federal active duty status of the member. A license or certificate issued pursuant to this chapter to any member serving in the regular component of the United States armed forces shall be extended one hundred eighty days from the date of expiration, provided that the member, or the legal representative of the member, notifies the board of the federal active duty status of the member. If the license or certificate is renewed during the applicable extended time period, the member is responsible only for normal fees and activities relating to renewal of the license and shall not be charged any additional costs such as late fees or delinquency fees. The member, or the legal representative of the member, shall present to the board a copy of the member's official military orders, a redacted military identification card or a written verification from the member's commanding officer before the end of the applicable extended time period in order to qualify for the extension.

S. A license or certificate issued pursuant to this chapter to any member of the Arizona national guard, the United States armed forces reserves or the regular component of the United States armed forces shall not expire and shall be extended one hundred eighty days from the date the military member is able to perform activities necessary under the license or certificate if the member both:

1. Is released from active duty service.

2. Suffers an injury as a result of active duty service that temporarily prevents the member from being able to perform activities necessary under the license, certificate or registration.

36-446.08. Nursing care institution administrators' licensing and assisted living facility managers' certification fund; investment of fund monies

A. The nursing care institution administrators' licensing and assisted living facility managers' certification fund is established.

B. Pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all monies collected pursuant to this article in the state general fund and deposit the remaining ninety per cent in the nursing care institution administrators' licensing and assisted living facility managers' certification fund. All monies derived from civil penalties collected pursuant to section 36-446.07, subsection C shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

C. Monies deposited in the nursing care institution administrators' licensing and assisted living facility managers' certification fund are subject to the provisions of section 35-143.01.

D. On notice from the board, 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.

36-446.09. Violations; classification

A. Any person who manages, directs and controls the operation of a nursing care institution or an assisted living facility without a current and valid license or certificate as required by this article or who otherwise violates any provisions of this article is guilty of a class 2 misdemeanor. Each day of violation shall constitute a separate offense.

B. Action taken under subsection A shall not be a bar to enforcement of this article and the standards and rules issued and adopted pursuant to this article, by injunction or other appropriate remedy, and the board may institute and maintain in the name of this state any such enforcement proceeding.

36-446.10. Confidentiality of records; release of complainant's name and nature of complaint

A. Except as provided in subsection B, all records concerning a pending investigation, examination materials, records of examination grading and applicants' performance and transcripts of educational institutions concerning applicants are confidential and are not public records. "Records of applicants' performance" does not include records of whether an applicant passed or failed an examination.

B. During a pending investigation, the board shall inform the administrator or manager who is the subject of the complaint of the name of the complainant and the nature of the complaint if so requested.

36-446.11. Relief from civil liability

Members, employees and agents of the board and members of review committees shall not be held civilly liable for acts done or actions taken by any of these persons if such persons act in good faith following the requirements of this article. A person who in good faith reports or provides information to the board shall not be held civilly liable as a result of doing so.

36-446.12. Fees

A. The board by rule shall establish nonrefundable fees and penalties for the following for nursing care institution administrators:

1. Initial application.
2. Examination for licensure as a nursing care institution administrator.

As of July 13, 2018

3. A license as a nursing care institution administrator.
 4. Renewing an active biennial license.
 5. Renewing an inactive biennial license.
 6. A temporary license as a nursing care institution administrator.
 7. Readministering the state examination.
 8. Readministering the national examination.
 9. A duplicate license.
 10. Late renewal of a license.
 11. Certifying licensure status.
 12. Reviewing the sponsorship of continuing education programs, for each credit hour.
 13. Reviewing an individual's request for continuing education credit hours, for each credit hour.
- B. The board shall prorate on a monthly basis fees paid for an initial license as a nursing care institution administrator.
- C. The board by rule shall limit by percentage the amount it may increase a fee above the amount of a fee previously prescribed by the board pursuant to this section.

36-446.13. Unlawful act; unlicensed operation; injunction

- A. On application by the board, the superior court may issue an injunction to enjoin the activities of a person who purports to be licensed pursuant to this article or who is engaging in the activities of a nursing care institution administrator without a license.
- B. In a petition for injunction filed pursuant to this section, it is sufficient to charge that the respondent on a certain day in a named county engaged in the activities of a nursing care institution administrator without a license and without being exempt from the licensing requirements of this article.
- C. For the purposes of this section, damage or injury is presumed.
- D. A petition for an injunction to enjoin unlicensed activities shall be filed in the name of this state in the superior court in the county where the respondent resides or may be found or in Maricopa county. On request of the board, the attorney general shall file the injunction.

As of July 13, 2018

E. Issuance of an injunction does not relieve the respondent from being subject to other proceedings as provided in this article.

D-2

DEPARTMENT OF TRANSPORTATION (Expedited Rulemaking) (R19-1202)

Title 17, Chapter 8, Articles 4 and 5, Fuel Taxes

Amend: R17-8-401, R17-8-403, R17-8-404, R17-8-501, R17-8-502, R17-8-504



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: December 3, 2019

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

FROM: Council Staff

DATE: November 5, 2019

SUBJECT: DEPARTMENT OF TRANSPORTATION (Expedited) (R19-1202)

Title 17, Chapter 8, Articles 4 and 5, Fuel Taxes

Amend: R17-8-401, R17-8-403, R17-8-404, R17-8-501, R17-8-502, R17-8-504

Summary:

This expedited rulemaking from the Department of Transportation (Department) seeks to amend Title 17, Chapter 8, Articles 4 and 5 relating to fuel taxes. Pursuant to A.R.S. § 41-1027(A)(7), the Department is conducting this expedited rulemaking to incorporate the changes proposed in the Department's Five Year Review Report (5YRR) on these rules which the Council approved on May 7, 2019. The Department determined that these rules should be updated and improved for clarity and for a better reflection of the Department's processes and needs.

This rulemaking includes updates and clarification to the definitions and removal of old and inconsistent information including:

- Removing the requirement in R17-8-502(D) (Applicability; General Provisions) that a licensee submit monthly fuel tax reports using paper forms because the Department no longer allows this;
- Clarifying the electronic funds declaration requirements by changing the “fee or tax” verbiage to “payment” to more accurately classify the data needed from the licensee;

- Requiring additional information from the contact person to ensure the Department has the appropriate information and method to contact the licensee; and
- Adding a requirement for a signature of a person authorized to sign for the licensee as the signature attests to the licensee's declaration of the use of either a credit or debit card to make fuel tax payments to the Department.

Additional changes include making minor technical changes to ensure conformity with the rulemaking format and style requirements of the Arizona Administrative Procedure Act and the Office of the Secretary of State.

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

Yes. This rulemaking satisfies the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)(7) because it implements, without material change, a course of action that is proposed in a five-year review report approved by the council pursuant to section 41-1056 within one hundred eighty days of the date that the agency files the proposed expedited rulemaking with the secretary of state.

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

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

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

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

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

The Department did not receive any comments on this rulemaking.

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

No, the rules are not a substantial change from the proposed rules and any supplemental proposals. However, the Department made two changes to the rules between the Notice of Proposed Expedited Rulemaking and the Notice of Final Expedited Rulemaking:

- In R17-8-401 (Definitions), in the definition of "Cash Concentration or Disbursement," the Department replaced "CCD Plus" with "CCD +" in order to be more consistent with its usage in the industry; and

- In R17-8-404(B) (Procedures for Payment), the Department replaced the term “CCD Plus” with “CCD+” in order to be more consistent with its usage in the industry and to maintain consistency with its usage in R17-8-401.

These changes do not result in rules that are “substantially different” under A.R.S. § 41-1025.

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

Not applicable. There is no corresponding federal law.

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

These rules concern the requirements for filing electronic fuel tax reports and remitting payments by licensees and applicants for licensure under A.R.S. Title 28, Chapter 16, Article 1. The license for these entities would be considered a general permit since, for each license type, the facilities, activities, or practices in the class are substantially similar in nature. Therefore, the Department complies with A.R.S. § 41-1037.

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

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

9. Conclusion

The Department is conducting an expedited rulemaking pursuant to A.R.S. § 41-1027(A) (7) to amend Articles 4 and 5. This rulemaking will result in rules that are more clear, concise, understandable, and effective. If approved, these rules will be immediately effective upon filing with the Office of the Secretary of State pursuant to A.R.S. § 41-1027(H). Council staff recommends approval of this rulemaking.

October 15, 2019

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

Re: Department of Transportation, 17 A.A.C. 8, Articles 4 and 5, Expedited Rulemaking

Dear Chairperson Nicole Sornsin:

The Arizona Department of Transportation submits the accompanying final expedited rule package for consideration by the Governor's Regulatory Review Council. The following information is provided to comply with R1-6-202(A)(1):

- a. The rulemaking record closed on September 5, 2019, and no written public comments were received on these rules;
- b. The Department is engaged in this expedited rulemaking pursuant to A.R.S. § 41-1027(A)(7), in order to incorporate the changes proposed in the Department's recent five-year review report on 17 A.A.C. Chapter 8, Articles 4 and 5;
- c. The rulemaking activity does relate to a five-year review report, approved by the Governor's Regulatory Review Council on May 7, 2019;
- d. The preamble discloses that the Department did not review any studies relevant to the rules and did not rely on any studies in its evaluation of or justification for the rules;
- e. Documents included in this final expedited rule package are as follows:
 1. Signed cover letter;
 2. Notice of Final Expedited Rulemaking, including the preamble, table of contents, and text of each rule;
 3. General and specific statutes authorizing the rules, including relevant statutory definitions;
 4. Definitions of terms; and
 5. Request for, and approval of, the Department's exception from the rulemaking moratorium.

Sincerely,



John S. Halikowski
ADOT Director

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING
TITLE 17. TRANSPORTATION
CHAPTER 8. DEPARTMENT OF TRANSPORTATION
FUEL TAXES
PREAMBLE

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

R17-8-401	Amend
R17-8-403	Amend
R17-8-404	Amend
R17-8-501	Amend
R17-8-502	Amend
R17-8-504	Amend

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

Authorizing statutes: A.R.S. §§ 28-366, 28-374, and 28-5930

Implementing statutes: A.R.S. §§ 28-5618, 28-5619, 28-5620, and 28-5625

3. The effective date of the rule:

Month X, 2019 (To be completed by the *Register* Editor with an immediate effective date.) This rulemaking becomes effective immediately on filing with the Office of the Secretary of State.

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

Notice of Rulemaking Docket Opening: 25 A.A.R. 2130, August 23, 2019

Notice of Proposed Expedited Rulemaking: 25 A.A.R. 2125, August 23, 2019

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

Name: Candace Olson, Rules Analyst
Address: Rules and Policy Development
Department of Transportation
206 S. 17th Ave., Mail Drop 180A
Phoenix, AZ 85007
Telephone: (602) 712-4534
E-mail: COlson2@azdot.gov
Web site: <https://azdot.gov/about/government-relations>

6. An agency's explanation why the 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):

Pursuant to A.R.S. § 41-1027(A)(7), the Department is engaged in this expedited rulemaking to incorporate the changes proposed in the Department's five-year review report on 17 A.A.C. Chapter 8, Articles 4 and 5,

which was approved by the Governor's Regulatory Review Council on May 7, 2019. The Department determined that these rules should be updated and improved for clarity and for a better reflection of the Department's process and needs. This rulemaking includes updates and clarification to the definitions and the removal of old and inconsistent information, including the allowance of a paper form in R17-8-502(D) since the Department no longer allows for this. Also, the Department is:

- Clarifying the electronic funds declaration requirements by changing the "fee or tax" verbiage to "payment" to more accurately classify the data needed from the licensee,
- Requiring additional information from the contact person to ensure the Department has the appropriate information and method of being able to contact the licensee, and
- Adding a requirement for a signature of a person authorized to sign for the licensee as the signature attests to the licensee's declaration of the use of either credit or debit to make fuel tax payments to the Department.

Additional changes include making minor technical changes to ensure conformity to the rulemaking format and style requirements of the Arizona Administrative Procedure Act and the Office of the Secretary of State.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not 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 agency is exempt from the requirements under A.R.S. § 41-1055(G) to prepare and file an economic, small business, and consumer impact statement under A.R.S. § 41-1055(D)(2)::

The Department is exempt from an economic, small business, and consumer impact statement for these rules.

10. A description of any changes between the proposed expedited rulemaking and the final expedited rulemaking:

In R17-8-401, to the definition of "Cash Concentration or Disbursement", replaced "CCD Plus" with "CCD+" in order to be more consistent with its usage in industry.

In R17-8-404 (B), replaced "CCD-Plus" with "CCD+" in order to be more consistent to its usage in industry and to maintain consistency with its usage in R17-8-401.

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

The Department did not receive any public or stakeholder comments regarding 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:

There are no other matters prescribed by statute applicable to the Department or to any specific rule or class of rules.

a. Whether the rules require 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:

These rules concern the requirements of filing electronic fuel tax reports and remitting payments by licensees and applicants for licensure under A.R.S. Title 28, Chapter 16, Article 1. The license for these entities would be considered a general permit since for each license type the facilities, activities, or practices in the class are substantially similar in nature.

b. Whether a federal law is applicable to the subject of the rules, whether the rules are 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 directly applicable to these rules.

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

No analysis was submitted to the Department.

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

This rulemaking incorporates no materials by reference.

14. The full text of the rules follows:

TITLE 17. TRANSPORTATION
CHAPTER 8. DEPARTMENT OF TRANSPORTATION
FUEL TAXES

ARTICLE 4. ELECTRONIC FUNDS TRANSFERS

Section

- R17-8-401. Definitions
- R17-8-403. Electronic Funds Transfer Declaration
- R17-8-404. Procedures for Payment

ARTICLE 5. ELECTRONIC FUEL TAX REPORTING

Section

- R17-8-501. Definitions
- R17-8-502. Applicability; General Provisions
- R17-8-504. Data Elements and Format

ARTICLE 4. ELECTRONIC FUNDS TRANSFERS

R17-8-401. Definitions

In addition to the definitions provided under A.R.S. §§ 28-101 and 28-5601, the following terms apply to this Article:

~~“Automated Clearing House,” or “ACH,” means a central distribution and settlement point for the electronic clearing of debits and credits between financial institutions.~~

“ACH credit” means an electronic funds transfer:

Generated by a licensee, and

Cleared through an ACH for deposit to the Department account.

“ACH debit” means an electronic funds transfer of funds from a licensee’s account:

Authorized by a licensee-signed authorization agreement,

Generated at a licensee’s instruction, and

Cleared through an ACH for deposit to the Department account.

“ADOT account number” means a confidential number assigned by the Department that identifies a licensee.

“Authorized representative” means the owner, officer, or managing person of the licensee.

~~“Automated Clearing House,” or “ACH,” means a central distribution and settlement point for the electronic clearing of debits and credits between financial institutions.~~

“Cash Concentration or Disbursement Plus,” or “CCD Plus CCD+,” means the standardized data format approved by NACHA Nacha for remitting tax payments electronically.

“Electronic Fuel Tax Program” means the Department program for the electronic filing of fuel tax reports and payment of fuel taxes.

“Electronic fuel tax report” means the monthly fuel tax report required under A.R.S. Title 28, Chapter 16, Article 1, filed pursuant to the Electronic Fuel Tax Program.

“Electronic funds transfer” means a transmission of funds by electronic means to order, instruct, or authorize a financial institution to debit or credit an account pursuant to the Electronic Fuel Tax Program.

“Financial institution” means a licensed bank, savings and loan association, mutual savings bank or credit union.

“Licensee” means a person licensed under A.R.S. Title 28, Chapter 16, Article 1.

~~“MVD account number” means a confidential number assigned by the Department that identifies a licensee.~~

~~“NACHA Nacha” means NACHA – The Electronic Payments Association, which is a not-for-profit association that oversees the Automated Clearing House ACH network.~~

“Payment information” means data the Department requires of a licensee when making an electronic funds transfer.

“State servicing bank” means the financial institution contracted to perform banking functions on behalf of the state.

R17-8-403. Electronic Funds Transfer Declaration

- A. Prior to remitting an initial payment by electronic funds transfer, and within 30 days prior to any change in the method of payment transfer, a licensee shall file with the Department an electronic funds transfer declaration.
- B. The electronic funds transfer declaration shall be made on a form approved by the Department and shall contain the following:
 1. Licensee name;
 2. Licensee Employer Identification Number (EIN);
 3. Business address;
 4. ~~MVD ADOT~~ account number;
 5. ~~Fee or tax~~ Payment type;
 6. Either ACH credit or ACH debit payment method;
 7. Name, title, email address, and phone number of contact person; and
 8. Signature of the authorized representative of the licensee; and
 - 8.9. Any other information required by the Director.

R17-8-404. Procedures for Payment

- A. All electronic funds transfers shall be in compliance with the ~~NACHA Nacha~~ Operating Rules and Guidelines.
- B. A licensee may remit payments by either ACH credit or ACH debit.
- C. A licensee using the ACH credit method shall ensure that all ACH credit transfers are in the ~~CCD Plus~~ CCD+ addenda format and contain all information required by the Department and the licensee's financial institution to process the transfer.
- D. A licensee using the ACH debit method shall electronically communicate the following payment information to the state servicing bank:
 1. ~~MVD ADOT~~ account number,
 2. Payment amount, and
 3. Any other information required by the Director.

ARTICLE 5. ELECTRONIC FUEL TAX REPORTING

R17-8-501. Definitions

In addition to the definitions provided under A.R.S. §§ 28-101 and 28-5601, the following terms apply to this Article:

“Applicant” means a person applying for licensure under A.R.S. Title 28, Chapter 16, Article 1.

“Electronic Fuel Tax Program” ~~means the Department program for the electronic filing of fuel tax reports and payment of fuel taxes has the same meaning as defined in R17-8-401.~~

“~~Electronic Fuel Tax Reporting Agreement~~” means the contract between the Department and each licensee pertaining to filing electronic fuel tax reporting requirements in the form and containing such terms and conditions as established by the Director from time to time.

“~~Electronic funds transfer~~” has the same meaning as provided under R17-8-401.

“~~Electronic Fuel Tax Report fuel tax report~~” means the monthly fuel tax report required under A.R.S. Title 28, Chapter 16, Article 1, filed pursuant to the Electronic Fuel Tax Program ~~has the same meaning as defined in R17-8-401.~~

“~~Electronic Fuel Tax Reporting Agreement~~” means the contract between the Department and each licensee pertaining to filing electronic fuel tax reporting requirements in the form and containing such terms and conditions as established by the Director from time to time.

“~~Electronic funds transfer~~” has the same meaning as defined in R17-8-401.

“Fuel Tax Suite” means the secure ~~web site website~~ provided by the Department for filing fuel tax reports and accessing a licensee’s fuel tax account.

“Licensee” ~~means a person licensed under A.R.S. Title 28, Chapter 16, Article 1 has the same meaning as defined in R17-8-401.~~

“Secure Access Gateway” means the Department’s secure network application that allows a remote user to connect to the Fuel Tax Suite.

“~~ServiceArizona Access Request and Agreement~~” means the contract documenting terms and conditions for access to the Secure Access Gateway and Fuel Tax Suite established by the Director from time to time.

R17-8-502. Applicability; General Provisions

- A. For the purpose of administering the reporting requirements under A.R.S. Title 28, Chapter 16, Articles 1 and 5, a licensee shall participate in the Electronic Fuel Tax ~~Reporting~~ Program as provided under this Article.
- B. Each applicant and licensee shall apply for Department authorization to submit electronic fuel tax reports as required by the Department.
- C. Each applicant and licensee shall enter into an Electronic Fuel Tax Reporting Agreement as a condition of licensure.
- D. ~~A licensee shall submit monthly fuel tax reports required under A.R.S. Title 28, Chapter 16, Article 1, using paper forms provided by the Department until authorized by the Department to file electronic fuel tax reports.~~

E.D. A licensee authorized by the Department to file electronic fuel tax reports shall complete monthly fuel tax reports only by means of the Electronic Fuel Tax Program and shall not submit such reports in paper form.

F.E. A licensee authorized by the Department to file electronic fuel tax reports shall submit fuel tax payments by electronic funds transfer as provided under Article 4. The licensee shall ensure that the fuel tax payments are deposited to the Department account as prescribed under A.R.S. Title 28, Chapter 16, Articles 1 and 5.

R17-8-504. Data Elements and Format

Electronic ~~Fuel Tax Reports~~ fuel tax reports shall include the following:

1. Identification of the licensee,
2. Detailed load-by-load receipts information that establishes the amount of fuel received,
3. Detailed load-by-load disbursement information that establishes the amount of fuel delivered,
4. Diesel differential information that establishes the basis for the differential adjustment, and
5. Other information required by the Director.

Arizona Administrative CODE

17 A.A.C. 8 Supp. 18-4

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, 2018 through December 31, 2018

Title 17



TITLE 17. TRANSPORTATION

CHAPTER 8. DEPARTMENT OF TRANSPORTATION - FUEL TAXES

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*.

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The release of this Chapter in Supp. 18-4 replaces Supp. 09-1, 9 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

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. 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, 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

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

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



Arizona
Secretary
of State

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Arizona Secretary
of State
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Arizona Administrative Code

17 A.A.C. 8

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 17. TRANSPORTATION

CHAPTER 8. DEPARTMENT OF TRANSPORTATION - FUEL TAXES

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CHAPTER 8. DEPARTMENT OF TRANSPORTATION - FUEL TAXES

ARTICLE 1. RESERVED**ARTICLE 2. RESERVED****ARTICLE 3. RESERVED****ARTICLE 4. ELECTRONIC FUNDS TRANSFERS****R17-8-401. Definitions**

In addition to the definitions provided under A.R.S. §§ 28-101 and 28-5601, the following terms apply to this Article:

“Automated Clearing House,” or “ACH,” means a central distribution and settlement point for the electronic clearing of debits and credits between financial institutions.

“ACH credit” means an electronic funds transfer:

Generated by a licensee, and

Cleared through an ACH for deposit to the Department account.

“ACH debit” means an electronic transfer of funds from a licensee’s account:

Authorized by a licensee-signed authorization agreement,

Generated at a licensee’s instruction, and

Cleared through an ACH for deposit to the Department account.

“Cash Concentration or Disbursement Plus,” or “CCD Plus,” means the standardized data format approved by NACHA for remitting tax payments electronically.

“Electronic Fuel Tax Program” means the Department program for the electronic filing of fuel tax reports and payment of fuel taxes.

“Electronic funds transfer” means a transmission of funds by electronic means to order, instruct, or authorize a financial institution to debit or credit an account pursuant to the Electronic Fuel Tax Program.

“Financial institution” means a licensed bank, savings and loan association, mutual savings bank or credit union.

“Licensee” means a person licensed under A.R.S. Title 28, Chapter 16, Article 1.

“MVD account number” means a confidential number assigned by the Department that identifies a licensee.

“NACHA” means NACHA - The Electronic Payments Association, which is a not-for-profit association that oversees the Automated Clearing House network.

“Payment information” means data the Department requires of a licensee when making an electronic funds transfer.

“State servicing bank” means the financial institution contracted to perform banking functions on behalf of the state.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 225, effective March 7, 2009 (Supp. 09-1).

R17-8-402. Applicability

- A. A licensee authorized by the Department to file electronic fuel tax reports under A.R.S. Title 28, Chapter 16, shall remit payments to the Department by electronic funds transfer as provided under A.R.S. §§ 28-374, 28-5930, and this Article.
- B. Payments subject to this Article include any tax or fee associated with:
 - 1. Filing original or amended tax reports,
 - 2. Taxpayer billings associated with tax reports, or
 - 3. Audit assessments associated with tax reports.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 225,

effective March 7, 2009 (Supp. 09-1).

R17-8-403. Electronic Funds Transfer Declaration

- A. Prior to remitting an initial payment by electronic funds transfer, and within 30 days prior to any change in the method of payment transfer, a licensee shall file with the Department an electronic funds transfer declaration.
- B. The electronic funds transfer declaration shall be made on a form approved by the Department and shall contain the following:
 - 1. Licensee name,
 - 2. Licensee Employer Identification Number (EIN),
 - 3. Business address,
 - 4. MVD account number,
 - 5. Fee or tax type,
 - 6. Either ACH credit or ACH debit payment method,
 - 7. Name and phone number of contact person, and
 - 8. Any other information required by the Director.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 225, effective March 7, 2009 (Supp. 09-1).

R17-8-404. Procedures for Payment

- A. All electronic funds transfers shall be in compliance with the NACHA Operating Rules.
- B. A licensee may remit payments by either ACH credit or ACH debit.
- C. A licensee using the ACH credit method shall ensure that all ACH credit transfers are in the CCD-Plus addenda format and contain all information required by the Department and the licensee’s financial institution to process the transfer.
- D. A licensee using the ACH debit method shall electronically communicate the following payment information to the state servicing bank:
 - 1. MVD account number,
 - 2. Payment amount, and
 - 3. Any other information required by the Director.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 225, effective March 7, 2009 (Supp. 09-1).

R17-8-405. Remedies

- A. Violations of this Article shall result in the assessment of applicable penalties, interest, and late filing fees pursuant to A.R.S. Title 28, Chapter 16.
- B. Licensure shall be subject to cancellation by the Department upon a licensee’s failure to comply with this Chapter and A.R.S. Title 28, Chapter 16 or 25, for failing to file an electronic report as required under A.R.S. § 28-5930.
- C. Remedies are cumulative. A cancellation of licensure under this Chapter or A.R.S. Title 28, Chapters 16 and 25, shall not terminate any reporting requirement or fee, tax, penalty or interest obligation.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 225, effective March 7, 2009 (Supp. 09-1).

ARTICLE 5. ELECTRONIC FUEL TAX REPORTING**R17-8-501. Definitions**

In addition to the definitions provided under A.R.S. §§ 28-101 and 28-5601, the following terms apply to this Article:

“Applicant” means a person applying for licensure under A.R.S. Title 28, Chapter 16, Article 1.

CHAPTER 8. DEPARTMENT OF TRANSPORTATION - FUEL TAXES

“Electronic Fuel Tax Program” means the Department program for the electronic filing of fuel tax reports and payment of fuel taxes.

“Electronic Fuel Tax Reporting Agreement” means the contract between the Department and each licensee pertaining to filing electronic fuel tax reporting requirements in the form and containing such terms and conditions as established by the Director from time to time.

“Electronic funds transfer” has the same meaning as provided under R17-8-401.

“Electronic Fuel Tax Report” means the monthly fuel tax report required under A.R.S. Title 28, Chapter 16, Article 1, filed pursuant to the Electronic Fuel Tax Program.

“Fuel Tax Suite” means the secure web site provided by the Department for filing fuel tax reports and accessing a licensee’s fuel tax account.

“Licensee” means a person licensed under A.R.S. Title 28, Chapter 16, Article 1.

“Secure Access Gateway” means the Department’s secure network application that allows a remote user to connect to the Fuel Tax Suite.

“ServiceArizona Access Request and Agreement” means the contract documenting terms and conditions for access to the Secure Access Gateway and Fuel Tax Suite established by the Director from time to time.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 278, effective March 7, 2009 (Supp. 09-1).

R17-8-502. Applicability; General Provisions

- A. For the purpose of administering the reporting requirements under A.R.S. Title 28, Chapter 16, Articles 1 and 5, a licensee shall participate in the Electronic Fuel Tax Reporting Program as provided under this Article.
- B. Each applicant and licensee shall apply for Department authorization to submit electronic fuel tax reports as required by the Department.
- C. Each applicant and licensee shall enter into an Electronic Fuel Tax Reporting Agreement as a condition of licensure.
- D. A licensee shall submit monthly fuel tax reports required under A.R.S. Title 28, Chapter 16, Article 1, using paper forms provided by the Department until authorized by the Department to file electronic fuel tax reports.
- E. A licensee authorized by the Department to file electronic fuel tax reports shall complete monthly fuel tax reports only by means of the Electronic Fuel Tax Program and shall not submit such reports in paper form.
- F. A licensee authorized by the Department to file electronic fuel tax reports shall submit fuel tax payments by electronic funds transfer as provided under Article 4. The licensee shall ensure that the fuel tax payments are deposited to the Department account as prescribed under A.R.S. Title 28, Chapter 16, Articles 1 and 5.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 278, effective March 7, 2009 (Supp. 09-1).

R17-8-503. Method and Medium of Transmission

- A. A licensee shall submit electronic fuel tax reports to the Department through the Fuel Tax Suite.
- B. The filing deadline is 5:00 p.m. (Arizona Mountain Standard Time) on the 27th day of each calendar month, or, if such day

is a Saturday, Sunday, or Arizona legal holiday, the next following business day.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 278, effective March 7, 2009 (Supp. 09-1).

R17-8-504. Data Elements and Format

Electronic Fuel Tax Reports shall include the following:

1. Identification of the licensee,
2. Detailed load-by-load receipts information that establishes the amount of fuel received,
3. Detailed load-by-load disbursement information that establishes the amount of fuel delivered,
4. Diesel differential information that establishes the basis for the differential adjustment, and
5. Other information required by the Director.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 278, effective March 7, 2009 (Supp. 09-1).

R17-8-505. Record Retention; Audit

- A. A licensee shall retain the following records as provided under this Section:
 1. A copy of each electronic fuel tax report,
 2. A record of all transactions subject to the Electronic Fuel Tax Program,
 3. A record of all other electronic transmissions under the Electronic Fuel Tax Program,
 4. Back-up files adequate to recreate all electronic records, and
 5. All other records required under A.R.S. § 28-5619.
- B. A licensee shall make available to the Department for inspection all hard copy records, electronic records, books, receipts, disbursements, and accounts used in support of an electronic report as prescribed under A.R.S. Title 28, Chapter 16. At the time of inspection, the licensee shall provide the Department with access to the electronic reporting method and medium in effect at the time of all electronic transmissions sufficient for the Department to effectively follow the audit trail.
- C. A licensee shall retain the records specified under this Section for a period of three years following the latter of the filing due date or the actual filing date of an original or amended electronic fuel tax report. However, if notified by the Department of an audit, the licensee shall retain the records referenced in the Department’s notice through the date the Department finalizes the audit.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 278, effective March 7, 2009 (Supp. 09-1).

R17-8-506. Remedies and Waiver

- A. Violations of this Article shall result in the assessment of applicable penalties, interest, and late filing fees pursuant to A.R.S. Title 28, Chapter 16, provided that, subject to statute, the Department may waive and extend compliance deadlines in order to advance the efficient administration of the Electronic Fuel Tax Program as it may, in its sole discretion, determine appropriate in particular cases.
- B. Licensure shall be subject to cancellation by the Department upon a licensee’s failure to comply with this Chapter and A.R.S. Title 28, Chapter 16 or 25, for failing to file an electronic report as required under A.R.S. § 28-5930.
- C. Remedies are cumulative. A cancellation of licensure under this Chapter and A.R.S. Title 28, Chapters 16 and 25, shall not terminate any reporting requirement or fee, tax, penalty or interest obligation.

CHAPTER 8. DEPARTMENT OF TRANSPORTATION - FUEL TAXES

Historical Note

New Section made by final rulemaking at 15 A.A.R. 278, effective March 7, 2009 (Supp. 09-1).

ARTICLE 6. MOTOR FUEL REFUNDS**R17-8-601. Definitions and General Provisions**

- A.** Definitions. The following definitions apply to this Article unless otherwise specified:

“Application” means a request for refund of motor fuel taxes, made on a form provided by the Department.

“Cardlock use fuel facility” has the same meaning as a card-lock facility as defined in A.R.S. § 28-5605.

“Claimant” means the taxpayer or a person who has the authority to file an application on behalf of the taxpayer, as authorized by a notarized power of attorney, also referred to as applicant.

“Complete application” means an application that includes all supporting documentation and schedules for the period of the refund claim, claimant signature, and provides all information required on the application.

“Contaminated Fuel” means motor fuel, which is accidentally tainted, and which is unsalable for highway use.

“Daily log” means notations made by a driver of a commercial motor vehicle which records a daily record of duty status as specified under 49 CFR 395.8.

“Declaration of Status” means a statement on a form provided by the Department that a light class or exempt use class vehicle qualifies for use fuel tax differential under A.R.S. § 28-5606(B)(2).

“Destination state” means a state in the United States, other than the state of Arizona.

“Diversion” means delivery of motor fuel to a destination state other than the intended destination as signified on a carrier bill of lading.

“Exempt use class motor vehicle” means a vehicle exempt from gross weight fees under A.R.S. § 28-5432.

“GPS” means the Global Positioning System, a navigation system of satellites and receiving devices used to compute vehicle position and time information.

“Highway” has the same meaning as defined in A.R.S. § 28-5601, and also includes a:

Port of entry,
Weigh station, or
Public rest area.

“Idle status” means a vehicle that is stationary, its engine continues to operate, and it is located in Arizona, but off-highway.

“Licensee” has the same meaning as defined in A.R.S. § 28-5613.

“Light class motor vehicle” has the same meaning as defined in A.R.S. § 28-5601.

“Mexican Pedimento” means an authorizing permit document issued by Mexico.

“Motor fuel” has the same meaning as defined in A.R.S. § 28-5601.

“Motor fuel tax” means any tax on motor fuel imposed under A.R.S. Title 28, Chapter 16, Article 1.

“Notification date” means the date on a notice sent by the Department.

“Off-highway” means any location that is not on a highway in this state.

“Person” has the same meaning as defined in A.R.S. § 28-5601.

“Power take-off” means the operation of vehicle-mounted, auxiliary equipment that is powered by energy supplied by the same engine that propels the motor vehicle, but does not include equipment related to the operation of a vehicle and powered by the vehicle’s engine, including air conditioning, alternator, automatic transmission, and power steering.

“Tribal agreement” means an agreement between the Department and a Native American tribe for the administration of motor fuel taxes.

“Trip” means travel within or through Arizona’s state borders with a designated beginning and ending location.

“Use class motor vehicle” has the same meaning as defined in A.R.S. § 28-5601.

“Use fuel” has the same meaning as defined in A.R.S. § 28-5601.

“Use fuel tax differential” means the difference between the use fuel tax rate applicable to light class motor vehicles or exempt use class motor vehicles, and the use fuel tax rate applicable to use class motor vehicles.

“Vendor” has the same meaning as defined in A.R.S. § 28-5601.

“VIN” means Vehicle Identification Number.

B. General Provisions.

1. Scope. For purposes of administering A.R.S. § 28-5612 this Article applies to a person or licensee under A.R.S. §§ 28-5612 and 28-5613.

2. Application.

- a. A complete application for refund of motor fuel tax shall be submitted to the Department.
 - i. A claimant may combine several months’ totals and submit to the Department one application for refund.
 - ii. A complete application shall be for the whole calendar month and not for a partial month.
 - iii. Supplemental applications for refunds covering the same period already paid are not permitted.
- b. An application for refund for an amount of \$10 or less shall be accepted only once within a consecutive six-month period.
- c. When the Department determines that an application is incomplete under these rules and A.R.S. Title 28, Chapter 16, Article 1, the Department shall suspend processing of the application for refund and,
 - i. Notify the claimant of the deficiencies, and
 - ii. Return the application to the claimant.
- d. A claimant whose application is returned as incomplete under A.R.S. Title 28, Chapter 16, Article 1 and these rules shall have 60 days from the notification date to remedy the deficiencies.
- e. If the claimant fails to remedy the deficiencies under subsection (B)(2)(c) within 60 days of the notification date and return a complete application, the Department shall deny the application for refund.
- f. If the Department denies an application because the claimant failed to remedy a deficiency, the deadline

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- to submit a new application shall be governed by the time-frames established in subsection (B)(3).
3. Application filing. A complete application for refund shall be submitted to the Department as provided in Table 1.
4. Filing location and timely filing. A claimant shall submit an application under this Article to the Department as provided under A.R.S. § 1-218, and this subsection:
- a. Hand delivered or other delivery service requiring a street address:
 - i. Arizona Department of Transportation, Financial Management Services, Fuel Tax Refund Compliance Unit, 1801 W. Jefferson St., Rm. 201, Phoenix, AZ 85007.
 - ii. Hand delivered: the Department time and date stamp will be used to determine whether a complete application was received within the required time-frames established under subsection (B)(3).
 - iii. Other delivery service: the date of receipt by the designated delivery service shall be used to determine whether an application was received by the Department within the required time-frame established under subsection (B)(3).
 - b. United States Postal Service, including certified or registered mail:
 - i. Arizona Department of Transportation, Financial Management Services, Fuel Tax Refund Compliance Unit, P.O. Box 2100, Mail Drop 521M, Phoenix, AZ 85001.
 - ii. Regular mail: the postmark date will be used to determine whether an application was received by the Department within the required time-frames established under subsection (B)(3).
 - iii. Certified or registered mail: the date of receipt by the designated delivery service shall be used to determine whether an application was received by the Department within the required time-frame established under subsection (B)(3).
 - c. Other method as indicated on the Department's website at www.azdot.gov.
5. Supporting documentation.
- a. The Department shall accept any of the following forms of documentation to support a claim for refund, which may be admissible to the same extent as an original:
 - i. Photocopies;
 - ii. Duplicates (reprints);
 - iii. Document image; or
 - iv. Electronic copy, as indicated on the Department's website at www.azdot.gov.
 - b. The Department shall not return documentation submitted to support an application for refund once an application for refund has been accepted as complete.
 - c. If the Department determines that the supporting documentation required under these rules does not provide sufficient evidence of motor fuel tax paid,
- the Department may require the claimant to produce additional information.
- d. Failure to produce additional documentation as requested by the Department, within the time prescribed under subsection (B)(2)(d), shall result in a denial of refund request being issued by the Department.
6. Record retention and review.
- a. A licensee shall maintain the records relied upon to support the application for refund as specified under A.R.S. Title 28, Chapter 16, Article 1 and these rules, and produce those records to the Department when requested.
 - b. Unless required by A.R.S. Title 28, Chapter 16 to maintain records relied upon to substantiate an application for refund for a shorter or longer period of time, a licensee shall retain the records required to support an application for refund for three years from the issuance date of refund by the Department.
 - c. The Department reserves the right to review a claimant's records used to substantiate an application for refund under these rules.
7. If at any time, the Department discovers an overpayment of motor fuel tax refunded to a claimant under these rules, the Department shall recover payment under A.R.S. § 28-5612.
8. Notification; violation; suspension; administrative hearing.
- a. Denial of request for refund. If the Department denies an applicant's request for refund the Department shall send notification of denial to the claimant.
 - b. Administrative Hearings. Hearings, rehearings, and appeals shall be noticed and conducted in accordance with A.R.S. § 28-5924 and A.A.C Title 17, Chapter 1, Article 5.
 - c. Suspension due to violation of A.R.S. § 28-5612.
 - i. If the Department finds that a claimant is in violation of A.R.S. § 28-5612, the Department shall send notification to the claimant identifying the violation.
 - ii. A claimant determined by the Department to be in violation of state laws and regulations under A.R.S. § 28-5612 and these rules, may be suspended from filing motor tax fuel refunds for six consecutive months from the notification date of the Department for motor fuel tax paid during the suspension period.
 - iii. If a suspension is set aside under A.R.S. § 28-5612, a claimant may again apply to the Department for refund.
 - iv. The time-frame requirements under subsection (B)(3) shall not toll while pursuit of remedy by the claimant or the Department under this subsection.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 24 A.A.R. 3501, effective December 4, 2018 (Supp. 18-4).

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Table 1.

Refund Type	Claimant Status		
Sections	Licensee	Non-Licensee	
R17-8-602. Exports	3 years from date of export	3 months from date of export	
R17-8-603. Use Fuel Vendors	3 years from date of sale	6 months from date of sale	
R17-8-604. Off-Highway	3 years from date of purchase	6 months from date of purchase	
R17-8-606. Tribal Government	If no Tribal Agreement with the Department, 6 months from date of purchase		
R17-8-607. Tribal Member			
R17-8-608. Transport of Forest Products; Healthy Forest Initiative	March 1st of the year following calendar year consumed		
R17-8-609. Motor Fuel Used in Aircraft	6 months from date of purchase		
R17-8-610. Motor Fuel Losses Caused by Fire, Theft, Accident, or Contamination	3 years from date of event	6 months from date of event	
R17-8-611. Bulk Purchase of Use Fuel	3 years	6 months	

Historical Note

Table 1 made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1). Table 1 amended by final expedited rulemaking at 24 A.A.R. 3501, effective December 4, 2018 (Supp. 18-4).

R17-8-602. Exports

- A. To qualify under this Article for a refund of Arizona fuel tax paid on motor fuel exported, a claimant shall provide the following documents to support a complete application for refund:
1. Export to another state within the United States:
 - a. Terminal, carrier, or bulk plant bill of lading or delivery ticket showing the point of origin and destination of the motor fuel;
 - b. Invoice or monthly supplier report schedule indicating that the Arizona tax was paid;
 - c. Motor fuel invoice or shipping document reflecting final destination and gallons exported;
 - d. Tax report establishing that the destination state's tax was reported;
 - e. Name and license number issued by the destination state of the licensee responsible for payment of motor fuel tax and tax reporting to the destination state; and
 - f. If the export of motor fuel is a diversion, the claimant shall provide the following documents to the Department:
 - i. A carrier bill of lading; and
 - ii. Other documentation which supports the delivery of motor fuel to a specific location, other than its intended destination.
 2. Exports to Mexico:
 - a. Documentation under subsection (A)(1),
 - b. U.S. Department of Commerce export documentation, and
 - c. Copy of Mexican Pedimento indicating authorization for import and verification of the motor fuel import.
 3. Exports to Navajo Nation:
 - a. Documentation under subsection (A)(1),
 - b. Name and license number of the Navajo Nation distributor,
 - c. Copy of Navajo Nation manifest or copy of the Navajo Nation monthly motor fuel distributor tax return, and
 - d. Invoice showing the Navajo Nation tax was included in total amount due.

- B. The description of the motor fuel exported shall be identical on all documentation submitted in support of a request for refund of motor fuel tax paid on export.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 24 A.A.R. 3501, effective December 4, 2018 (Supp. 18-4).

R17-8-603. Use Fuel Vendors

- A. To qualify for refund of the use fuel tax differential, a use fuel vendor shall submit to the Department:
1. A complete application as prescribed under R17-8-601;
 2. Supplier or restricted distributor invoice, documenting the use fuel taxes that the vendor paid for the fuel; and
 3. Supporting documentation:
 - a. For sales of use fuel dispensed from a pump which is labeled for use class into a light class or exempt use class vehicle, a fuel log of use fuel tax differential sales, submitted on a format approved by the Department that includes the following vendor information:
 - i. Vendor name;
 - ii. Department-issued retail branch number;
 - iii. Retail branch physical address;
 - iv. Department-issued vendor license number;
 - v. Date of sale to consumer;
 - vi. License plate number and name of jurisdiction that issued the license plate of the motor vehicle into which the fuel was dispensed;
 - vii. Number of gallons of use fuel that were purchased and dispensed into the fuel tank of a qualifying vehicle;
 - viii. Amount of fuel tax refunded to purchaser; and
 - ix. Purchaser's name and signature indicating receipt of the refund made by a vendor of use fuel, submitted on a vendor use fuel refund log, provided by the Department.
 - b. For use fuel vendors who have sales of use fuel dispensed from both a pump labeled for use class and from a pump labeled for light class or exempt use class, a report of the total pump sales for each type.
 - B. A licensed use fuel vendor shall maintain the following records under R17-8-601(B)(6):

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1. Records of daily sales to light class or exempt use class motor vehicles which provides details for each use fuel sale to include the following:
 - a. Gallonage,
 - b. Transaction date,
 - c. Price per gallon, and
 - d. Product description;
 2. Purchase invoices of use fuel;
 3. Inventory records of use fuel; and
 4. Vendor use fuel refund log under subsection (A)(3)(a).
- C. Cardlock use fuel facility.**
1. Applicability. For purposes of receiving a refund from the Department for use fuel sold to a light class or exempt use class vehicle at a cardlock use fuel facility, the vendor shall:
 - a. Submit documentation under subsection (A)(3), except subsection (A)(3)(a)(ix), to the Department;
 - b. Have controlled access to the cardlock use fuel facility in compliance with A.R.S. § 28-5605;
 - c. Restrict use of a cardlock use fuel facility to those approved purchasers that have completed a Declaration of Status; and
 - d. Shall maintain records under subsection (B).
 2. Declaration of Status.
 - a. A vendor shall require that a purchaser of use fuel for use in light class or exempt use class vehicles complete and submit to the vendor a Declaration of Status for each vehicle that will have the ability to obtain fuel at a cardlock use fuel facility.
 - b. A Declaration of Status must be completed for each additional vehicle prior to purchase of motor fuel at a cardlock use fuel facility.
 - c. A Declaration of Status shall be made on a form provided by the Department and may be obtained at www.azdot.gov.
 - d. The original signature of the purchaser shall be included on the Declaration of Status.
 - e. A vendor who operates a cardlock use fuel facility must retain all original Declarations of Status received from a purchaser in the vendor's files under R17-8-601(B)(6), and shall make the Declarations of Status available for review by the Department.
 3. Labeling. A cardlock vendor shall comply with state law by placing a label with verbiage and specifications as required under A.R.S. § 28-5605.
 - a. Cardlock use fuel facilities shall post a use fuel tax rate label provided by the Department.
 - b. Vendors found in violation of labeling regulations shall be subject to penalties under A.R.S. § 28-5605.
- D. Mobile fueling vendor.**
1. Applicability. For purposes of receiving a refund from the Department for use fuel sold and delivered directly from a mobile vehicle into a light class or exempt use class vehicle fuel tank for other than the dispenser's own consumption, the vendor shall:
 - a. Submit documentation under subsection (A)(3), except subsection (A)(3)(a)(ix), to the Department; and
 - b. Shall maintain records under subsection (B).
 2. Declaration of Status.
 - a. A vendor shall require that a purchaser of dispensed use fuel complete and submit to the vendor a Declaration of Status for each light class or exempt use class vehicle that will have the ability to obtain fuel with a mobile fueling vendor.
- b. A Declaration of Status must be completed for each additional vehicle prior to delivery of motor fuel by a mobile fueling vendor.
 - c. A Declaration of Status shall be made on a form provided by the Department and may be obtained at www.azdot.gov.
 - d. The original signature of the purchaser shall be included on the Declaration of Status.
 - e. A vendor who operates a mobile fueling operation must retain all original Declarations of Status received from a purchaser in the vendor's files under R17-8-601(B)(6), and shall make the Declarations of Status available for review by the Department.
3. Labeling. A mobile fueling vendor shall comply with state law by placing a label with verbiage and specifications as required under A.R.S. § 28-5605.
 - a. Mobile fueling vendors shall post on their fueling dispenser a use fuel tax rate label provided by the Department.
 - b. Vendors found in violation of labeling regulations shall be subject to penalties under A.R.S. § 28-5605.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 24 A.A.R. 3501, effective December 4, 2018 (Supp. 18-4).

R17-8-604. Off-Highway

- A. The Department shall refund under this Article the Arizona motor fuel tax paid on the motor fuel consumed in Arizona while the vehicle is off-highway.
- B. A complete application for refund, as prescribed under R17-8-601, shall include the following supporting documentation:
 1. System or manual motor fuel log summary by VIN which includes the following:
 - a. Items under subsection (C)(1)(a), and
 - b. Mileage consumed off-highway when applicable;
 2. Equipment and vehicle listing which includes year, make, equipment type, VIN or equipment serial number, and gross vehicle weight; and
 3. Proof of fuel purchase which may include:
 - a. Motor fuel invoices,
 - b. Motor fuel purchase receipts, and
 - c. Computerized fuel purchase statement.
- C. A claimant shall provide the following documentation to the Department for the identified refund types:
 1. Refrigeration unit:
 - a. Fuel log summary consisting of, at a minimum, the following information:
 - i. Fuel type,
 - ii. Date fuel dispensed,
 - iii. Number of gallons dispensed, and
 - iv. Identification number of equipment or vehicle into which the fuel was dispensed.
 - b. Equipment or vehicle listing which includes year, make, equipment type, VIN or equipment serial number, and gross vehicle weight.
 2. Power take-off: A motor fuel consumption study under this Section shall be conducted at the claimant's expense, and shall be approved by the Department prior to the initial application for refund, and shall include the following information:
 - a. A description of the methodology used to determine the percentage of exempt motor fuel consumed by the power take-off;
 - b. A list of all equipment using motor fuel;

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- c. All operations where motor fuel is consumed;
 - d. Testing and study components shall be a true representation of the operation of business as follows:
 - i. Vehicles shall be grouped into similar categories based on similar power take-off units and similar gross vehicle weight.
 - ii. Vehicles selected shall be representative of the category as to age, make, model, and engine size.
 - iii. Each vehicle category shall be tested individually to determine the amount of motor fuel consumed by the power take-off unit.
 - iv. If a vehicle category contains:
 - (1) Less than four vehicles, all vehicles must be included in the test study.
 - (2) Thirty or fewer vehicles, then at least three vehicles must be included in the test sample.
 - (3) More than 30 and fewer than 151 vehicles, then at least 10 percent of the vehicles must be included in the test sample.
 - (4) More than 150 vehicles, then at least 15 vehicles must be included in the test sample.
 - e. Explanation of the measuring method used to determine fuel consumption by vehicles, equipment, and machinery, which shall include manufacturer specifications;
 - f. Results of a period of a study which shall include a period covering cyclical or seasonal impacts which captures low and high points of fuel usage for exempt or non-exempt purposes;
 - g. Results from a test or study shall be a duration of at least two weeks; and
 - h. The approved power take-off percentage may then be used for three years or shall be updated as requested by the Department.
3. Idle time as prescribed under R17-8-605.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 24 A.A.R. 3501, effective December 4, 2018 (Supp. 18-4).

R17-8-605. Idle Time

- A. Under the provisions of this Article, the Department shall refund the Arizona motor fuel tax imposed on the motor fuel consumed by a claimant's vehicle while in idle status.
- B. A complete application for refund, as prescribed under R17-8-601, shall include the following documentation to verify the quantity of motor fuel consumed by a vehicle while in idle status:
 - 1. Documentation that proves the total quantity of motor fuel purchased by the claimant in Arizona during refund period:
 - a. An invoice that contains the following information:
 - i. Date of purchase,
 - ii. Seller's name,
 - iii. Physical address where motor fuel was purchased,
 - iv. Number of gallons of motor fuel purchased,
 - v. Type of motor fuel purchased, and
 - vi. Price per gallon of motor fuel.
 - b. A fuel log shall be maintained that contains the following information:
 - 2. The date that the motor fuel was placed in the fuel tank of a motor vehicle,
 - 3. The identification number of the equipment or vehicle in which the motor fuel was placed, and
 - 4. The number of gallons of motor fuel placed in the fuel tank.
- c. In lieu of subsections (B)(1)(a) and (b), a licensee may submit a summary of the fuel purchases made by the claimant for the vehicle during the refund period. The summary shall contain the same information required to be on a fuel invoice under subsection (B)(1)(a).
- 2. Documentation that proves that the claimant's vehicle was located in Arizona, off-highway, at the time it was in idle status, and the length of time the vehicle was in idle status, using one or more of the following methods:
 - a. Nonscheduled route:
 - i. A logbook, approved by the Department, maintained for each vehicle that identifies the date and time when the idle status started, the date and time when the idle status ended, and a physical description of the location of the vehicle during the idle status that establishes that the vehicle was in Arizona, but located off-highway.
 - ii. The driver shall make an affirmative statement in the driver's daily log that the engine was operating during the idle status and shall prepare the logbook entries simultaneously with the idle status.
 - iii. The claimant shall retain trip schedules or bills of lading to support the logbook entries.
 - b. Scheduled route:
 - i. Published schedule which includes arrival at and departure from fixed locations at prescribed times; or
 - ii. A record of average wait times recorded in a daily log consisting of arrival at and departure from fixed locations at prescribed times, approved by the Department; and
 - iii. The claimant shall document that the engine remained running during the scheduled stops.
 - c. Global Positioning System:
 - i. A report from a GPS, approved pursuant to subsection (C).
 - ii. The claimant shall maintain trip schedules or bills of lading to support GPS reports.
- 3. Documentation that proves the quantity of motor fuel consumed by the claimant's vehicle while in idle status:
 - a. The claimant shall document the number of the gallons of motor fuel consumed per hour to maintain idle status by one or more of the following methods:
 - i. Engine manufacturer's standard specifications that establish the quantity of motor fuel consumed per hour while the vehicle is in idle status.
 - ii. Computerized system that computes the quantity of motor fuel consumed per hour while in idle status.
 - iii. A study or test that determines motor fuel consumption per hour while in idle status, prior to the period covered by the refund claim.
 - b. A study under this Section shall meet the following specifications:
 - i. The study shall be conducted at the claimant's expense,

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- ii. The methodology shall be approved by the Department prior to conducting the study under subsection (C),
 - iii. The fuel consumption characteristics of the vehicles and their operation during the period of the refund shall not vary significantly from the conditions that existed during the study, and
 - iv. The results of the study shall be approved by the Department prior to the time period covered under the refund claim.
- C.** The Department shall review and approve the method used and the data captured by a GPS or manual report prior to the initial claim for refund and the report shall include the following components:
1. A description of the methodology used to determine the percentage of exempt use fuel consumption;
 2. A list of all equipment consuming use fuel;
 3. A description of all of the vehicle operations where use fuel is consumed;
 4. Whether vehicles are traveling scheduled routes, and whether seasonal or cyclical events affect use fuel;
 5. Testing and study components shall be a true representation of operation of business as follows:
 - a. Vehicles shall be grouped into similar categories based on similar units and similar gross vehicle weight.
 - b. Each vehicle category must be tested individually to determine the idle time fuel consumption.
 - c. Vehicles selected for testing shall be representative of the category as to age, make, model, and engine size.
 6. Study components under R17-8-604(C)(2)(d)(iv);
 7. Explanation of the measuring method used to determine fuel consumption by vehicles, equipment, and machinery, which shall include manufacturer specifications;
 8. Study results under this subsection shall include periods covering cyclical or seasonal impacts which captures low and high points of fuel usage for exempt or non-exempt purposes;
 9. Results from a test or study shall be of duration of at least two weeks; and
 10. The approved idle time study may then be used for three years or shall be updated as requested by the Department.
- D.** A claimant shall submit technical documentation that details the operating system of any system or manual study used including, but not limited to, the following:
1. Identification of the computer system, including the name of the manufacturer, name of the software, and software version number;
 2. Identification of vehicle engines on which the software will be used by the claimant, including makes, models, years, and fuel types;
 3. Description of the methodology used by computer system to determine idle status;
 4. Description of the methodology used to determine fuel consumption while in idle status;
 5. Description of the methodology used to determine the location of the vehicle during idle status; and
 6. Operating policies and procedures for the systems that are used in the claimant's business operations.
- E.** The claimant shall provide additional supporting documentation if there is any update to the system study for which documentation was initially submitted and approved.
1. A claimant shall submit to the Department an updated study under this Section three years from the date of Department approval or at the Department's request.
- 2. A study under this Section shall be conducted at the claimant's expense.
 - 3. The methodology used in support of a study under these rules shall be approved by the Department prior to conducting the study under subsection (C).
 - 4. If the Department rejects the results of a study, a claimant may request a hearing under A.R.S. § 28-5924.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 24 A.A.R. 3501, effective December 4, 2018 (Supp. 18-4).

R17-8-606. Tribal Government

- A. The Department shall refund the Arizona motor fuel tax imposed on the motor fuel consumed by a vehicle owned or leased to a tribal government under this Article.
- B. A complete application for refund, as prescribed under R17-8-601, shall include all of the following supporting documentation for each vehicle:
 1. Detailed fuel receipt statement which includes the following purchase information:
 - a. Date of fuel purchase,
 - b. Gallonage,
 - c. Location,
 - d. Fuel type, and
 - e. Seller's name and address;
 2. Fuel purchase summary by vehicle which includes documentation under subsection (B)(1);
 3. Bulk motor fuel purchase invoice which includes:
 - a. Gallonage,
 - b. Delivery location,
 - c. Fuel type, and
 - d. Tax rate paid; and
 4. If vehicle is leased, a copy of the lease agreement.
- C. A vehicle and equipment listing shall be maintained by the tribal government to include year, make, equipment type, VIN or equipment serial number, and gross vehicle weight.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 24 A.A.R. 3501, effective December 4, 2018 (Supp. 18-4).

R17-8-607. Tribal Member

- A. Enrolled members of a tribe may make application to the Department, as prescribed under R17-8-601, for a refund of the Arizona motor fuel taxes on fuel purchased on the reservation of the tribe in which the member is enrolled, provided the motor fuel was not used off the reservation for a commercial purpose.
- B. A complete application for refund, as prescribed under R17-8-601, shall include the following supporting documentation:
 1. Copy of the vehicle registration,
 2. Copy of the Tribal member identification card,
 3. Receipt of motor fuel purchased on the reservation, and
 4. Signed statement certifying motor fuel was used for non-commercial purposes under A.R.S. § 28-5610(A).

Historical Note

New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 24 A.A.R. 3501, effective December 4, 2018 (Supp. 18-4).

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R17-8-608. Transport of Forest Products; Healthy Forest Initiative

- A. A claim for refund, pursuant to A.R.S. § 28-5614(B), of the tax on motor fuel used to transport forest products on Arizona highways shall comply with the requirements of R17-8-601.
- B. A complete application for refund, as prescribed under R17-8-601, shall include the following supporting documentation:
 1. An equipment and vehicle listing which includes year, make, equipment type, VIN or equipment serial number, and gross vehicle weight;
 2. Certification letter issued by the Arizona Commerce Authority pursuant to A.R.S. § 41-1516 for the same period of time as the refund claim;
 3. Memorandum of Understanding between the Arizona Commerce Authority and the claimant pursuant to A.R.S. § 41-1516;
 4. Individual Project Mileage and Fuel Reports for each project;
 5. Purchase invoices of use fuel; and
 6. Changes to the Arizona Commerce Authority Certification when applicable.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 24 A.A.R. 3501, effective December 4, 2018 (Supp. 18-4).

R17-8-609. Motor Vehicle Fuel Used in Aircraft

- A. A claim for the refund of the tax, pursuant to A.R.S. § 28-5611(A)(2) or non-agricultural purposes under A.R.S. § 28-5611(B), on motor vehicle fuel used to power aircraft shall comply with the requirements of R17-8-601 and subsections (B) and (C) of this Section.
- B. A complete application for refund, as prescribed under R17-8-601, shall include the following supporting documentation:
 1. Motor fuel log summary by aircraft which includes:
 - a. Purchase date,
 - b. Name and location of vendor of fuel to show that Arizona motor fuel tax was included in the purchase price,
 - c. Gallons dispensed,
 - d. Fuel type, and
 - e. Manner consumed;
 2. List of aircraft to include, year, make model, and N-number assigned by the Federal Aviation Administration; and
 3. Purchase invoice indicating items under subsection (B)(1) and amount of tax paid.
- C. Motor vehicle fuel used to power aircraft for agricultural purposes shall, in addition to subsection (B), include a flight log detailing the purpose of use.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 24 A.A.R. 3501, effective December 4, 2018 (Supp. 18-4).

R17-8-610. Motor Fuel Losses Caused by Fire, Theft, Accident, or Contamination

- A. A claimant may apply to the Department for a refund of the tax on motor fuel lost due to fire, theft, accident, or contamination.

- B. A request for refund pursuant to A.R.S. §§ 28-5610 or 28-5611 of the tax on motor fuel that is lost due to fire, theft, accident, or contamination shall comply with the requirements of R17-8-601.

- C. A complete application for refund, as prescribed under R17-8-601, shall include the following supporting documentation:
 1. Signed statements from persons with personal knowledge regarding the facts and circumstances of the loss, including:
 - a. Date of loss or contamination,
 - b. Location where the loss or contamination occurred,
 - c. Detailed explanation regarding the nature of the loss or contamination,
 - d. Name and contact information of persons who witnessed loss or contamination,
 - e. Quantity of fuel lost or contaminated, and
 - f. Disposition of the contaminated fuel.
 2. Copies of records that substantiate the date of acquisition and quantity acquired of the fuel lost as well as the fact the Arizona motor fuel tax was paid by the claimant when the fuel was acquired.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 24 A.A.R. 3501, effective December 4, 2018 (Supp. 18-4).

R17-8-611. Bulk Purchase of Use Fuel

- A. A request for refund of taxes paid on the bulk purchase of use fuel dispensed into a light class, or exempt use class vehicle, shall be submitted to the Department, as prescribed under R17-8-601(B), on an application provided by the Department.
- B. Bulk use fuel shall be purchased and consumed in Arizona to qualify for refund.
- C. A complete application for refund, as prescribed under R17-8-601, shall include the following supporting documentation:
 1. Invoice that contains the following information:
 - a. Name and address of vendor,
 - b. Tax rate,
 - c. Product type,
 - d. Delivery date,
 - e. Quantity of fuel,
 - f. Invoiced amount, and
 - g. A statement from the seller of the use fuel that the use fuel is non-dyed use fuel.
 2. Fuel usage log which includes the following information:
 - a. Date fuel dispensed,
 - b. VIN of vehicle into which fuel was dispensed,
 - c. Gallons dispensed, and
 - d. Fuel type.
 3. Annual vehicle listing to include make, model, year, VIN, and gross vehicle weight.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 24 A.A.R. 3501, effective December 4, 2018 (Supp. 18-4).

NOTICE OF FINAL EXPEDITED RULEMAKING
TITLE 17. TRANSPORTATION
CHAPTER 8. DEPARTMENT OF TRANSPORTATION
FUEL TAXES

Definitions of Terms

A.R.S. § 28-101. Definitions

(L19, Ch. 89, sec. 1 & Ch. 120, sec. 1)

In this title, unless the context otherwise requires:

1. “Alcohol” means any substance containing any form of alcohol, including ethanol, methanol, propynol and isopropynol.
2. “Alcohol concentration” if expressed as a percentage means either:
 - (a) The number of grams of alcohol per one hundred milliliters of blood.
 - (b) The number of grams of alcohol per two hundred ten liters of breath.
3. “All-terrain vehicle” means either of the following:
 - (a) A motor vehicle that satisfies all of the following:
 - (i) Is designed primarily for recreational nonhighway all-terrain travel.
 - (ii) Is fifty or fewer inches in width.
 - (iii) Has an unladen weight of one thousand two hundred pounds or less.
 - (iv) Travels on three or more nonhighway tires.
 - (v) Is operated on a public highway.
 - (b) A recreational off-highway vehicle that satisfies all of the following:
 - (i) Is designed primarily for recreational nonhighway all-terrain travel.
 - (ii) Is eighty or fewer inches in width.
 - (iii) Has an unladen weight of two thousand five hundred pounds or less.
 - (iv) Travels on four or more nonhighway tires.
 - (v) Has a steering wheel for steering control.
 - (vi) Has a rollover protective structure.
 - (vii) Has an occupant retention system.
4. “Authorized emergency vehicle” means any of the following:
 - (a) A fire department vehicle.
 - (b) A police vehicle.
 - (c) An ambulance or emergency vehicle of a municipal department or public service corporation that is designated or authorized by the department or a local authority.
 - (d) Any other ambulance, fire truck or rescue vehicle that is authorized by the department in its sole discretion and that meets liability insurance requirements prescribed by the department.

5. “Autocycle” means a three-wheeled motorcycle on which the driver and passengers ride in a fully or partially enclosed seating area that is equipped with a roll cage, safety belts for each occupant and antilock brakes and that is designed to be controlled with a steering wheel and pedals.
6. “Aviation fuel” means all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating an internal combustion engine for use in an aircraft but does not include fuel for jet or turbine powered aircraft.
7. “Bicycle” means a device, including a racing wheelchair, that is propelled by human power and on which a person may ride and that has either:
 - (a) Two tandem wheels, either of which is more than sixteen inches in diameter.
 - (b) Three wheels in contact with the ground, any of which is more than sixteen inches in diameter.
8. “Board” means the transportation board.
9. “Bus” means a motor vehicle designed for carrying sixteen or more passengers, including the driver.
10. “Business district” means the territory contiguous to and including a highway if there are buildings in use for business or industrial purposes within any six hundred feet along the highway, including hotels, banks or office buildings, railroad stations and public buildings that occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway.
11. “Certificate of ownership” means a paper or an electronic record that is issued in another state or a foreign jurisdiction and that indicates ownership of a vehicle.
12. “Certificate of title” means a paper document or an electronic record that is issued by the department and that indicates ownership of a vehicle.
13. “Combination of vehicles” means a truck or truck tractor and semitrailer and any trailer that it tows but does not include a forklift designed for the purpose of loading or unloading the truck, trailer or semitrailer.
14. “Controlled substance” means a substance so classified under section 102(6) of the controlled substances act (21 United States Code section 802(6)) and includes all substances listed in schedules I through V of 21 Code of Federal Regulations part 1308.
15. “Conviction” means:
 - (a) An unvacated adjudication of guilt or a determination that a person violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal.
 - (b) An unvacated forfeiture of bail or collateral deposited to secure the person’s appearance in court.
 - (c) A plea of guilty or no contest accepted by the court.
 - (d) The payment of a fine or court costs.
16. “County highway” means a public road that is constructed and maintained by a county.
17. “Dealer” means a person who is engaged in the business of buying, selling or exchanging motor vehicles, trailers or semitrailers and who has an established place of business and has paid fees pursuant to section 28-4302.
18. “Department” means the department of transportation acting directly or through its duly authorized officers and agents.

19. “Digital network or software application” has the same meaning prescribed in section 28-9551.
20. “Director” means the director of the department of transportation.
21. “Drive” means to operate or be in actual physical control of a motor vehicle.
22. “Driver” means a person who drives or is in actual physical control of a vehicle.
23. “Driver license” means a license that is issued by a state to an individual and that authorizes the individual to drive a motor vehicle.
24. “Electric bicycle” means a bicycle or tricycle that is equipped with fully operable pedals and an electric motor of less than seven hundred fifty watts and that meets the requirements of one of the following classes:
 - (a) “Class 1 electric bicycle” means a bicycle or tricycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle or tricycle reaches the speed of twenty miles per hour.
 - (b) “Class 2 electric bicycle” means a bicycle or tricycle that is equipped with an electric motor that may be used exclusively to propel the bicycle or tricycle and that is not capable of providing assistance when the bicycle or tricycle reaches the speed of twenty miles per hour.
 - (c) “Class 3 electric bicycle” means a bicycle or tricycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle or tricycle reaches the speed of twenty-eight miles per hour.
25. “Electric miniature scooter” means a device that:
 - (a) Weighs less than thirty pounds.
 - (b) Has two or three wheels.
 - (c) Has handlebars.
 - (d) Has a floorboard on which a person may stand while riding.
 - (e) Is powered by an electric motor or human power, or both.
 - (f) Has a maximum speed that does not exceed ten miles per hour, with or without human propulsion, on a paved level surface.
26. “Electric personal assistive mobility device” means a self-balancing device with one wheel or two nontandem wheels and an electric propulsion system that limits the maximum speed of the device to fifteen miles per hour or less and that is designed to transport only one person.
27. “Electric standup scooter”:
 - (a) Means a device that:
 - (i) Weighs less than seventy-five pounds.
 - (ii) Has two or three wheels.
 - (iii) Has handlebars.
 - (iv) Has a floorboard on which a person may stand while riding.
 - (v) Is powered by an electric motor or human power, or both.
 - (vi) Has a maximum speed that does not exceed twenty miles per hour, with or without human propulsion, on a paved level surface.

- (b) Does not include an electric miniature scooter.
28. "Evidence" includes both of the following:
- (a) A display on a wireless communication device of a department-generated driver license, nonoperating identification license, vehicle registration card or other official record of the department that is presented to a law enforcement officer or in a court or an administrative proceeding.
 - (b) An electronic or digital license plate authorized pursuant to section 28-364.
29. "Farm" means any lands primarily used for agriculture production.
30. "Farm tractor" means a motor vehicle designed and used primarily as a farm implement for drawing implements of husbandry.
31. "Foreign vehicle" means a motor vehicle, trailer or semitrailer that is brought into this state other than in the ordinary course of business by or through a manufacturer or dealer and that has not been registered in this state.
32. "Golf cart" means a motor vehicle that has not less than three wheels in contact with the ground, that has an unladen weight of less than one thousand eight hundred pounds, that is designed to be and is operated at not more than twenty-five miles per hour and that is designed to carry not more than four persons including the driver.
33. "Hazardous material" means a material, and its mixtures or solutions, that the United States department of transportation determines under 49 Code of Federal Regulations is, or any quantity of a material listed as a select agent or toxin under 42 Code of Federal Regulations part 73 that is, capable of posing an unreasonable risk to health, safety and property if transported in commerce and that is required to be placarded or marked as required by the department's safety rules prescribed pursuant to chapter 14 of this title.
34. "Implement of husbandry" means a vehicle that is designed primarily for agricultural purposes and that is used exclusively in the conduct of agricultural operations, including an implement or vehicle whether self-propelled or otherwise that meets both of the following conditions:
- (a) Is used solely for agricultural purposes including the preparation or harvesting of cotton, alfalfa, grains and other farm crops.
 - (b) Is only incidentally operated or moved on a highway whether as a trailer or self-propelled unit. For the purposes of this subdivision, "incidentally operated or moved on a highway" means travel between a farm and another part of the same farm, from one farm to another farm or between a farm and a place of repair, supply or storage.
35. "Limousine" means a motor vehicle providing prearranged ground transportation service for an individual passenger, or a group of passengers, that is arranged in advance or is operated on a regular route or between specified points and includes ground transportation under a contract or agreement for services that includes a fixed rate or time and is provided in a motor vehicle with a seating capacity not exceeding fifteen passengers including the driver.
36. "Livery vehicle" means a motor vehicle that:
- (a) Has a seating capacity not exceeding fifteen passengers including the driver.

- (b) Provides passenger services for a fare determined by a flat rate or flat hourly rate between geographic zones or within a geographic area.
 - (c) Is available for hire on an exclusive or shared ride basis.
 - (d) May do any of the following:
 - (i) Operate on a regular route or between specified places.
 - (ii) Offer prearranged ground transportation service as defined in section 28-141.
 - (iii) Offer on demand ground transportation service pursuant to a contract with a public airport, licensed business entity or organization.
37. "Local authority" means any county, municipal or other local board or body exercising jurisdiction over highways under the constitution and laws of this state.
38. "Manufacturer" means a person engaged in the business of manufacturing motor vehicles, trailers or semitrailers.
39. "Moped" means a bicycle, not including an electric bicycle, an electric miniature scooter or an electric standup scooter, that is equipped with a helper motor if the vehicle has a maximum piston displacement of fifty cubic centimeters or less, a brake horsepower of one and one-half or less and a maximum speed of twenty-five miles per hour or less on a flat surface with less than a one percent grade.
40. "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the rider and that is designed to travel on not more than three wheels in contact with the ground but excludes a tractor, an electric bicycle, an electric miniature scooter, an electric standup scooter and a moped.
41. "Motor driven cycle" means a motorcycle, including every motor scooter, with a motor that produces not more than five horsepower but does not include an electric bicycle, an electric miniature scooter or an electric standup scooter.
42. "Motorized quadricycle" means a self-propelled motor vehicle to which all of the following apply:
- (a) The vehicle is self-propelled by an emission-free electric motor and may include pedals operated by the passengers.
 - (b) The vehicle has at least four wheels in contact with the ground.
 - (c) The vehicle seats at least eight passengers, including the driver.
 - (d) The vehicle is operable on a flat surface using solely the electric motor without assistance from the pedals or passengers.
 - (e) The vehicle is a commercial motor vehicle as defined in section 28-5201.
 - (f) The vehicle is a limousine operating under a vehicle for hire company permit issued pursuant to section 28-9503.
 - (g) The vehicle is manufactured by a motor vehicle manufacturer that is licensed pursuant to chapter 10 of this title.
 - (h) The vehicle complies with the definition and standards for low-speed vehicles set forth in federal motor vehicle safety standard 500 and 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.

43. "Motor vehicle":

(a) Means either:

- (i) A self-propelled vehicle.
- (ii) For the purposes of the laws relating to the imposition of a tax on motor vehicle fuel, a vehicle that is operated on the highways of this state and that is propelled by the use of motor vehicle fuel.

(b) Does not include a personal delivery device, a personal mobile cargo carrying device, a motorized wheelchair, an electric personal assistive mobility device, an electric bicycle, an electric miniature scooter, an electric standup scooter or a motorized skateboard. For the purposes of this subdivision:

- (i) "Motorized skateboard" means a self-propelled device that does not have handlebars and that has a motor, a deck on which a person may ride and at least two tandem wheels in contact with the ground.
- (ii) "Motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.

44. "Motor vehicle fuel" includes all products that are commonly or commercially known or sold as gasoline, including casinghead gasoline, natural gasoline and all flammable liquids, and that are composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. Motor vehicle fuel does not include inflammable liquids that are specifically manufactured for racing motor vehicles and that are distributed for and used by racing motor vehicles at a racetrack, use fuel as defined in section 28-5601, aviation fuel, fuel for jet or turbine powered aircraft or the mixture created at the interface of two different substances being transported through a pipeline, commonly known as transmix.

45. "Neighborhood electric vehicle" means a self-propelled electrically powered motor vehicle to which all of the following apply:

- (a) The vehicle is emission free.
- (b) The vehicle has at least four wheels in contact with the ground.
- (c) The vehicle complies with the definition and standards for low-speed vehicles set forth in federal motor vehicle safety standard 500 and 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.

46. "Nonresident" means a person who is not a resident of this state as defined in section 28-2001.

47. "Off-road recreational motor vehicle" means a motor vehicle that is designed primarily for recreational nonhighway all-terrain travel and that is not operated on a public highway. Off-road recreational motor vehicle does not mean a motor vehicle used for construction, building trade, mining or agricultural purposes.

48. "Operator" means a person who drives a motor vehicle on a highway, who is in actual physical control of a motor vehicle on a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.

49. "Owner" means:

- (a) A person who holds the legal title of a vehicle.

- (b) If a vehicle is the subject of an agreement for the conditional sale or lease with the right of purchase on performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, the conditional vendee or lessee.
 - (c) If a mortgagor of a vehicle is entitled to possession of the vehicle, the mortgagor.
50. “Pedestrian” means any person afoot. A person who uses an electric personal assistive mobility device or a manual or motorized wheelchair is considered a pedestrian unless the manual wheelchair qualifies as a bicycle. For the purposes of this paragraph, “motorized wheelchair” means a self-propelled wheelchair that is used by a person for mobility.
51. “Personal delivery device”:
- (a) Means an electronically powered device that:
 - (i) Is operated primarily on sidewalks and within crosswalks and that is designed to transport property.
 - (ii) Weighs less than two hundred pounds, excluding cargo, unless otherwise authorized by a local authority pursuant to section 28-627.
 - (iii) Operates at a maximum speed of seven miles per hour, unless otherwise authorized by a local authority pursuant to section 28-627.
 - (iv) Is equipped with technology to allow for the operation of the device with or without the active control or monitoring of a natural person.
 - (v) Is equipped with a braking system that when active or engaged enables the personal delivery device to come to a controlled stop.
 - (b) Does not include a personal mobile cargo carrying device.
52. “Personal mobile cargo carrying device” means an electronically powered device that:
- (a) Is operated primarily on sidewalks and within crosswalks and that is designed to transport property.
 - (b) Weighs less than eighty pounds, excluding cargo.
 - (c) Operates at a maximum speed of twelve miles per hour.
 - (d) Is equipped with technology to transport personal property with the active monitoring of a property owner and that is primarily designed to remain within twenty-five feet of the property owner.
 - (e) Is equipped with a braking system that when active or engaged enables the personal mobile cargo carrying device to come to a controlled stop.
53. “Power sweeper” means an implement, with or without motive power, that is only incidentally operated or moved on a street or highway and that is designed for the removal of debris, dirt, gravel, litter or sand whether by broom, vacuum or regenerative air system from asphaltic concrete or cement concrete surfaces, including parking lots, highways, streets and warehouses, and a vehicle on which the implement is permanently mounted.
54. “Public transit” means the transportation of passengers on scheduled routes by means of a conveyance on an individual passenger fare-paying basis excluding transportation by a sightseeing bus, school bus or taxi or a vehicle not operated on a scheduled route basis.
55. “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.

56. “Residence district” means the territory contiguous to and including a highway not comprising a business district if the property on the highway for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business.
57. “Right-of-way” when used within the context of the regulation of the movement of traffic on a highway means the privilege of the immediate use of the highway. Right-of-way when used within the context of the real property on which transportation facilities and appurtenances to the facilities are constructed or maintained means the lands or interest in lands within the right-of-way boundaries.
58. “School bus” means a motor vehicle that is designed for carrying more than ten passengers and that is either:
 - (a) Owned by any public or governmental agency or other institution and operated for the transportation of children to or from home or school on a regularly scheduled basis.
 - (b) Privately owned and operated for compensation for the transportation of children to or from home or school on a regularly scheduled basis.
59. “Semitrailer” means a vehicle that is with or without motive power, other than a pole trailer or single-axle tow dolly, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that some part of its weight and that of its load rests on or is carried by another vehicle. For the purposes of this paragraph, “pole trailer” has the same meaning prescribed in section 28-601.
60. “Single-axle tow dolly” means a nonvehicle device that is drawn by a motor vehicle, that is designed and used exclusively to transport another motor vehicle and on which the front or rear wheels of the drawn motor vehicle are mounted on the tow dolly while the other wheels of the drawn motor vehicle remain in contact with the ground.
61. “State” means a state of the United States and the District of Columbia.
62. “State highway” means a state route or portion of a state route that is accepted and designated by the board as a state highway and that is maintained by the state.
63. “State route” means a right-of-way whether actually used as a highway or not that is designated by the board as a location for the construction of a state highway.
64. “Street” or “highway” means the entire width between the boundary lines of every way if a part of the way is open to the use of the public for purposes of vehicular travel.
65. “Taxi” means a motor vehicle that has a seating capacity not exceeding fifteen passengers, including the driver, that provides passenger services and that:
 - (a) Does not primarily operate on a regular route or between specified places.
 - (b) Offers local transportation for a fare determined on the basis of the distance traveled or prearranged ground transportation service as defined in section 28-141 for a predetermined fare.

66. “Title transfer form” means a paper or an electronic form that is prescribed by the department for the purpose of transferring a certificate of title from one owner to another owner.
67. “Traffic survival school” means a school that offers educational sessions to drivers who are required to attend and successfully complete educational sessions pursuant to this title that are designed to improve the safety and habits of drivers and that are approved by the department.
68. “Trailer” means a vehicle that is with or without motive power, other than a pole trailer or single-axle tow dolly, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that no part of its weight rests on the towing vehicle. A semitrailer equipped with an auxiliary front axle commonly known as a dolly is deemed to be a trailer. For the purposes of this paragraph, “pole trailer” has the same meaning prescribed in section 28-601.
69. “Transportation network company” has the same meaning prescribed in section 28-9551.
70. “Transportation network company vehicle” has the same meaning prescribed in section 28-9551.
71. “Transportation network service” has the same meaning prescribed in section 28-9551.
72. “Truck” means a motor vehicle designed or used primarily for the carrying of property other than the effects of the driver or passengers and includes a motor vehicle to which has been added a box, a platform or other equipment for such carrying.
73. “Truck tractor” means a motor vehicle that is designed and used primarily for drawing other vehicles and that is not constructed to carry a load other than a part of the weight of the vehicle and load drawn.
74. “Vehicle”:
- (a) Means a device in, on or by which a person or property is or may be transported or drawn on a public highway.
 - (b) Does not include:
 - (i) Electric bicycles, electric miniature scooters, electric standup scooters and devices moved by human power.
 - (ii) Devices used exclusively on stationary rails or tracks.
 - (iii) Personal delivery devices.
 - (iv) Personal mobile cargo carrying devices.
75. “Vehicle transporter” means either:
- (a) A truck tractor capable of carrying a load and drawing a semitrailer.
 - (b) A truck tractor with a stinger-steered fifth wheel capable of carrying a load and drawing a semitrailer or a truck tractor with a dolly mounted fifth wheel that is securely fastened to the truck tractor at two or more points and that is capable of carrying a load and drawing a semitrailer.

A.R.S. § 28-5601. Definitions

In this article and articles 2 and 5 of this chapter, unless the context otherwise requires:

1. “Blending”:
 - (a) Means the mixing of one or more products, regardless of the original character of the product blended, if the product obtained by the blending is capable of use or otherwise sold for use in the generation of power for the propulsion of a motor vehicle, aircraft or watercraft.
 - (b) Does not include blending that occurs in the process of refining by the original refiner of crude petroleum or the blending of products known as lubricating oil and greases.
2. “Bulk end user” means a person who receives into the person’s own storage facilities in transport truck lots motor fuel for the person’s own consumption.
3. “Bulk plant” means a motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.
4. “Bulk transfer” means any transfer of motor fuel from one location to another by pipeline tender or marine delivery within the bulk transfer terminal system.
5. “Bulk transfer terminal system” means the motor fuel distribution system consisting of refineries, pipelines, marine vessels and terminals. Motor fuel in a refinery, pipeline, vessel or terminal is in the bulk transfer terminal system. Motor fuel in the fuel supply tank of any engine, or in any tank car, rail car, trailer, truck or other equipment suitable for ground transportation, is not in the bulk transfer terminal system.
6. “Consumer” means the end purchaser of motor vehicle fuel for use on the highways in this state, the end purchaser of motor vehicle fuel for use in watercraft on waterways of this state or the end purchaser of aviation fuel for use in aircraft.
7. “Destination state” means the state, territory or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container or a type of transportation equipment for the purpose of resale or use.
8. “Distributor” means a person who acquires motor fuel from a supplier or another distributor for subsequent sale or use and who may blend or import into or export from this state motor fuel in the original package or container or otherwise but excluding a person who imports motor fuel in the fuel tank of a motor vehicle or aircraft.
9. “Dyed diesel fuel” means diesel fuel that is dyed pursuant to United States internal revenue service regulations or requirements, including any invisible marker requirements.
10. “Fuel tank” means a receptacle on a motor vehicle, watercraft or aircraft from which fuel is supplied for the propulsion of the motor vehicle, watercraft or aircraft, excluding a cargo tank but including a separate compartment of a cargo tank used as a fuel tank and an auxiliary tank or receptacle of any kind from which fuel is supplied for the propulsion of the motor vehicle, watercraft or aircraft, whether or not the tank or receptacle is directly connected to the fuel supply line of the motor vehicle, watercraft or aircraft.

11. "Highway" means any way or place in this state of whatever nature that is maintained by public monies and that is open to the use of the public for purposes of vehicular travel, including a highway under construction.
12. "In this state" means any way or place within the exterior limits of the state of Arizona that is maintained by public monies, including any such way or place that is owned by or ceded to the United States of America.
13. "Indian reservation" means all lands that are within the limits of areas set aside by the United States for the exclusive use and occupancy of Indian tribes by treaty, law or executive order and that are currently recognized as Indian reservations by the United States department of the interior.
14. "Indian tribe" means any organized nation, tribe, band or community recognized as an Indian tribe by the United States department of the interior.
15. "Interstate user" means a person registering a use class motor vehicle under chapter 7, article 7 or 8 of this title or section 28-2321 or 28-2324.
16. "Invoiced gallons" means the gallons actually billed on an invoice in payment to a supplier.
17. "Light class motor vehicle" means a motor vehicle that uses use fuel on the highways in this state but excludes a road tractor, truck tractor, truck or passenger carrying vehicle having a declared gross vehicle weight of more than twenty-six thousand pounds or having more than two axles.
18. "Motor fuel" means motor vehicle fuel, use fuel and aviation fuel.
19. "Motor vehicle" means a self-propelled vehicle required to be licensed or subject to licensing for operation on a highway.
20. "Permissive supplier" means an out-of-state supplier that elects, but is not required, to have a supplier's license pursuant to this article.
21. "Person" means an individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver or syndicate, this state, any county, city, town, district or other subdivision of this state, an Indian tribe, or any other group or combination acting as a unit.
22. "Position holder":
 - (a) Means the person who holds the inventory position in motor fuel in a terminal, as reflected on the records of the terminal operator. For the purposes of this subdivision, "a person who holds the inventory position in motor fuel" means a person who has a contract with the terminal operator for the use of storage facilities and terminaling services for fuel at the terminal.
 - (b) Includes a terminal operator who owns fuel in the terminal.
23. "Public monies" means those monies that are received by this state and that are derived all or in part from tax revenues or other funding sources.
24. "Qualified terminal" means a terminal that is designated as a qualified terminal pursuant to the United States internal revenue code, regulation and practices and that has been assigned a terminal control number by the United States internal revenue service.

25. "Rack" means a mechanism for delivering motor fuel from a refinery, a terminal or a bulk plant into a railroad tank car, a transport truck or other means of transfer that is outside the bulk transfer terminal system.
26. "Refiner" means any person who owns, operates or otherwise controls a refinery within the United States.
27. "Refinery" means a facility that is used to produce motor fuel from crude oil, unfinished oils, natural gas liquids, transmix or other hydrocarbons or by blending and from which motor fuel may be removed by pipeline, by vessel or at a rack.
28. "Road tractor" means a motor vehicle that is designed and used for drawing other vehicles and that is not constructed to carry either a load independently or any part of the weight of a vehicle or load so drawn.
29. "Sell" includes a transfer of title or possession, exchange or barter in any manner or by any means.
30. "Supplier":
 - (a) Means a person who is registered pursuant to section 4101 of the United States internal revenue code for transactions in motor fuels in the bulk transfer terminal distribution system and who is one of the following:
 - (i) The position holder in a terminal or refinery in this state.
 - (ii) A person who imports motor fuel into this state from a foreign country.
 - (iii) A person who acquires motor fuel from a terminal or refinery in this state from a position holder pursuant to a two party exchange.
 - (iv) The position holder in a terminal or refinery outside this state with respect to motor fuel that that person imports into this state on the account of that person.
 - (b) Includes a permissive supplier unless specifically provided otherwise. Supplier does not include a terminal operator merely because the terminal operator handles motor fuel consigned to the terminal operator within a terminal.
31. "Terminal" means a storage and distribution facility for motor fuel, which is supplied by pipeline or marine vessel, that is registered as a qualified terminal by the United States internal revenue service and from which motor fuel may be removed at a rack.
32. "Terminal bulk transfer" includes the following:
 - (a) A marine barge movement of motor fuel from a refinery or terminal to a terminal.
 - (b) Pipeline movements of motor fuel from a refinery or terminal to a terminal.
33. "Terminal operator" means any person who owns, operates or otherwise controls a terminal and who does not use a substantial portion of the motor fuel that is transferred through or stored in the terminal for the person's own use or consumption or in the manufacture of products other than motor fuel. A terminal operator may own the motor fuel that is transferred through or stored in the terminal.
34. "Transmix" means the buffer or interface between two different products in a pipeline shipment or a mix of two different products within a refinery or terminal that results in an off-grade mixture that is not usable or salable as motor fuel.
35. "Two party exchange" means a transaction:

- (a) In which motor fuel is transferred from one licensed supplier or licensed permissive supplier to another licensed supplier or licensed permissive supplier.
 - (b) That includes a transfer from the person that holds the original inventory position for motor fuel in the terminal as reflected on the records of the terminal operator.
 - (c) That is simultaneous with removal from the terminal by the receiving exchange party.
 - (d) In which the terminal operator in the terminal operator's books and records treats the receiving exchange party as the supplier that removes the product across a terminal rack for purposes of reporting the events to the department.
36. "Use" includes the placing of fuel into any receptacle on a motor vehicle from which fuel is supplied for the propulsion of the vehicle unless the operator of the vehicle establishes to the satisfaction of the director that the fuel was consumed for a purpose other than to propel a motor vehicle on a highway in this state and, with respect to fuel brought into this state in any such receptacle on a use class motor vehicle, the consumption of the fuel in this state. A person who places fuel in a receptacle on a use class motor vehicle of another is not deemed to have used the fuel.
37. "Use class motor vehicle" means a motor vehicle that uses use fuel on a highway in this state and that is a road tractor, truck tractor, truck or passenger carrying vehicle having a declared gross vehicle weight of more than twenty-six thousand pounds or having more than two axles.
38. "Use fuel" includes all gases and liquids used or suitable for use to propel motor vehicles, except fuels that are subject to the motor vehicle fuel tax imposed by this article.
39. "User" includes a person who, within the meaning of the term use as defined in this section, uses fuel in a use class motor vehicle.
40. "Vendor" includes a person who sells use fuel in this state and who places the fuel or causes the fuel to be placed into any receptacle on a motor vehicle from which receptacle fuel is supplied for the propulsion, including a service station dealer, a broker and a user who sells use fuel to others.

NOTICE OF FINAL EXPEDITED RULEMAKING
TITLE 17. TRANSPORTATION
CHAPTER 8. DEPARTMENT OF TRANSPORTATION
FUEL TAXES

Statutory Authority Including Relevant Statutory Definitions

General Authority for Rulemaking

A.R.S. § 28-366. Director; rules

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:

1. Collection of taxes and license fees.
2. Public safety and convenience.
3. Enforcement of the provisions of the laws the director administers or enforces.
4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

A.R.S. § 28-374. Fees and taxes; alternative payment methods; penalties

- A. Subject to the limitations of sections 35-142 and 41-2544, the director may enter into agreements for the purpose of accepting payment for fees and taxes imposed under this title by alternative payment methods, including credit cards, debit cards and electronic funds transfers.
- B. Before the revenues are transferred to the director as provided in sections 28-2005 and 28-6533, the collecting officer shall deduct any fee charged or withheld by a company providing the alternative payment method under an agreement with the director or the director may reimburse the collecting officer pursuant to an agreement.
- C. For a tax year or reporting period that begins on or after January 1, 1998, the department may require by rule that a person who owed twenty thousand dollars or more for the preceding tax year in taxes imposed by chapter 16, article 1 of this title pay taxes on or before the prescribed payment date in monies that are immediately available to this state on the date of transfer as provided in subsection D of this section. The rule shall be consistent with the cash management policies of the state treasurer.
- D. A payment in monies that are immediately available shall be made by electronic funds transfer or any other means that is required by the department, that is approved by the state treasurer and that ensures the availability of the monies to this state on the date of payment.
- E. A person who pays taxes as prescribed in subsection C of this section shall furnish to the department evidence as prescribed by the department that shows that payment was remitted on or before the prescribed payment date.
- F. A person who fails to make a timely payment in monies that are immediately available is subject to penalties as prescribed in chapter 16 of this title.

A.R.S. § 28-5930. Electronic report filing; rules; payment availability

- A. The director may require by rule that persons who are required to file reports pursuant to this chapter file those reports by electronic means.
- B. The rules shall include at least the following:
 - 1. Data elements.
 - 2. The format for the data elements.
 - 3. The method and medium of transmission.
 - 4. Provisions for waiver.
- C. All monies that accompany electronic reports shall be immediately available to this state on the date of transfer as provided in section 28-374.

Specific Statutes

A.R.S. § 28-5618. Report requirements

- A.** On or before the twenty-seventh day of each month, a supplier shall file with the director a true and verified statement in a form prescribed by the director showing:
 1. The total number of gallons of motor vehicle fuel or aviation fuel, blended, imported, exported or acquired during the preceding calendar month.
 2. The number of gallons of motor vehicle fuel or aviation fuel sold or otherwise disposed of by the supplier for use in each of the several counties of this state.
 3. The total number of gallons of motor vehicle fuel that is included in this subsection and that is intended for use in aircraft.
 4. Other information the director requires.
- B.** In addition to making the statement required in subsection A and if the supplier received an interstate shipment of motor vehicle fuel during the preceding month, the supplier shall report on or before the twenty-seventh day of each month to the director in a form prescribed by the director:
 1. The quantity and particular description of the fuel received by interstate shipment and delivered intercounty.
 2. The name of the consignor and consignee.
 3. The date shipped.
 4. The date received.
 5. How it was shipped.
 6. Other information the director requires.
- C.** A supplier may amend a report filed pursuant to this section within three years after the date the original tax report was filed unless the report for the period is final due to an audit.
- D.** If an amended report results in a reduction in taxes paid, the department shall credit the licensee's account unless the licensee files a written request for a refund.

A.R.S. § 28-5619. Records required; violation; classification

- A.** Suppliers and restricted distributors shall maintain and keep records of motor vehicle fuel or aviation fuel received, acquired, used, sold and delivered in this state by the supplier or restricted distributor, the amount of tax paid as part of the purchase price, invoices, bills of lading and other pertinent records and papers required by the director for the reasonable administration of this article at least until the later of the following:
 1. Three years after a report is required to be filed pursuant to this article.
 2. Three years after a report is filed.
- B.** Any person, other than a restricted distributor, purchasing motor vehicle fuel taxable under this article or aviation fuel taxable under section 28-8344 from a supplier for the purpose of resale shall maintain and keep for

one year a record of motor vehicle fuel or aviation fuel received, the amount of tax paid to the supplier as part of the purchase price, delivery tickets, invoices, bills of lading and other records the director requires.

- C. Each distributor and vendor shall maintain and keep for three years the following:
 - 1. Records of use fuel received, sold or delivered in this state by the distributor or vendor.
 - 2. Invoices, bills of lading and other pertinent records and papers required by the director for the reasonable administration of this article.
- D. The director may require distributors to file information as to sales or deliveries to vendors or users of use fuel at the times and in the form as the director requires.
- E. A person who violates this section is guilty of a class 1 misdemeanor.

A.R.S. § 28-5620. Records and equipment inspections; hearings; use restrictions; violation; costs

- A. The director or a deputy, employee or agent authorized by the director may examine during usual business hours records, books, papers, storage tanks and any other equipment of a person pertaining to motor fuel imported, received, sold, shipped, delivered or used to either:
 - 1. Verify the truth and accuracy of a statement, report, return or claim.
 - 2. Ascertain whether the tax imposed by this article or section 28-8344 has been paid.
 - 3. Determine the financial responsibility of the supplier for the payment of the taxes imposed by this article or section 28-8344.
 - 4. Determine the validity of a refund.
- B. In the enforcement of this article, the director may hold hearings, take testimony of persons, issue subpoenas for the purpose of taking testimony, compel attendance of witnesses and conduct investigations the director deems necessary.
- C. The director may prescribe forms for required reports or claims for refund or forms of record to be used by suppliers, distributors, restricted distributors, vendors or refund claimants.
- D. Records required by this article may be maintained in this state. If the records are maintained outside this state and on request of the director, the records shall be made available at a location in this state designated by the director. If the records are maintained outside this state and will not be made available at the location designated by the director, the director may require the person to whom a records request has been made to pay in advance costs reimbursable for subsistence and travel expenses for the director or an agent of the director to conduct the examination of the records.

A.R.S. § 28-5625. Restricted distributor licenses; reports; violation; classification

- A. A person shall obtain a license and report pursuant to subsection D of this section as a restricted distributor of motor vehicle fuel from the director if all of the following apply:
 - 1. The person transports for sale motor vehicle fuel to another county from the county that was originally reported by the supplier.
 - 2. The person purchases or otherwise acquires motor vehicle fuel in tank car or cargo lots.

3. The person sells the motor vehicle fuel for delivery in this state or export from this state.
 4. The person is not required by this article to be licensed as a supplier.
- B.** To obtain a restricted distributor license, a person shall file with the director an application that contains the following:
1. The name under which the person is transacting business in this state.
 2. The address of the person's principal office or place of business in this state.
 3. The name and address of the owner, the names and addresses of the partners if the restricted distributor is a partnership or the names and addresses of the principal officer if the restricted distributor is a corporation or association.
 4. Other information the director requires.
- C.** If the application is in proper form and is accepted for filing, the director shall issue to the applicant a license to transact business as a restricted distributor in this state subject to cancellation as provided by law.
- D.** A restricted distributor shall report on or before the twenty-seventh day of each month to the director in a form prescribed by the director:
1. The quantity of motor vehicle fuel acquired during the preceding calendar month.
 2. The disposition of the motor vehicle fuel for use in each of the several counties.
 3. The name of the consignor and consignee.
 4. The date shipped.
 5. The date received.
 6. How it was shipped.
 7. Other information the director requires.
- E.** A restricted distributor may amend a report filed pursuant to this section within three years after the date the original tax report was filed unless the report for the period is final due to an audit.
- F.** If a restricted distributor files a false report or fails, refuses or neglects to file a report pursuant to subsection D of this section, the director may cancel the restricted distributor's license and notify the restricted distributor of the cancellation by regular mail at the last known address of the restricted distributor appearing in the department's records.
- G.** If a restricted distributor ceases to engage in business as a restricted distributor in this state by reason of discontinuance, sale or transfer of the business, the restricted distributor shall notify the director in writing at least ten days before the discontinuance, sale or transfer takes effect. If the restricted distributor sells or transfers the business, the restricted distributor shall include the name and address of the purchaser or transferee in the notice to the director.
- H.** A person who is required to be licensed as a restricted distributor of motor vehicle fuel pursuant to this section and who fails to obtain a license is guilty of a class 1 misdemeanor.

STATE BOARD OF PHARMACY (R19-1203)

Title 4, Chapter 23, Board of Pharmacy, Articles 1, 2, 4, 6, 8, and 11

Amend: R4-23-110, R4-23-204, R4-23-205, R4-23-407, R4-23-408, R4-23-411,
R4-23-607, R4-23-1103, R4-23-1106

Repeal: R4-23-801



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: December 3, 2019

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

FROM: Council Staff

DATE: November 8, 2019

SUBJECT: **STATE BOARD OF PHARMACY (R19-1203)**

Title 4, Chapter 23, Board of Pharmacy, Articles 1, 2, 4, 6, 8, and 11

Amend: R4-23-110, R4-23-204, R4-23-205, R4-23-407, R4-23-408, R4-23-411,
R4-23-607, R4-23-1103, R4-23-1106

Repeal: R4-23-801

Summary:

This regular rulemaking from the State Board of Pharmacy (“Board”) seeks to amend multiple rules in Title 4, Chapter 23, Articles 1, 2, 4, 6, and 11 and repeal one rule in Article 8. The Board indicates the rulemaking is an effort to comply with Executive Order 2019-01 by making minor changes to remove unnecessary or burdensome regulatory requirements and comply with statutory changes.

Specifically, in a rulemaking approved by Council on April 2, 2019 (See 25 A.A.R. 1015 (April 26, 2019)), a definition of virtual wholesaler was removed to provide time for the Board to consider public comment. The revised definition of virtual wholesaler, as required under A.R.S. § 32-1901, is included in this rulemaking. Under Laws 2018, Chapter 228, the legislature amended A.R.S. § 32-1901 to remove reference to “graduate intern” so the term is removed from Sections included in this rulemaking. R4-23-205 is amended to add fees for temporary licenses as specifically authorized under A.R.S. § 32-3124(H); R4-23-204 is amended to comply with A.R.S. § 32-3248.02, which requires health professionals to obtain continuing education

regarding opioids; and R4-23-1103 is amended to comply with A.R.S. § 32-1924(F), which establishes a 36-month license for a pharmacy technician trainee. R4-23-607 is amended to clarify that a nonresident permittee is required to be licensed in both Arizona and the jurisdiction of residence.

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

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

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

Yes. R4-23-205 is being amended to add fees for temporary licenses. Pursuant to A.R.S. § 41-1008(A)(1), “an agency shall not charge or receive a fee or make a rule establishing a fee unless the fee for the specific activity is expressly authorized by statute....” Here, A.R.S. § 32-3124(H) states, “[a] health profession regulatory board may establish an application and fee in rule for temporary licensure under this section.” As such, the new fee for temporary licensure is in compliance with A.R.S. § 41-1008(A)(1).

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

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

The Board is making minor changes to remove unnecessary or burdensome regulatory requirements to comply with statute. As a result, the Board believes the rulemaking will have minimal economic impact on stakeholders. Stakeholders include the Board, licensees who prescribe opioids, applicants wishing to obtain a temporary license, and virtual wholesalers.

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

The Board indicates that because the costs associated with the rulemaking are minimal and reasonable and they did not consider less costly or less intrusive alternative methods.

6. What are the economic impacts on stakeholders?

The Board is the only state agency directly affected by the rulemaking and will incur the cost of implementing the rule making. No political subdivisions are directly affected. The Board believes that the changes and requirements in the rulemaking impose minimal economic burdens on stakeholders. The Board believes it is not possible to reduce the impact on small business and achieve the goal of protecting public safety. No private persons or consumers are directly affected by the rule making.

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

No. The Board made two non-substantive changes between the Notice of Proposed Rulemaking and Notice of Final Rulemaking before the Council. First, the Board changed R4-23-408(H)(1)(e) to clarify that a hard-copy record is required if a prescription order is for any controlled substance to make the rule consistent with federal law. Second, the Board changed R4-23-1103(C)(5) to clarify there are two Board-approved certification examinations for pharmacy technicians.

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

The Board received three comments on this proposed rulemaking.

First, one commenter expressed concern regarding R4-23-1103 and that the 36-month expiration of a pharmacy technician license with no opportunity for renewal would cause hardship for some individuals. The Board responded that A.R.S. § 32-1924(F) specifies the 36-month expiration and no opportunity for renewal. Therefore, the only way to address this concern would be through statutory change.

The other two comments from the Consumer Healthcare Products Association and the Council for Responsible Nutrition both supported repeal of R4-23-801.

Council staff finds that the Board adequately addressed comments on 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 Board indicates that it does not issue general permits, but individual licenses as specifically authorized by the Board's statutes. *See* A.R.S. §§ 32-1904(A)(5) and 32-1922. As such, the Board is in compliance with A.R.S. § 41-1037.

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

The Board indicates that no rule is more stringent than federal law.

11. Conclusion

The Board is conducting this rulemaking to remove unnecessary or burdensome regulatory requirements and comply with statutory changes. While the rulemaking establishes a new fee, the Board has cited specific statutory authority for establishing a new fee related to temporary licensure. The Board has adequately responded to the three public comments on this

rulemaking. The Board is requesting the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.



Arizona State Board of Pharmacy

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October 16, 2019

Ms. Nicole Sornsin, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 305
Phoenix, AZ 85007

**Re: A.A.C. Title 4. Professions and Occupations
Chapter 23. Board of Pharmacy**

Dear Ms. Sornsin:

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

- A. Close of record date: The rulemaking record was closed on October 11, 2019, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).
- B. Relation of the rulemaking to a five-year-review report: The rulemaking does not relate to the five-year-review report.
- C. New fee: As specifically authorized under A.R.S. § 32-3124(H), a new fee is added for a temporary license.
- D. Fee increase: The rulemaking does not increase an existing fee.
- E. Immediate effective date: An immediate effective date is not requested.
- F. Certification regarding studies: I certify that the preamble accurately discloses the Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.
- G. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.
- H. List of documents enclosed:
 1. Cover letter signed by the Executive Director;
 2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
 3. Economic, Small Business, and Consumer Impact Statement
 4. Public comments

Sincerely,

A handwritten signature in blue ink that reads "Kam Gandhi".

Kamlesh Gandhi
Executive Director

NOTICE OF FINAL RULEMAKING
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 23. BOARD OF PHARMACY

PREAMBLE

<u>1. Articles, Parts, and Sections Affected</u>	<u>Rulemaking Action</u>
R4-23-110	Amend
R4-23-204	Amend
R4-23-205	Amend
R4-23-407	Amend
R4-23-408	Amend
R4-23-411	Amend
R4-23-607	Amend
R4-23-801	Repeal
R4-23-1103	Amend
R4-23-1106	Amend
<u>2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):</u>	
Authorizing statute: A.R.S. § 32-1904(A)(1)	
Implementing statute: A.R.S. §§ 32-1923.01, 32-1924(F), 32-1925, 32-1936, 32-1964, 32-1968, and 32-1974	
<u>3. The effective date for the rules:</u>	
As specified under A.R.S. § 41-1032(A), the rule will be effective 60 days after the rule package is filed with the Office of the Secretary of State.	
<u>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):</u>	
Not applicable	
<u>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):</u>	
Not applicable	

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

Notice of Rulemaking Docket Opening: 25 A.A.R. 2092, August 16, 2019

Notice of Proposed Rulemaking: 25 A.A.R. 2159, August 30, 2019

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

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

Website: www.azpharmacy.gov

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

The Board is complying with Executive Order 2019-01 by making minor changes to remove unnecessary or burdensome regulatory requirements and comply with statute. In a rulemaking approved by Council on April 2, 2019 (See 25 A.A.R. 1015 (April 26, 2019)), a definition of virtual wholesaler was removed to provide time for the Board to consider public comment. The revised definition of virtual wholesaler, as required under A.R.S. § 32-1901, is included in this rulemaking. Under Laws 2018, Chapter 228, the legislature amended A.R.S. § 32-1901 to remove reference to “graduate intern” so the term is removed from Sections included in this rulemaking. R4-23-205 is amended to add fees for temporary licenses as specifically authorized under A.R.S. § 32-3124(H); R4-23-204 is amended to comply with A.R.S. § 32-3248.02, which requires health professionals to obtain continuing education regarding opioids; and R4-23-1103 is amended to comply with A.R.S. § 32-1924(F), which establishes a 36-month license for a pharmacy technician trainee. R4-23-607 is amended to clarify that a nonresident permittee is required to be licensed in both Arizona and the jurisdiction of residence. Exemptions from EO2019-01 were provided by Emily Rajakovich, in the Governor’s Office, by e-mails dated April 1, 2019, and July 12, 2019.

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

The Board did not review or rely on any study in its evaluation of or justification for any rule in this rulemaking.

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

Not applicable

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

The rulemaking will have minimal economic impact because it simply removes unnecessary or burdensome requirements or makes rule consistent with statute. An individual who chooses to obtain a temporary license will incur the cost of the fee for the temporary license but will have the benefit of being able to be employed while an application for licensure is processed. A person that chooses to operate as a virtual wholesaler is required to obtain either a full-service or non-prescription wholesalers permit and pay the applicable fee.

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

Between the proposed and final rulemakings, the Board made the following non-substantive changes:

R4-23-408(H)(1)(e) to clarify that a hard-copy record is required if a prescription order is for any controlled substance. This change makes the rule consistent with federal law.

R4-23-1103(C)(5) to clarify there are two Board-approved certification examinations for pharmacy technicians.

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

The Board received comments from three individuals. The comments, the Board's analysis, and the Board's response follow:

COMMENT	ANALYSIS	RESPONSE
R4-23-1103: Concern was expressed that the 36-month expiration of a pharmacy technician license with no opportunity for renewal would cause hardship for some individuals.	A.R.S. § 32-1924(F) specifies the 36-month expiration and no opportunity for renewal. The only way to address the comment is through statutory change.	No change
R4-23-801: Letters from both the Consumer Healthcare Products Association and the Council for Responsible	The Board appreciates the support.	No change

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

None

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

The Board does not issue general permits. Rather, the Board issues individual licenses as required by the Board's statutes to each person that is qualified by statute and rule.

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

No rule in this rulemaking is more stringent than federal law. There is federal law governing medications and those requiring a prescription order. R4-23-408(H) is consistent with 21 CFR 1304.04 relating to maintenance of records and inventories.

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

No analysis was submitted.

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

None

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

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

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 23. BOARD OF PHARMACY
ARTICLE 1. ADMINISTRATION

Section
R4-23-110 Definitions

ARTICLE 2. PHARMACIST LICENSURE

Section
R4-23-204. Continuing Education Requirements
R4-23-205. Fees

ARTICLE 4. PROFESSIONAL PRACTICES

Section
R4-23-407. Prescription Requirements
R4-23-408. Computer Records
R4-23-411. Pharmacist-administered or ~~Pharmacy or Graduate~~ Intern-administered Immunizations

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

Section
R4-23-607. Nonresident Permits

ARTICLE 8. DRUG CLASSIFICATION

Section
R4-23-801. Dietary Supplements ~~Repealed~~

ARTICLE 11. PHARMACY TECHNICIANS

Section
R4-23-1103. Pharmacy Technician Trainee Licensure
R4-23-1106. Continuing Education Requirements

ARTICLE 1. ADMINISTRATION

R4-23-110. Definitions

In addition to definitions in A.R.S. § 32-1901, the following definitions apply to this Chapter:

“Active ingredient” means any component that furnishes pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease or that affects the structure or any function of the body of man or other animals. The term includes those components that may undergo chemical change in the manufacture of the drug, that are present in the finished drug product in a modified form, and that furnish the specified activity or effect.

“AHCCCS” means the Arizona Health Care Cost Containment System.

“Annual family income” means the combined yearly gross earned income and unearned income of all adult individuals within a family unit.

“Approved course in pharmacy law” means a continuing education activity that addresses practice issues related to state or federal pharmacy statutes, rules, or regulations.

“Approved Provider” means an individual, institution, organization, association, corporation, or agency that is approved by the Accreditation Council for Pharmacy Education (ACPE) in accordance with ACPE’s policy and procedures or by the Board as meeting criteria indicative of the ability to provide quality continuing education.

“Assisted living facility” means a residential care institution as defined in A.R.S. § 36-401.

“Authentication of product history” means identifying the purchasing source, the ultimate fate, and any intermediate handling of any component of a radiopharmaceutical or other drug.

“Automated dispensing system” means a mechanical system in a long-term care facility that performs operations or activities, other than compounding or administration, relative to the storage, packaging, counting, labeling, and dispensing of medications, and which collects, controls, and maintains all transaction information.

“Automated storage and distribution system” means a mechanical system that performs operations or activities other than counting, compounding, or administration, relative to the storage, packaging, or distributing of drugs or devices and that collects, controls, and maintains all transaction information.

“Batch” means a specific quantity of drug that has uniform character and quality, within specified limits, and is produced according to a single manufacturing order during the same cycle of manufacture.

“Beyond-use date” means:

A date determined by a pharmacist and placed on a prescription label at the time of dispensing to indicate a time beyond which the contents of the prescription are not recommended to be used; or

A date determined by a pharmacist and placed on a compounded pharmaceutical product's label at the time of preparation as specified in R4-23-410(B)(3)(d), R4-23-410(I)(6)(e), or R4-23-410(J)(1)(d) to indicate a time beyond which the compounded pharmaceutical product is not recommended to be used.

“Biological safety cabinet” means a containment unit suitable for the preparation of low to moderate risk agents when there is a need for protection of the product, personnel, and environment, consistent with National Sanitation Foundation (NSF) standards, published in the National Sanitation Foundation Standard 49, Class II (Laminar Flow) Biohazard Cabinetry, NSF International P. O. Box 130140, Ann Arbor, MI, revised June 1987 edition, (and no future amendments or editions), incorporated by reference and on file with the Board.

“Care-giver” means a person who cares for someone who is sick or disabled or an adult who cares for an infant or child and includes a patient’s husband, wife, son, daughter, mother, father, sister, brother, legal guardian, nurse, or medical practitioner.

“Change of ownership,” as used in A.R.S. § 32-1901.01(A), means a change of at least 30 percent in voting stock or vested interest that has direct operational oversight.

“Community pharmacy” means any place under the direct supervision of a pharmacist where the practice of pharmacy occurs or where prescription orders are compounded and dispensed other than a hospital pharmacy or a limited service pharmacy.

“Component” means any ingredient used in compounding or manufacturing drugs in dosage form, including an ingredient that may not appear in the finished product.

“Compounding and dispensing counter” means a pharmacy counter working area defined in this Section where a pharmacist ~~or a graduate intern, pharmacy~~ intern, pharmacy technician, or pharmacy technician trainee under the supervision of a pharmacist compounds, mixes, combines, counts, pours, or prepares and packages a prescription medication to dispense an individual prescription order or prepackages a drug for future dispensing.

“Computer system” means an automated data-processing system that uses a programmable electronic device to store, retrieve, and process data.

“Computer system audit” means an accounting method, involving multiple single-drug usage reports and audits, used to determine a computer system’s ability to store, retrieve, and process original and refill prescription dispensing information.

“Contact hour” means 50 minutes of participation in a continuing education activity sponsored by an Approved Provider.

“Container” means:

A receptacle, as described in the official compendium or the federal act, that is used in manufacturing or compounding a drug or in distributing, supplying, or dispensing the finished dosage form of a drug; or

A metal receptacle designed to contain liquefied or vaporized compressed medical gas and used in manufacturing, transfilling, distributing, supplying, or dispensing a compressed medical gas.

“Continuing education” means a structured learning process required of a licensee to maintain licensure that includes study in the general areas of socio-economic and legal aspects of health care; the properties and actions of drugs and dosage forms; etiology, characteristics and therapeutics of disease status; or pharmacy practice.

“Continuing education activity” means continuing education obtained through an institute, seminar, lecture, conference, workshop, mediated instruction, programmed learning course, or postgraduate study in an accredited college or school of pharmacy.

“Continuing education unit” or “CEU” means 10 contact hours of participation in a continuing education activity sponsored by an Approved Provider.

“Continuous quality assurance program” or “CQA program” means a planned process designed by a pharmacy permittee to identify, evaluate, and prevent medication errors.

“Correctional facility” has the same meaning as in A.R.S. §§ 13-2501 and 31-341.

“CRT” means a cathode ray tube or other mechanism used to view information produced or stored by a computer system.

“CSPMP” means the Controlled Substances Prescription Monitoring Program established under A.R.S. Title 36, Chapter 28.

“Current good compounding practices” means the minimum standards for methods used in, and facilities or controls used for, compounding a drug to ensure that the drug has the identity and strength and meets the quality and purity characteristics it is represented to possess.

“Current good manufacturing practice” means the minimum standard for methods used in, and facilities or controls used for manufacturing, processing, packing, or holding a drug to ensure that the drug meets the requirements of the federal act as to safety, and has the identity and strength and meets the quality and purity characteristics it is represented to possess.

“Cytotoxic” means a pharmaceutical that is capable of killing living cells.

“Day” means a calendar day unless otherwise specified.

“DEA” means the Drug Enforcement Administration as defined in A.R.S. § 32-1901.

“Declared disaster areas” means areas designated by the governor or by a county, city, or town under A.R.S. § 32-1910 as those areas that have been adversely affected by a natural disaster or terrorist attack and require extraordinary measures to provide adequate, safe, and effective health care for the affected population.

“Delinquent license” means a pharmacist, ~~pharmacy~~ intern, ~~graduate intern~~, or pharmacy technician license the Board suspends for failure to renew or pay all required fees on or before the date the renewal is due.

“Dietary supplement or food supplement,” as used in A.R.S. § 32-1904(B), means a product (other than tobacco) that:

Is intended to supplement the diet that contains one or more of the following dietary ingredients: a vitamin, a mineral, ~~a~~ herb or other botanical, ~~a~~ amino acid, a dietary substance for use by humans to supplement the diet by increasing the total daily intake, or a concentrate, metabolite, constituent, extract, or combinations of these ingredients;

Is intended for ingestion in pill, capsule, tablet, or liquid form;

Is not represented for use as a conventional food or as the sole item of a meal or diet; and

Is labeled as a “dietary supplement” or “food supplement.”

“Digital signature” has the same meaning as in A.R.S. § 41-132(E).

“Dispensing pharmacist” means a pharmacist who, in the process of dispensing a prescription medication after the complete preparation of the prescription medication and before delivery of the prescription medication to a patient or patient’s agent, verifies, checks, and initials the prescription medication label, as required in R4-23-402(A).

“Drug sample” means a unit of a prescription drug that a manufacturer provides free of charge to promote the sale of the drug.

“Durable medical equipment” or “DME” means technologically sophisticated medical equipment that may be used by a patient or consumer in a home or residence. DME may be prescription-only devices as defined in A.R.S. § 32-1901. DME includes:

Air-fluidized beds,

Apnea monitors,
Blood glucose monitors and diabetic testing strips,
Continuous Positive Airway Pressure (CPAP) machines,
Electronic and computerized wheelchairs and seating systems,
Feeding pumps,
Home phototherapy devices,
Hospital beds,
Infusion pumps,
Medical oxygen and oxygen delivery systems excluding compressed medical gases,
Nebulizers,
Respiratory disease management devices,
Sequential compression devices,
Transcutaneous electrical nerve stimulation (TENS) unit, and
Ventilators.

“Earned income” means monetary payments received by an individual as a result of work performed or rental property owned or leased by the individual, including:

Wages,
Commissions and fees,
Salaries and tips,
Profit from self-employment,
Profit from rent received from a tenant or boarder, and
Any other monetary payments received by an individual for work performed or rental of property.

“Electronic signature” has the same meaning as in A.R.S. § 44-7002.

“Eligible patient” means a patient who a pharmacist determines is eligible to receive an immunization using professional judgment after consulting with the patient regarding the patient’s current health condition, recent health condition, and allergies.

“Emergency drug supply unit” means those drugs that may be required to meet the immediate and emergency therapeutic needs of long-term care facility residents and hospice inpatient facility

patients, and which are not available from any other authorized source in sufficient time to prevent risk of harm to residents or patients.

“Extreme emergency” means the occurrence of a fire, water leak, electrical failure, public disaster, or other catastrophe constituting an imminent threat of physical harm to pharmacy personnel or patrons.

“Family unit” means:

A group of individuals residing together who are related by birth, marriage, or adoption; or

An individual who:

Does not reside with another individual; or

Resides only with another individual or group of individuals to whom the individual is unrelated by birth, marriage, or adoption.

“FDA” means the Food and Drug Administration, a federal agency within the United States Department of Health and Human Services, established to set safety and quality standards for foods, drugs, cosmetics, and other consumer products.

“Health care decision maker” has the same meaning as in A.R.S. § 12-2291.

“Health care institution” has the same meaning as in A.R.S. § 36-401.

“Hospice inpatient facility” means a health care institution licensed under A.R.S. § 36-401 and Article 8 that provides hospice services to a patient requiring inpatient services.

“Immediate notice” means a required notice sent by mail, fax, or electronic mail to the Board Office within 24 hours.

“Immunizations training program” means an immunization training program for pharmacists, and ~~pharmacy interns, and graduate interns~~ that meets the requirements of R4-23-411(E).

“Inactive ingredient” means any component other than an “active ingredient” present in a drug.

“Internal test assessment” means performing quality assurance or other procedures necessary to ensure the integrity of a test.

“ISO Class 5 environment” means an atmospheric environment that complies with the ISO/TC209 International Cleanroom Standards, specifically ANSI/IEST/ISO-14644-1:1999: Cleanrooms and associated controlled environments--Part 1: Classification of air cleanliness, first edition dated May 1, 1999, (and no future amendments or editions), incorporated by reference and on file in the Board office.

“ISO Class 7 environment” means an atmospheric environment that complies with the ISO/TC209 International Cleanroom Standards, specifically ANSI/IEST/ISO-14644-1:1999: Cleanrooms and associated controlled environments--Part 1: Classification of air cleanliness, first edition dated May 1, 1999, (and no future amendments or editions), incorporated by reference and on file in the Board office.

“Licensed health care professional” means an individual who is licensed and regulated under A.R.S. Title 32, Chapter 7, 11, 13, 14, 15, 16, 17, 18, 25, 29, or 35.

“Limited-service correctional pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that:

Holds a current Board permit under A.R.S. § 32-1931;

Is located in a correctional facility; and

Uses pharmacists, interns, and support personnel to compound, produce, dispense, and distribute drugs.

“Limited-service long-term care pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that holds a current Board-issued permit and dispenses prescription medication or prescription-only devices to patients in long-term care facilities.

“Limited-service mail-order pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that holds a current Board permit under A.R.S. § 32-1931 and dispenses a majority of its prescription medication or prescription-only devices by mailing or delivering the prescription medication or prescription-only device to an individual by the United States mail, a common or contract carrier, or a delivery service.

“Limited-service nuclear pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that holds a current Board permit under A.R.S. § 32-1931 and provides radiopharmaceutical services.

“Limited-service pharmacy permittee” means a person who holds a current limited-service pharmacy permit in compliance with A.R.S. §§ 32-1929, 32-1930, 32-1931, and A.A.C. R4-23-606.

“Limited-service sterile pharmaceutical products pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that holds a current Board permit under A.R.S. § 32-1931 and dispenses a majority of its prescription medication or prescription-only devices as sterile pharmaceutical products.

“Long-term care consultant pharmacist” means a pharmacist providing consulting services to a long-term care facility.

“Long-term care facility” or “LTCF” means a nursing care institution as defined in A.R.S. § 36-401.

“Lot” means a batch or any portion of a batch of a drug, or if a drug produced by a continuous process, an amount of drug produced in a unit of time or quantity in a manner that assures its uniformity. In either case, a lot is identified by a distinctive lot number and has uniform character and quality with specified limits.

“Lot number” or “control number” means any distinctive combination of letters or numbers, or both, from which the complete history of the compounding or manufacturing, control, packaging, and distribution of a batch or lot of a drug can be determined.

“Low-income subsidy” means Medicare-provided assistance that may partially or fully cover the costs of drugs and is based on the income of an individual and, if applicable, the individual’s spouse.

“Materials approval unit” means any organizational element having the authority and responsibility to approve or reject components, in-process materials, packaging components, and final products.

“Mechanical counting device for a drug in solid, oral dosage form” means a mechanical device that counts drugs in solid, oral dosage forms for dispensing and includes an electronic balance when used to count drugs.

“Mechanical storage and counting device for a drug in solid, oral dosage form” means a mechanical device that stores and counts and may package or label drugs in solid, oral dosage forms for dispensing.

“Mediated instruction” means information transmitted via intermediate mechanisms such as audio or video tape or telephone transmission.

“Medical practitioner-patient relationship” means that before prescribing, dispensing, or administering a prescription-only drug, prescription-only device, or controlled substance to a person, a medical practitioner, as defined in A.R.S. § 32-1901, shall first conduct a physical examination of that person or have previously conducted a physical examination. This subdivision does not apply to:

A medical practitioner who provides temporary patient supervision on behalf of the patient’s regular treating medical practitioner;

Emergency medical situations as defined in A.R.S. § 41-1831;

Prescriptions written to prepare a patient for a medical examination; or

Prescriptions written, prescription-only drugs, prescription-only devices, or controlled substances issued for use by a county or tribal public health department for immunization programs, emergency treatment, in response to an infectious disease investigation, public health emergency, infectious disease outbreak or act of bioterrorism. For purposes of this subsection, “bioterrorism” has the same meaning as in A.R.S. § 36-781.

“Medicare” means a federal health insurance program established under Title XVIII of the Social Security Act.

“Medication error” means any unintended variation from a prescription or medication order. Medication error does not include any variation that is corrected before the medication is dispensed to the patient or patient’s care-giver, or any variation allowed by law.

“Mobile pharmacy” means a pharmacy that is self-propelled or movable by another vehicle that is self-propelled.

“MPJE” means Multistate Pharmacy Jurisprudence Examination, a Board-approved national pharmacy law examination written and administered in cooperation with NABP.

“NABP” means National Association of Boards of Pharmacy.

“NABPLEX” means National Association of Boards of Pharmacy Licensure Examination.

“NAPLEX” means North American Pharmacist Licensure Examination.

“Order” means either of the following:

A prescription order as defined in A.R.S. § 32-1901; or

A medication order as defined in A.A.C. R4-23-651.

“Other designated personnel” means a non-pharmacist individual who is permitted in the pharmacy area, for a limited time, under the direct supervision of a pharmacist, to perform non-pharmacy related duties, such as trash removal, floor maintenance, and telephone or computer repair.

“Outpatient” means an individual who is not a residential patient in a health care institution.

“Outpatient setting” means a location that provides medical treatment to an outpatient.

“Patient profile” means a readily retrievable, centrally located information record that contains patient demographics, allergies, and medication profile.

“Pharmaceutical patient care services” means the provision of drug selection, drug utilization review, drug administration, drug therapy monitoring, and other drug-related patient care services intended to achieve outcomes related to curing or preventing a disease, eliminating or reducing a patient’s

symptoms, or arresting or slowing a disease process, by identifying and resolving or preventing potential and actual drug-related problems.

“Pharmaceutical product” means a medicinal drug.

“Pharmacy counter working area” means a clear and continuous working area that contains no major obstacles such as a desktop computer, computer monitor, computer keyboard, external computer drive device, printer, fax machine, pharmacy balance, typewriter, or pill-counting machine, but may contain individual documents or prescription labels, pens, prescription blanks, refill log, pill-counting tray, spatula, stapler, or other similar items necessary for the prescription-filling process.

“Pharmacy law continuing education” means a continuing education activity that addresses practice issues related to state or federal pharmacy statutes, rules, or regulations, offered by an Approved Provider.

“Pharmacy permittee” means a person who holds a current pharmacy permit that complies with A.R.S. §§ 32-1929, 32-1930, 32-1931, 32-1934, and R4-23-606 and R4-23-652.

“Physician” means a medical practitioner licensed under A.R.S. Title 32, Chapter 13 or 17.

“Physician-in-charge” means a physician who is responsible to the Board for all aspects of a prescription medication donation program required in A.R.S. § 32-1909 and operated in the physician’s office or in a health care institution.

“Poverty level” means the annual family income for a family unit of a particular size, as specified in the poverty guidelines updated annually in the *Federal Register* by the U.S. Department of Health and Human Services.

“Precursor chemical” means a precursor chemical I as defined in A.R.S. § 13-3401(26) and a precursor chemical II as defined in A.R.S. § 13-3401(27).

“Prepackaged drug” means a drug that is packaged in a frequently prescribed quantity, labeled in compliance with A.R.S. §§ 32-1967 and 32-1968, stored, and subsequently dispensed by a pharmacist ~~or a graduate intern or pharmacy~~ intern under the supervision of a pharmacist, who verifies at the time of dispensing that the drug container is properly labeled, in compliance with A.R.S. § 32-1968, for the patient.

“Prep area” means a specified area either within an ISO class 7 environment or adjacent to but outside an ISO class 7 environment that:

Allows the assembling of necessary drugs, supplies, and equipment for compounding sterile pharmaceutical products, but does not allow the use of paper products such as boxes or bulk drug storage;

Allows personnel to don personnel protective clothing, such as gown, gloves, head cover, and booties before entering the clean compounding area; and

Is a room or a specified area within a room, such as an area specified by a line on the floor.

“Primary care provider” means the medical practitioner who is treating an individual for a disease or medical condition.

“Proprietor” means the owner of a business permitted by the Board under A.R.S. §§ 32-1929, 32-1930, 32-1931, and 32-1934.

“Provider pharmacy” means a pharmacy that contracts with a long-term care facility to supply prescription medication or other services for residents of a long-term care facility.

“Radiopharmaceutical” means any drug that emits ionizing radiation and includes:

Any nonradioactive reagent kit, nuclide generator, or ancillary drug intended to be used in the preparation of a radiopharmaceutical, but does not include drugs such as carbon-containing compounds or potassium-containing salts, that contain trace quantities of naturally occurring radionuclides; and

Any biological product that is labeled with a radionuclide or intended to be labeled with a radionuclide.

“Radiopharmaceutical quality assurance” means performing and interpreting appropriate chemical, biological, and physical tests on radiopharmaceuticals to determine the suitability of the radiopharmaceutical for use in humans and animals. Radiopharmaceutical quality assurance includes internal test assessment, authentication of product history, and appropriate record retention.

“Radiopharmaceutical services” means procuring, storing, handling, compounding, preparing, labeling, quality assurance testing, dispensing, distributing, transferring, recordkeeping, and disposing of radiochemicals, radiopharmaceuticals, and ancillary drugs. Radiopharmaceutical services include quality assurance procedures, radiological health and safety procedures, consulting activities associated with the use of radiopharmaceuticals, and any other activities required for the provision of pharmaceutical care.

“Red C stamp” means a device used with red ink to imprint an invoice with a red letter C at least one inch high, to make an invoice of a Schedule III through IV controlled substance, as defined in A.R.S. § 36-2501, readily retrievable, as required by state and federal rules.

“Refill” means other than the original dispensing of the prescription order, dispensing a prescription order in the same quantity originally ordered or in multiples of the originally ordered quantity when specifically authorized by the prescriber, if the refill is authorized by the prescriber:

In the original prescription order;

By an electronically transmitted refill order that the pharmacist promptly documents and files; or

By an oral refill order that the pharmacist promptly documents and files.

“Regulated chemical” means the same as in A.R.S. § 13-3401(30).

“Remodel” means to alter structurally the pharmacy area or location.

“Remote drug storage area” means an area that is outside the premises of the pharmacy, used for the storage of drugs, locked to deny access by unauthorized persons, and secured against the use of force.

“Resident” means:

An individual admitted to and living in a long-term care facility or an assisted living facility,

An individual who has a place of habitation in Arizona and lives in Arizona as other than a tourist, or

A person who that owns or operates a place of business in Arizona.

“Responsible person” means the owner, manager, or other employee who is responsible to the Board for a permitted establishment’s compliance with the laws and administrative rules of this state and of the federal government pertaining to distribution of drugs, devices, precursor chemicals, and regulated chemicals. Nothing in this definition relieves other individuals from the responsibility to comply with state and federal laws and administrative rules.

“Score transfer” means the process that enables an applicant to take the NAPLEX in a jurisdiction and be eligible for licensure by examination in other jurisdictions.

“Security features” means attributes incorporated into the paper of a prescription order, referenced in A.R.S. § 32-1968(A)(4), that are approved by the Board or its staff and include one or more of the following designed to prevent duplication or aid the authentication of a paper document: laid lines, enhanced laid lines, thermochromic ink, artificial watermark, fluorescent ink, chemical void, persistent void, penetrating numbers, high-resolution border, high-resolution latent images, micro-printing, prismatic printing, embossed images, abrasion ink, holograms, and foil stamping.

“Shared order filling” means the following:

Preparing, packaging, compounding, or labeling an order, or any combination of these functions, that are performed by:

A person with a current Arizona Board license, located at an Arizona pharmacy, on behalf of and at the request of another resident or nonresident pharmacy; or

A person, located at a nonresident pharmacy, on behalf of and at the request of an Arizona pharmacy; and

Returning the filled order to the requesting pharmacy for delivery to the patient or patient’s care-giver or, at the request of this pharmacy, directly delivering the filled order to the patient.

“Shared order processing” means the following:

Interpreting the order, performing order entry verification, drug utilization review, drug compatibility and drug allergy review, final order verification, and when necessary, therapeutic intervention, or any combination of these order processing functions, that are performed by:

A pharmacist or intern, under pharmacist supervision, with a current Arizona Board license, located at an Arizona pharmacy, on behalf of and at the request of another resident or nonresident pharmacy; or

A pharmacist or intern, under pharmacist supervision, located at a nonresident pharmacy, on behalf of and at the request of an Arizona pharmacy; and

After order processing is completed, returning the processed order to the requesting pharmacy for order filling and delivery to the patient or patient’s care-giver or, at the request of this pharmacy, returning the processed order to another pharmacy for order filling and delivery to the patient or patient’s care-giver.

“Shared services” means shared order filling or shared order processing, or both.

“Sight-readable” means that an authorized individual is able to examine a record and read its information from a CRT, microfiche, microfilm, printout, or other method acceptable to the Board or its designee.

“Single-drug audit” means an accounting method that determines the numerical and percentage difference between a drug’s beginning inventory plus purchases and ending inventory plus sales.

“Single-drug usage report” means a computer system printout of original and refill prescription order usage information for a single drug.

“Standard-risk sterile pharmaceutical product” means a sterile pharmaceutical product compounded from sterile commercial drugs using sterile commercial devices or a sterile pharmaceutical optic or ophthalmic product compounded from non-sterile ingredients.

“State of emergency” means a governmental declaration issued under A.R.S. § 32-1910 as a result of a natural disaster or terrorist attack that results in individuals being unable to refill existing prescriptions.

“Sterile pharmaceutical product” means a medicinal drug free from living biological organisms.

“Strength” means:

The concentration of the drug substance (for example, weight/weight, weight/volume, or unit dose/volume basis); or

The potency, that is, the therapeutic activity of a drug substance as indicated by bioavailability tests or by controlled clinical data (expressed, for example, in terms of unity by reference to a standard).

“Substantial-risk sterile pharmaceutical product” means a sterile pharmaceutical product compounded as a parenteral or injectable dosage form from non-sterile ingredients.

“Supervision” means a pharmacist is present, assumes legal responsibility, and has direct oversight of activities relating to acquiring, preparing, distributing, administering, and selling prescription medications by ~~pharmacy~~ interns, ~~graduate interns~~, pharmacy technicians, or pharmacy technician trainees and when used in connection with the intern training requirements means that, in a pharmacy where intern training occurs, ~~a~~ ~~pharmacy~~ an intern preceptor assumes the primary responsibility of teaching the intern during the entire period of the training.

“Supplying” means selling, transferring, or delivering to a patient or a patient’s agent one or more doses of:

A nonprescription drug in the manufacturer’s original container for subsequent use by the patient,
or

A compressed medical gas in the manufacturer’s or compressed medical gas distributor’s original container for subsequent use by the patient.

“Support personnel” means an individual, working under the supervision of a pharmacist, trained to perform clerical duties associated with the practice of pharmacy, including cashiering, bookkeeping, pricing, stocking, delivering, answering non-professional telephone inquiries, and documenting third-party reimbursement. Support personnel shall not perform the tasks of a pharmacist, ~~pharmacy~~ intern, ~~graduate intern~~, pharmacy technician, or pharmacy technician trainee.

“Temporary pharmacy facility” means a facility established as a result of a declared state of emergency to temporarily provide pharmacy services within or adjacent to declared disaster areas.

“Tourist” means an individual who is living in Arizona but maintains a place of habitation outside of Arizona and lives outside of Arizona for more than six months during a calendar year.

“Transfill” means a manufacturing process by which one or more compressed medical gases are transferred from a bulk container to a properly labeled container for subsequent distribution or supply.

“Unearned income” means monetary payment received by an individual that is not compensation for work performed or rental of property owned or leased by the individual, including:

 Unemployment insurance,

 Workers’ compensation,

 Disability payments,

 Payments from the Social Security Administration,

 Payments from public assistance,

 Periodic insurance or annuity payments,

 Retirement or pension payments,

 Strike benefits from union funds,

 Training stipends,

 Child support payments,

 Alimony payments,

 Military family allotments,

 Regular support payments from a relative or other individual not residing in the household,

 Investment income,

 Royalty payments,

 Periodic payments from estates or trusts, and

Any other monetary payments received by an individual that are not:

 As a result of work performed or rental of property owned by the individual,

 Gifts,

 Lump-sum capital gains payments,

Lump-sum inheritance payments,
Lump-sum insurance payments, or
Payments made to compensate for personal injury.

“Verified signature” or “signature verifying” means in relation to a Board license or permit application or report, form, or agreement, the hand-written or electronic signature of an individual who, by placing a hand-written or electronic signature on a hard-copy or electronic license or permit application or report, form, or agreement agrees with and verifies that the statements and information within or attached to the license or permit application or report, form, or agreement are true in every respect and that inaccurate reporting can result in denial or loss of a license or permit or report, form, or agreement.

“Veteran” means an individual who has served in the United States Armed Forces.

“Virtual manufacturer” means an entity that contracts for the manufacture of a drug or device for which the entity:

Owns the New Drug Application or Abbreviated New Drug Application number, as defined by the FDA, for a drug;

Owns the Unique Device Identification number, as defined by the FDA, for a prescription device;

Is not involved in the physical manufacture of the drug or device; and

Contracts with an Arizona-permitted manufacturing entity for the physical manufacture of the drug or device; or

If the contracted manufacturing entity is in a location not included in the definition at A.R.S. 32-1901 of other jurisdiction, the virtual manufacturer ensures the facility is inspected every time the virtual manufacturer submits an initial or renewal application and determined to comply with current good manufacturing practices as defined by the federal act and the official compendium.

Virtual manufacturer includes an entity that may be identified as an own-label distributor, which contracts with a manufacturer to produce a drug or device and with another entity to package and label the drug or device, which is then sold under the distributor’s name or another name.

“Virtual wholesaler” means an entity that engages in the wholesale distribution of a drug or device in, into, or out of Arizona but does not take physical possession of the drug or device. A virtual wholesaler distributes a drug or device only from a Board-permitted facility to:

A Board-permitted pharmacy, drug manufacturer, full-service drug wholesaler, or non-prescription drug wholesaler; or

A medical practitioner licensed under A.R.S. Title 32; and

Virtual wholesaler includes an entity that may be identified as a broker that buys and sells goods for others or a person that facilitates distribution of a drug, chemical, or device regulated by the Board.

“Wholesale distribution” means distribution of a drug to a person other than a consumer or patient, but does not include:

Selling, purchasing, or trading a drug or offering to sell, purchase, or trade a drug for emergency medical reasons. For purposes of this Section, “emergency medical reasons” includes transferring a prescription drug by a community or hospital pharmacy to another community or hospital pharmacy to alleviate a temporary shortage;

Selling, purchasing, or trading a drug, offering to sell, purchase, or trade a drug, or dispensing a drug as specified in a prescription;

Distributing a drug sample by a manufacturers’ or distributors’ representative; or

Selling, purchasing, or trading blood or blood components intended for transfusion.

“Wholesale distributor” means any person engaged in wholesale distribution of drugs, including: manufacturers; repackers; own-label distributors; private-label distributors; jobbers; brokers; warehouses, including manufacturers’ and distributors’ warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; and retail pharmacies that conduct wholesale distributions in the amount of at least 5% of gross sales.

ARTICLE 2. PHARMACIST LICENSURE

R4-23-204. Continuing Education Requirements

A. General. Under A.R.S. § 32-1936, continuing professional pharmacy education is mandatory for all licensees.

1. General continuing education requirement. In accordance with A.R.S. § 32-1925(G) 32-1925(F), the Board shall not renew a license unless the ~~applicant~~ licensee has, during the two years preceding the application for renewal, participated in 30 contact hours (3.0 CEU's CEUs) of continuing education activity sponsored by an Approved Provider as defined in R4-23-110, of which at least three contact hours (0.3 CEU's) are approved courses in pharmacy law. Subject to A.R.S. § 32-1937, a pharmacist licensed for less than 24 months shall obtain continuing education-

~~units in an amount determined by multiplying 1.25 hours times the number of months between the date of initial licensure and the next license renewal date.~~

2. Special continuing education requirement. The Board shall not renew a license unless:
 - a. A licensee certified under R4-23-411 to administer immunizations, vaccines, and emergency medications has participated in at least two contact hours of continuing education activity related to administering immunizations, vaccines, and emergency medications; and
 - b. A licensee authorized to dispense controlled substances has participated in at least three contact hours of opioid-related, substance use disorder-related, or addiction-related continuing education activity.
 3. A pharmacist is exempt from the continuing education requirement in subsections (A)(1) and (2) between the time of initial licensure and first renewal.
- B.** Acceptance of continuing education units (~~CEU's~~) CEUs. The Board shall:
1. ~~Only accept CEU's~~ Accept CEUs for continuing education activities sponsored only by an Approved Provider;
 2. ~~Only accept CEU's~~ Accept CEUs accrued only during the two-year period immediately before licensure renewal;
 3. Not allow ~~CEU's~~ CEUs accrued in a biennial renewal period ~~in excess of the 3.0 CEU's required~~ to be carried forward to the succeeding biennial renewal period;
 4. Allow a pharmacist who leads, instructs, or lectures to a group of health professionals on pharmacy-related topics in ~~a~~ a continuing education ~~activities~~ activity sponsored by an Approved Provider to receive ~~CEU's~~ CEUs for a presentation by following the same attendance procedures as any other attender of the continuing education activity; and
 5. Not accept as ~~CEU's~~ CEUs the performance of normal teaching duties within a learning institution by a pharmacist whose primary responsibility is the education of health professionals.
- C.** Continuing education records and reporting ~~CEU's~~ CEUs. A pharmacist shall:
1. No change
 - a. No change
 - b. No change
 2. At the time of licensure renewal, attest to the number of ~~CEU's~~ CEUs the pharmacist participated in during the renewal period on the biennial renewal form; and
 3. Mo change
- D.** No change
- E.** No change

R4-23-205. Fees

A. No change

1. No change
2. No change

B. No change

1. No change
 - a. No change
 - b. No change
2. ~~Pharmacy or graduate intern Intern~~. Initial licensure: \$50.
3. No change
 - a. No change
 - b. No change
4. Temporary license valid for 30 days:
 - a. Pharmacist: \$120.
 - b. Intern: \$50.
 - c. Pharmacy technician: \$50.

C. No change

1. No change
2. No change
 - a. No change
 - b. No change
 - c. No change
3. No change
4. ~~Nonprescription drug, retail:~~
 - a. ~~Category I (30 or fewer items): \$120 biennially.~~
 - b. ~~Category II (more than 30 items): \$200 biennially.~~
- 5.~~4.~~ No change
- 6.~~5.~~ No change
- 7.~~6.~~ No change

D. No change

1. No change
2. No change

E. No change

F. No change

G. No change

1. No change
2. No change
3. No change

H. No change

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

I. No change

J. No change

1. No change
2. No change

ARTICLE 4. PROFESSIONAL PRACTICES

R4-23-407. Prescription Requirements

A. Prescription orders. A pharmacist shall ensure that:

1. A prescription order the pharmacist uses to dispense a drug or device includes the following information:
 - a. Date of issuance;
 - b. Name and address of the patient for whom or the owner of the animal for which the drug or device is dispensed;
 - c. Drug name, strength, and dosage form or device name;
 - d. Name of the manufacturer or distributor of the drug or device if the prescription order is written generically or a substitution is made;
 - e. Prescribing medical practitioner's directions for use;
 - f. Date of dispensing;
 - g. Quantity prescribed and if different, quantity dispensed;
 - h. For a prescription order for a controlled substance, the medical practitioner's address and DEA number;

- i. For a written prescription order, the medical practitioner's signature;
 - j. For an electronically transmitted prescription order, the medical practitioner's digital or electronic signature;
 - k. For an oral prescription order, the medical practitioner's name and telephone number; and
 - l. Name or initials of the dispensing pharmacist;
 2. A prescription order is kept by the pharmacist or pharmacy permittee as a record of the dispensing of a drug or device for seven years from the date the drug or device is dispensed,
~~except for a drug or device personally administered by a medical practitioner to the medical practitioner's patient~~; and
 3. The dispensing of a drug or device complies with the packaging requirements of the official compendium and state and federal law.
 4. If the drug dispensed is a schedule II controlled substance that is an opioid, the drug is placed in a container that has a red cap and a warning label stating "CAUTION: OPIOID, Risk of Overdose and Addiction" or other similarly clear language indicating the possibility of overdose and addiction. Under delegation from the Board, the Executive Director may waive the red-cap requirement if implementing the requirement is not feasible because of the specific dosage form or packaging type.
- B.** Prescription refills. A pharmacist shall ensure that the following information is recorded on the back of a prescription order when it is refilled:
1. Date refilled,
 2. Quantity dispensed,
 3. Name or approved abbreviation of the manufacturer or distributor if the prescription order is written generically or a substitution is made, and
 4. The name or initials of the dispensing pharmacist.
- C.** Prescription order adaptation. Except for a prescription order for a controlled substance, a pharmacist, using professional judgment, may make the following adaptations to a prescription order if the pharmacist documents the adaptation in the patient's record:
1. Change the prescribed quantity if the prescribed quantity is not a package size commercially available from the manufacturer;
 2. Change the prescribed dosage form or directions for use if the change achieves the intent of the prescribing medical practitioner;
 3. Complete missing information on the prescription order if there is sufficient evidence to support the change; and

4. Extend the quantity of a maintenance drug for the limited quantity necessary to achieve medication refill synchronization for the patient.

C.D. A pharmacist may furnish a copy of a prescription order to the patient for whom it is prescribed or to the authorized representative of the patient if the copy is clearly marked “COPY FOR REFERENCE PURPOSES ONLY” or other similar statement. A copy of a prescription order is not a valid prescription order and a pharmacist shall not dispense a drug or device from the information on a copy.

D.E. Transfer of prescription order information. For a transfer of prescription order information to be valid, a pharmacy permittee or pharmacist-in-charge shall ensure that:

1. Both the original and the transferred prescription order are maintained for seven years after the last dispensing date;
2. The original prescription order information for a Schedule III, IV, or V controlled substance is transferred only as specified in 21 CFR 1306.25, ~~published April 1, 2008, and no future amendments or editions, incorporated by reference, and on file with the Board, and available from the U.S. Government Printing Office, U.S. Superintendent of Documents, Washington, DC 20402-0001;~~
3. The original prescription order information for a non-controlled substance drug is transferred without limitation only up to the number of originally authorized refills;
4. For a transfer within Arizona:
 - a. The transfer of original prescription order information for a non-controlled substance drug meets the following conditions:
 - i. The transfer of information is communicated electronically, verbally, or by fax directly between:
 - (1) Two licensed pharmacists,
 - (2) A licensed pharmacist and a licensed ~~pharmacy or graduate~~ intern, or
 - (3) Two licensed ~~pharmacy or graduate~~ interns;
 - ii. The following information is recorded by the transferring pharmacist or ~~pharmacy or graduate~~ intern:
 - (1) The word “void” is written on the face of the invalidated original prescription unless it is an electronic or oral transfer and the transferred prescription order information is invalidated in the transferring pharmacy’s computer system; and
 - (2) The name and identification code, number, or address and telephone number of the pharmacy to which the prescription is transferred, the name of the receiving pharmacist or ~~pharmacy or graduate~~ intern, the date of transfer, and the name of the

- transferring pharmacist or ~~pharmacy or graduate~~-intern is written on the back of the prescription or entered into the transferring pharmacy's computer system; and
- iii. The following information is recorded by the receiving pharmacist or ~~pharmacy or graduate~~ intern on the transferred prescription order:
- (1) The word "transfer;"
- (2) Date of issuance of the original prescription order;
- (3) Original number of refills authorized on the original prescription order;
- (4) Date of original dispensing;
- (5) Number of valid refills remaining and the date of the last refill;
- (6) Name and identification code, number, or address, telephone number, and original prescription number of the pharmacy from which the prescription is transferred;
- (7) Name of the transferring pharmacist or ~~pharmacy or graduate~~-intern; and
- (8) Name of the receiving pharmacist or ~~pharmacy or graduate~~-intern;
- b. The transfer of original prescription order information for a Schedule III, IV, or controlled substance meets the following conditions:
- i. The transfer of information is communicated directly between two licensed pharmacists or interns electronically, or verbally, or by fax;
- ii. The following information is recorded by the transferring pharmacist or intern:
- (1) The word "void" is written on the face of the invalidated original prescription order unless it is an electronic or oral transfer and the transferred prescription order information is invalidated in the transferring pharmacy's computer system; and
- (2) The name, address, and DEA number of the pharmacy to which the prescription is transferred, the name of the receiving pharmacist, the date of transfer, and the name of the transferring pharmacist is written on the back of the prescription order or entered into the transferring pharmacy's computer system; and
- iii. The following information is recorded by the receiving pharmacist on the transferred prescription order:
- (1) The word "transfer;"
- (2) Date of issuance of original prescription order;
- (3) Original number of refills authorized on the original prescription order;
- (4) Date of original dispensing;
- (5) Number of valid refills remaining and the date of the last refill;
- (6) Name, address, DEA number, and original prescription number of the pharmacy from which the prescription is transferred;

- (7) Name of the transferring pharmacist; and
 - (8) Name of the receiving pharmacist;
5. For a transfer from out-of-state:
- a. The transfer of original prescription order information for a non-controlled substance drug meets the conditions in subsections ~~(D)(4)(a)(i)~~ (E)(4)(a)(i) and ~~(D)(4)(a)(iii)~~ (E)(4)(a)(iii); and
 - b. The transfer of original prescription order information for a Schedule III, IV, or V controlled substance meets the conditions in subsections ~~(D)(4)(b)(i)~~ (E)(4)(b)(i) and ~~(D)(4)(b)(iii)~~ (E)(4)(b)(iii); and
6. For an electronic transfer, the electronic transfer of original prescription order information meets the following conditions:
- a. The electronic transfer is between pharmacies owned by the same company using a common or shared database;
 - b. The electronic transfer of original prescription order information for a non-controlled substance drug is performed by a pharmacist or ~~a pharmacy or graduate~~ intern, pharmacy technician trainee, or pharmacy technician under the supervision of a pharmacist;
 - c. The electronic transfer of original prescription order information for a controlled substance is performed between two licensed pharmacists;
 - d. The electronic transfer of original prescription order information for a non-controlled substance drug meets the following conditions:
 - i. The transferring pharmacy's computer system:
 - (1) Invalidates the transferred original prescription order information;
 - (2) Records the identification code, number, or address of the pharmacy to which the prescription order information is transferred;
 - (3) Records the name or identification code of the receiving pharmacist, ~~pharmacy or graduate~~ intern, pharmacy technician trainee, or pharmacy technician; and
 - (4) Records the date of transfer; and
 - ii. The receiving pharmacy's computer system:
 - (1) Records that a prescription transfer occurred;
 - (2) Records the date of issuance of the original prescription order;
 - (3) Records the original number of refills authorized on the original prescription order;
 - (4) Records the date of original dispensing;
 - (5) Records the number of valid refills remaining and the date of the last refill;
 - (6) Records the identification code, number, or address and original prescription number

- of the pharmacy from which the prescription is transferred;
- (7) Records the name or identification code of the receiving pharmacist or ~~pharmacy or graduate~~ intern, pharmacy technician trainee, or pharmacy technician; and
 - (8) Records the date of transfer;
- e. The electronic transfer of original prescription order information for a controlled substance meets the following conditions:
 - i. The transferring pharmacy's computer system:
 - (1) Invalidates the transferred original prescription order information;
 - (2) Records the identification code, number, or address, and DEA number of the pharmacy to which the prescription order information is transferred;
 - (3) Records the name or identification code of the receiving pharmacist;
 - (4) Records the date of transfer; and
 - (5) Records the name or identification code of the transferring pharmacist; and
 - ii. The electronic prescription order information received by the computer system of the receiving pharmacy includes the information required in subsection (D)(4)(b)(iii) (E)(4)(b)(iii); and
 - f. In addition to electronic documentation of a transferred prescription order in the computer system, an original prescription order containing the requirements of this Section is filed in compliance with A.R.S. § 32-1964.

E.F. Transmission of a prescription order from a medical practitioner to a pharmacy by fax.

- 1. A medical practitioner or medical practitioner's agent may transmit a prescription order for a Schedule III, IV, or V controlled substance, prescription-only drug, or nonprescription drug to a pharmacy by fax under the following conditions:
 - a. The prescription order is faxed only to the pharmacy of the patient's choice;
 - b. The faxed prescription order:
 - i. Contains all the information required for a prescription order in A.R.S. §§ 32-1968 and 36-2525; and
 - ii. Is only faxed from the medical practitioner's practice location, except that a nurse in a hospital, long-term care facility, or inpatient hospice may send a fax of a prescription order for a patient of the facility; and
 - c. The faxed prescription order shall contain the following additional information:
 - i. The date the prescription order is faxed;
 - ii. The fax number of the prescribing medical practitioner or the facility from which the prescription order is faxed, and the telephone number of the facility; and

- iii. The name of the person who transmits the fax, if other than the medical practitioner.
 - 2. A medical practitioner or medical practitioner's agent may fax a prescription order for a Schedule II controlled substance for information purposes only, unless the faxed prescription order meets the requirements of A.R.S. § 36-2525(F) and (G).
 - 3. A pharmacy may receive a faxed prescription order for a Schedule II controlled substance for information purposes only, except a faxed prescription order for a Schedule II controlled substance that meets the requirements of A.R.S. § 36-2525(F) and (G) may serve as the original written prescription order.
 - 4. To meet the seven-year record retention requirement of A.R.S. § 32-1964, a pharmacy shall receive a faxed prescription order on a plain paper ~~fax machine~~, ~~except a pharmacy that does not have a plain paper fax machine or~~ ~~may make a copy photocopy of a~~ the faxed prescription order ~~received on a non-plain paper fax machine~~.
 - 5. A medical practitioner or the medical practitioner's agent may fax refill authorizations to a pharmacy if the faxed authorization includes the medical practitioner's telephone ~~number~~ and fax ~~number numbers~~, the medical practitioner's signature or medical practitioner's agent's name, and date of authorization.
- F.G.** Electronic transmission of a prescription order from a medical practitioner to a pharmacy.
- 1. Unless otherwise prohibited by law, a medical practitioner or medical practitioner's agent may transmit a prescription order by electronic means, directly or through an intermediary, including an E-prescribing network, to the dispensing pharmacy as specified in A.R.S. § 32-1968.
 - 2. For electronic transmission of a Schedule II, III, IV, or V controlled substance prescription order, the medical practitioner and pharmacy shall ensure that the transmission complies with any security or other requirements of federal law.
 - 3. The medical practitioner and pharmacy shall ensure that all electronic transmissions comply with all the security requirements of state or federal law related to the privacy of protected health information.
 - 4. In addition to the information required to be included on a prescription order as specified in A.R.S. § 32-1968, an electronically transmitted prescription order shall include:
 - a. The date of transmission; and
 - b. If the individual transmitting the prescription is not the medical practitioner, the name of the medical practitioner's authorized agent who transmits the prescription order.
 - 5. A pharmacy receiving an electronically transmitted prescription order shall maintain the prescription order as specified in A.R.S. § 32-1964 or R4-23-408(H)(2).

6. A medical practitioner or medical practitioner's agent shall transmit an electronic prescription order only to the pharmacy of the patient's choice.

R4-23-408. Computer Records

A. Systems manual. A pharmacy permittee or pharmacist-in-charge shall:

1. Develop, implement, and comply with policies and procedures for the following operational aspects of a computer system:
 - a. Examples of all output documentation provided by the computer system that contains original or refill prescription order or patient profile information;
 - b. Steps a pharmacy employee follows when the computer system is not operational due to scheduled or unscheduled system interruption;
 - c. Regular and routine backup file procedure and file maintenance, including secure storage of backup files;
 - d. Audit procedures, personnel code assignments, and personnel responsibilities; and
 - e. Quality assurance mechanism for data entry validation;
2. Review biennially and, if necessary, revise the policies and procedures required under this Section;
3. Document the review required under subsection (A)(2);
4. Assemble the policies and procedures as a written manual or by another method approved by the Board or its designee; and
5. Make the policies and procedures available within the pharmacy for reference by pharmacy personnel and inspection by the Board or its designee.

B. Computer system data storage and retrieval. A pharmacy permittee or pharmacist-in-charge shall ensure that the computer system is capable of:

1. Producing sight-readable information on all original and refill prescription orders and patient profiles;
2. Providing online retrieval (via CRT display or hard-copy printout) of original prescription order information required in A.R.S. § 32-1968(C), R4-23-402(A), and R4-23-407(A);
3. Providing online retrieval (via CRT display or hard-copy printout) of patient profile information required in R4-23-402(A);
4. Providing documentation identifying the pharmacist responsible for dispensing each original or refill prescription order, except a pharmacy permittee with a computer system that is in use before the effective date of this Section that cannot provide documentation identifying the dispensing

pharmacist may continue to use the computer system by providing manual documentation identifying the dispensing pharmacist;

5. Producing a printout of all prescription order information, including a single-drug usage report that contains:
 - a. The name of the prescribing medical practitioner;
 - b. The name and address of the patient;
 - c. The quantity dispensed on each original or refill prescription order;
 - d. The date of dispensing for each original or refill prescription order;
 - e. The name or identification code of the dispensing pharmacist; and
 - f. The serial number of each prescription order; and
6. Providing a printout of requested prescription order information to an individual pharmacy within 72 hours of the request if prescription order information is maintained in a centralized computer record system.

C. A pharmacy permittee or pharmacist-in-charge of a pharmacy that uses a pharmacy computer system:

1. Shall notify the D.E.A. and the Board in writing that original and refill prescription order information and patient profiles are stored in a pharmacy computer system;
2. Shall comply with this Section if the pharmacy computer system's refill records are used as an alternative to the manual refill records required in R4-23-407(B);
3. Is exempt from the manual refill recordkeeping requirements of R4-23-407(B), if the pharmacy computer system complies with the requirements of this Section; and
4. Shall ensure that documentation of the accuracy of original and refill prescription order information entered into a computer system is provided by each pharmacist using the computer system and kept on file in the pharmacy for seven years from the date of the last refill. Documentation includes one of the following:
 - a. A hard-copy printout of each day's original and refill prescription order data that:
 - i. States original and refill data for prescriptions dispensed by each pharmacist is reviewed for accuracy;
 - ii. Includes the printed name of each dispensing pharmacist; and
 - iii. Is signed and initialed by each dispensing pharmacist; or
 - b. A log book or separate file of daily statements that:
 - i. States original and refill data for prescriptions dispensed by each pharmacist is reviewed for accuracy;
 - ii. Includes the printed name of each dispensing pharmacist; and
 - iii. Is signed and initialed by each dispensing pharmacist.

- D. If a pharmacy computer system does not comply with the requirements of subsections (A), (B), and (F), the pharmacy permittee or pharmacist-in-charge shall bring the computer system into compliance within three months of a notice of noncompliance or violation letter. If the computer system is still noncompliant with subsection (A), (B), or (F) after three months, the pharmacy permittee or pharmacist-in-charge shall immediately comply with the manual recordkeeping requirements of R4-23-402 and R4-23-407.
- E. If a pharmacy's personnel perform manual recordkeeping under subsection (D), the pharmacy's personnel shall continue manual recordkeeping until the pharmacist-in-charge sends proof, verified by a Board compliance officer, that the computer system complies with subsections (A), (B), and (F).
- F. Security. To maintain the confidentiality of patient records, a pharmacy permittee or pharmacist-in-charge shall ensure that:
1. The computer system has security and systems safeguards designed to prevent and detect unauthorized access, modification, or manipulation of prescription order information and patient profiles; and
 2. After a prescription order is dispensed, any alteration of prescription order information is documented, including the identification of the pharmacist responsible for the alteration.
- G. A computer system that does not comply with all the requirements of subsections (A), (B), and (F) may be used in a pharmacy if:
1. The computer system was in use in the pharmacy before July 11, 2001, and
 2. The pharmacy complies with the manual recordkeeping requirements of R4-23-402 and R4-23-407.
- H. Prescription records and retention.
1. Instead of filing the original hard-copy prescription order as required in A.R.S. § 32-1964, a pharmacy permittee or pharmacist-in-charge may use an electronic imaging recordkeeping system, if:
 - a. The system is capable of capturing, storing, and reproducing the exact image of a prescription order, including the reverse side of the prescription order if necessary;
 - b. Any notes of clarification of and or alterations to a prescription order are directly associated with the electronic image of the prescription order;
 - c. The A prescription order image and any associated notes of clarification to of or alterations to a the prescription order are retained for a period not less no fewer than seven years from the date the prescription order is last dispensed;
 - d. The original hard-copy prescription is maintained for no less than 30 days after the date dispensed;

e.d. Policies and procedures for the use of an electronic imaging recordkeeping system are developed, implemented, reviewed, and revised in the same manner described in subsection (A) and complied with; and

f.e. The prescription is not for a ~~schedule H~~ controlled substance.

2. If a pharmacy's computer system fields are automatically populated by an electronically transmitted prescription order, the automated record constitutes the original prescription order and a hard-copy or electronic image is not required if the computer system is capable of maintaining, printing, and providing all the prescription order information required in A.R.S. §§ 32-1968 and 36-2525 and R4-23-407(A) within 72 hours of a request by the Board, the Board's compliance officers, other authorized regulatory board agents, or authorized officers of the law.

- I. A pharmacy permittee or pharmacist-in-charge shall make all prescription records available within 72 hours after a Board request.

R4-23-411. Pharmacist-administered or Pharmacy or Graduate Intern-administered Immunizations

A. ~~Certification Authorization~~ to administer immunizations, vaccines, and emergency medications, as defined at A.R.S. § 32-1974(N), to an eligible adult patient or eligible minor patient. As used in this Section, "eligible adult patient" means an eligible patient 13 years of age or older and "eligible minor patient" means an eligible patient at least three years of age but less than 13 years of age. A pharmacist or ~~a pharmacy or graduate~~ an intern in the presence of and under the immediate personal supervision of a pharmacist, may administer, without a prescription, immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient, if:

1. Both the pharmacist and ~~pharmacy or graduate~~ intern meet the qualifications and standards specified by A.R.S. § 32-1974 and this Section;
2. The Board ~~certifies authorizes~~ both the pharmacist and ~~pharmacy or graduate~~ intern as specified in subsection (D);
3. No change
 - a. No change
 - b. No change
4. No change
5. No change
6. No change

- B.** A pharmacist or ~~a pharmacy or graduate~~ an intern in the presence of and under the immediate personal supervision of a pharmacist, may administer, with a prescription, any immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient, if:
1. Both the pharmacist and ~~pharmacy or graduate~~ intern meet the qualifications and standards specified by A.R.S. § 32-1974 and this Section; and
 2. The Board certifies authorizes both the pharmacist and ~~pharmacy or graduate~~ intern as specified in subsection (D).
- C.** A pharmacist or ~~pharmacy or graduate~~ intern who is ~~certified~~ authorized to administer immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient shall:
1. Not delegate the authority to any other pharmacist, ~~pharmacy or graduate~~ intern, or employee; and
 2. No change
- D.** Qualifications ~~for certification~~ to administer immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient. After receipt of a completed application form, the Board shall issue a certificate authorizing authorize the administration of immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient to ~~by~~ a pharmacist or ~~pharmacy or graduate~~ intern who meets the following qualifications:
1. No change
 2. No change
 3. No change
- E.** Immunizations training program requirements. A training program for pharmacists or ~~pharmacy or graduate~~ interns to administer immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient shall include the following courses of study:
1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 6. No change
- F.** No change
1. A pharmacist or ~~pharmacy or graduate~~ intern ~~certified~~ authorized under this Section to administer immunizations, vaccines, and emergency medications to an eligible patient shall provide to the pharmacy the following information and documentation regarding each immunization, vaccine, or emergency medication administered:

- a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. The name of the pharmacist or ~~pharmacy or graduate~~ intern administering the immunization, vaccine, or emergency medication;
 - f. A record of the pharmacist's or ~~pharmacy or graduate~~ intern's consultation with the patient determining that the patient is an eligible patient as defined in R4-23-110;
 - g. ~~The date and time that the written report specified in subsection (F)(2) was sent to the patient's primary care provider or physician;~~
 - h. Consultation or other professional information provided to the patient by the pharmacist or ~~pharmacy or graduate~~ intern;
 - i. No change
 - j. No change
2. ~~The As required under A.R.S. § 32-1974(F)(1), the~~ pharmacist or ~~pharmacy or graduate~~ intern shall provide a written or electronic report to the patient's primary-care provider or physician containing the documentation required in subsection (F)(1)(a) through (d) ~~within 48 hours after the immunization or vaccination~~. The pharmacy shall document the time and date the report is sent and make the required records specified in subsection (F)(1) and a record of compliance with this subsection available in the pharmacy or on request, within 72 hours, for inspection by the Board or its designee.
3. A pharmacy's pharmacist-in-charge or permittee shall maintain the records required in subsection (F)(1) in the pharmacy or database for a minimum of seven years from the administration date.
- G. Confidentiality of records. A pharmacist, ~~pharmacy or graduate~~ intern, pharmacy permittee, or pharmacist-in-charge shall comply with applicable state and federal privacy statutes and rules when releasing patient health information.
- H. ~~Renewal of a certificate for pharmacist administered immunizations. A pharmacist remains in good standing to administer immunizations, vaccines, and emergency medications if, at the time of license renewal under R4-23-202, the pharmacist attests the following to the Board:~~
- 1. ~~Current certification in basic cardiopulmonary resuscitation, and~~
 - 2. ~~Completion of a minimum of two contact hours (0.2 CEU) of continuing education related to immunizations during the biennial license renewal period. A pharmacist may use the continuing education hours required in this subsection as part of the total continuing education hours required for pharmacist license renewal.~~

I.H. Pharmacist-administered or ~~pharmacy or graduate~~ intern-administered adult immunizations that require a prescription order. A pharmacist or ~~pharmacy or graduate~~ intern certified authorized by the Board to administer adult immunizations or vaccines shall not administer any immunization or vaccine listed in A.A.C. R9-6-1301 without a prescription order. In addition to filing a prescription order as required in A.R.S. § 32-1964, a pharmacist or ~~pharmacy or graduate~~ intern who administers an immunization or vaccine listed in A.A.C. R9-6-1301 shall comply with the recordkeeping requirements of subsection (F)(1).

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

R4-23-607. Nonresident Permits

- A.** Permit. A person that is not a resident of Arizona shall not sell or distribute any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical into Arizona without possessing both:
 - 1. A current Board-issued nonresident pharmacy permit, nonresident manufacturer permit, nonresident full-service or nonprescription drug wholesale permit, or nonresident nonprescription drug permit; and
 - 2. A current equivalent license or permit issued by the licensing authority in the jurisdiction where the person resides.
- B.** No change
- C.** No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- D.** No change
- E.** No change
 - 1. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - b. No change

- i. No change
 - ii. No change
 - iii. No change
 - c. No change
 - d. Provide permit and license records upon request, if immediately available, or in no fewer than two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).
2. No change
- a. No change
 - b. No change
 - c. No change
 - d. No change
3. No change
- a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
4. No change
- a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
5. No change
- a. No change
 - b. No change
 - c. No change
- F. No change

ARTICLE 8. DRUG CLASSIFICATION

R4-23-801. Dietary Supplements Repealed

A person who sells, distributes, or provides a product that is labeled as a dietary supplement and is labeled or marketed as a treatment for any deficiency disease, for the correction of any symptom of disease, or for the prevention, mitigation, or cure of any disease, either by direct statement or by inference, is selling, distributing, or providing a drug and is subject to the requirements of A.R.S. Title 32, Chapter 18 and 4 A.A.C. 23.

ARTICLE 11. PHARMACY TECHNICIANS

R4-23-1103. Pharmacy Technician Trainee Licensure

- A. No change**
- B. No change**
 - 1. No change
 - a. No change
 - b. No change
 - i. No change
 - ii. No change
 - iii. No change
 - 2. No change
- C. No change**
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. A pharmacy technician trainee license is valid for 24 36 months from the date issued. A pharmacy technician trainee who does not complete the prescribed training program and pass the Pharmacy Technician Certification Board (PTCB) examination or another a Board-approved-pharmacy technician examination before the pharmacy technician trainee's license expires is not eligible for licensure as a pharmacy technician and shall not practice as a pharmacy technician or pharmacy technician trainee. The Board has approved the following pharmacy technician examinations:
 - a. Pharmacy Technician Certification Board (PTCB) Exam, and
 - b. Exam for the Certification of Pharmacy Technicians (ExCPT).
- D. Re-application for licensure.**

1. The Board may allow a pharmacy technician trainee whose license expires before the pharmacy technician trainee completes the prescribed training program and passes the Pharmacy Technician Certification Board (PTCB) examination or another Board approved pharmacy technician examination to reapply for licensure not more than one time. A pharmacy technician trainee whose license has expired may make a special request to the Board under R4-23-401 for approval to reapply for licensure.
2. The Board shall base its decision to grant or deny a special request to reapply for licensure on an assessment of:

 - a. The reasons the pharmacy technician trainee did not complete a pharmacy technician training program and the likelihood that the pharmacy technician trainee will complete a pharmacy technician training program within the next 24 months;
 - b. The reasons the pharmacy technician trainee failed the pharmacy technician examination and the likelihood that the pharmacy technician trainee will pass the pharmacy technician examination within the next 24 months; and
 - c. Other extenuating circumstances.
3. A pharmacy technician trainee that receives Board approval to reapply for licensure shall submit a completed application manually on a form furnished by the Board and pay the licensure fee specified in R4-23-205(A)(4).

E.D. Time frames Time frames for pharmacy technician trainee licensure. The Board office shall follow the time frames time frames established in R4-23-202(F).

F.E. Verification of license. A pharmacy permittee or pharmacist-in-charge shall not permit a person to practice as a pharmacy technician trainee until the pharmacy permittee or pharmacist-in-charge verifies that the person is currently licensed by the Board as a pharmacy technician trainee.

R4-23-1106. Continuing Education Requirements

- A. General. According to A.R.S. § 32-1925(H), the Board shall not renew a pharmacy technician license unless the applicant licensee has during the two years preceding the application for renewal:
1. Participated in 20 contact hours or two CEUs of continuing education activity sponsored by an Approved Provider, as defined in R4-23-110, and
 2. At least two of the contact hours or 0.2 of the CEUs are approved courses in pharmacy law. For a pharmacy technician licensed less than 24 months the continuing education contact hours are calculated by multiplying 0.83 hours times the number of months between the date of initial licensure and the licensee's next license renewal date. A pharmacy technician licensee is exempt

from the continuing education requirement in subsection (A)(1) between the time of initial licensure and first renewal.

B. Valid CEUs. The Board shall:

1. Only accept Accept CEUs for continuing education activities sponsored only by an Approved Provider;
2. Only accept Accept CEUs accrued during only the two-year period immediately before licensure renewal;
3. Not allow CEUs accrued in a biennial renewal period ~~in excess of the required two CEUs~~ to be carried forward to the succeeding biennial renewal period;
4. Allow a pharmacy technician who leads, instructs, or lectures to a group of health professionals on pharmacy-related topics in a continuing education activities activity sponsored by an Approved Provider to receive CEUs for a presentation by following the same attendance procedures as any other attendee of the continuing education activity; and
5. Not accept as a CEU a pharmacy technician's normal teaching duties within a learning institution if the pharmacy technician's primary responsibility is the education of health professionals.

C. Continuing education records and reporting CEUs. A pharmacy technician shall:

1. Maintain continuing education records that:
 - a. Verify the continuing education activities the pharmacy technician participated in during the preceding five years; and
 - b. Consist of a statement of credit or a certificate issued by an Approved Provider at the conclusion of a continuing education activity;
 2. At the time of licensure renewal, attest to the number of CEUs the pharmacy technician participated in during the renewal period on the biennial renewal form; and
 3. When requested by the Board office, submit proof of continuing education participation within 20 days of the request.
- D.** The Board shall deem a pharmacy technician's failure to comply with the continuing education participation, recording, or reporting requirements of this Section as unprofessional conduct and grounds for disciplinary action by the Board under A.R.S. § 32-1927.01.
- E.** A pharmacy technician who is aggrieved by any decision of the Board concerning continuing education units may request a hearing before the Board.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT1

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

1. Identification of the rulemaking:

The Board is complying with Executive Order 2019-01 by making minor changes to remove unnecessary or burdensome regulatory requirements and comply with statute. In a rulemaking approved by Council on April 2, 2019 (See 25 A.A.R. 1015 (April 26, 2019)), a definition of virtual wholesaler was removed to provide time for the Board to consider public comment. The revised definition of virtual wholesaler, as required under A.R.S. § 32-1901, is included in this rulemaking. Under Laws 2018, Chapter 228, the legislature amended A.R.S. § 32-1901 to remove reference to “graduate intern” so the term is removed from Sections included in this rulemaking. R4-23-205 is amended to add fees for temporary licenses as specifically authorized under A.R.S. § 32-3124(H); R4-23-204 is amended to comply with A.R.S. § 32-3248.02, which requires health professionals to obtain continuing education regarding opioids; and R4-23-1103 is amended to comply with A.R.S. § 32-1924(F), which establishes a 36-month license for a pharmacy technician trainee. R4-23-607 is amended to clarify that a nonresident permittee is required to be licensed in both Arizona and the jurisdiction of residence. Exemptions from EO2019-01 were provided by Emily Rajakovich, in the Governor’s Office, by e-mails dated April 1, 2019, and July 12, 2019.

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 contain unnecessary or burdensome requirements and not be consistent with statute.

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

It is not good government for a regulatory board to have rules that contain unnecessary or burdensome requirements or are inconsistent with statute.

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

When the rulemaking is completed, the Board’s rules will not contain unnecessary or burdensome requirements and will be consistent with statute.

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

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

The Board believes the rulemaking will have minimal economic impact because it simply removes unnecessary or burdensome requirements or makes rule consistent with statute. An individual who chooses to obtain a temporary license will incur the cost of the fee for the temporary license but will have the benefit of being able to be employed while an application for licensure is processed. A person that chooses to operate as a virtual wholesaler is required to obtain either a full-service or non-prescription wholesalers permit and pay the applicable fee.

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

Website: www.azpharmacy.gov

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

Licensees who prescribe opioids, applicants wishing to obtain a temporary license, virtual wholesalers, and the Board will be directly affected by, bear the costs of, or directly benefit from the rulemaking. The rulemaking will indirectly affect all licensees and applicants by removing unnecessary or burdensome requirements and making the rules consistent with statute.

The Board has not started tracking the number of virtual wholesalers but expects to do so in the near future. To date, the Board has received no applications for a temporary license.

There are currently 5,157 pharmacists and interns authorized by the Board to administer immunizations, vaccines, and emergency medications. As a condition of continuing the authorization, each will be required to obtain two contact hours of continuing education relevant to administering immunizations, vaccines, and emergency medications. These two hours of continuing education are part of rather than in addition to the 30-hour biennial

continuing education requirement applicable to all pharmacists and interns. Pharmacists and interns authorized to administer immunizations, vaccines, and emergency medications have the benefit of being able to provide an additional service to members of the public. The continuing education requirement is minimal and necessary to protect the health and safety of those who choose to obtain immunizations or vaccines at a pharmacy.

The requirement that a licensee authorized to dispense controlled substances participate in at least three contact hours of opioid-related, substance use disorder-related, or addiction-related continuing education during each license-renewal cycle is established in statute (See A.R.S. § 32-3248.02). The legislature enacted this statutory provision to address the current epidemic opioid-related abuse. This rulemaking simply makes the Board's rule regarding continuing education consistent with statute. These three hours of continuing education are part of rather than in addition to the 30-hour biennial continuing education requirement applicable to all pharmacists and interns.

The legislature amended A.R.S. § 32-1924(F) to allow a pharmacy technician trainee to receive a 36- month, non-renewable license. Previously, a pharmacy technician trainee could obtain a 24-month license and could reapply once for another 24-month license. In the past, approximately 33 percent of pharmacy technician trainees reapplied because they had not completed the training or passed the examination required for licensure as a pharmacy technician. The Board does not have data yet but believes approximately 25 percent of pharmacy technician trainees will not complete training or pass the required examination during the 36 months provided.

The Board incurred the cost of doing this rulemaking and will incur the cost of implementing it. The Board will have the benefit of rules that are consistent with statute and minimize regulatory burdens on licensees and applicants. The Board has 23 FTES, 6 of whom are dedicated to the Controlled Substances Prescription Monitoring Program. The Board's current appropriation is \$2,642,200.

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 this rulemaking. The Board will not need a new full-time employee to implement or enforce the rules.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:
No political subdivision is directly affected by the rulemaking.
- c. Costs and benefits to businesses directly affected by the rulemaking:
Licensees are businesses directly affected by the rulemaking. Their costs and benefits are described in item 4.

6. Impact on private and public employment:

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

7. Impact on small businesses²:

- a. Identification of the small business subject to the rulemaking:
Licensees are small businesses subject to the rulemaking.
- b. Administrative and other costs required for compliance with the rulemaking:
Licensees to whom R4-23-204(A)(2) is applicable will have to maintain records showing compliance with the continuing education requirement. An applicant applying for a temporary license will incur the cost of making application and paying the required fee. A person choosing to operate as a virtual wholesaler will incur the cost of making application for either a full-service or non-prescription wholesalers' permit and paying the applicable fee. Under R4-23-607, a person who is not a resident of Arizona is required to be licensed in both Arizona and the person's residential jurisdiction before selling or distributing drugs into Arizona.
- c. Description of methods that may be used to reduce the impact on small businesses:
Many of the changes in this rulemaking remove regulatory requirements or make the rules consistent with statute. The Board determined the fees established are reasonable and necessary to enable the Board to perform the licensing and regulatory activities required to fulfill its responsibility to protect public health and safety. Making application for a license and maintaining records of compliance with requirements impose minimal economic burdens. The Board believes it is not possible to reduce the impact of the rules on small businesses and achieve the goal of protecting public health and safety.

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

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

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

9. Probable effects on state revenues:

If there are applications for a temporary license or to operate as a virtual wholesaler, 10 percent of the amount collected will be contributed to the state's general fund.

10. Less intrusive or less costly alternative methods considered:

Because the costs associated with the rulemaking are minimal and reasonable, the Board did not consider less intrusive or less costly alternative methods.

Arizona Administrative CODE

www.azsos.gov

This Chapter contains a correction to a historical note published in Supp. 13-3. No other changes have been made to it since Supp. 17-4.



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.

Due to a clerical error the historical note has been removed in R4-23-675 referencing an amendment in Supp. 13-3.

Questions about these rules? Contact:

Name:	Kamlesh Gandhi
Address:	Board of Pharmacy 1616 W. Adams St., Suite 120 Phoenix, AZ 85007
Telephone:	(602) 771-2740
Fax:	(602) 771-2749
E-mail:	kgandhi@azpharmacy.gov

The correction in this Chapter in supplement 18-2 replaces supplement 17-4, 85 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

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. 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, 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

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

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



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Secretary
of State

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State
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Arizona Administrative Code

Title 4, Ch. 23

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 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

Authority: A.R.S. § 32-1904 et seq.

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Article 5, consisting of Sections R4-23-501 through R4-23-505, expired effective August 30, 2013 (Supp. 14-1).

Article 5, consisting of Sections R4-23-501 and R4-23-502, recodified to Article 8 at 9 A.A.R. 4011, effective August 18, 2003 (Supp. 03-3).

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ARTICLE 8. DRUG CLASSIFICATION

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Article 8, consisting of Sections R4-23-801 through R4-23-804, repealed effective November 4, 1998 (Supp. 98-4).

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Board of Pharmacy

**ARTICLE 12. PRESCRIPTION MEDICATION DONATION
PROGRAM**

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ARTICLE 1. ADMINISTRATION

R4-23-101. General

- A. 4 A.A.C. 23 applies to all actions and proceedings of the Board and shall be deemed a part of the record in any Board action or proceeding without formal introduction of, or reference to the rules. A party to a Board action is deemed to have knowledge of the rules. The Board office shall provide a copy of the rules:
 - 1. To each license applicant who submits a completed application packet; and
 - 2. To each permit applicant during the final compliance inspection after the Board approves the permit application.
- B. The Board, within its jurisdiction, may, in the interest of justice, excuse the failure of any person to comply with the rules.
- C. The Board, within its jurisdiction, may grant an extension of time within which to comply with any rule when it deems the extension to be in the interest of justice.

Historical Note

Former Rules 1.1000, 1.1200, and 1.1300; Amended effective August 23, 1978 (Supp. 78-4). Amended by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1); Historical Note updated (Supp. 06-2).

R4-23-102. Meetings

- A. The Board shall hold not less than four meetings per fiscal year to conduct general business and interview permit and license applicants.
- B. A special meeting of the Board may be held at any time subject to the call of the President or a majority of the Board members and in compliance with the notification requirements of A.R.S. § 38-431.02.

Historical Note

Former Rules 1.2100, 1.2200, 1.2300, and 1.2400. Amended by final rulemaking at 7 A.A.R. 2143, effective May 1, 2001 (Supp. 01-2).

R4-23-103. Repealed

Historical Note

Former Rules 1.3100, 1.3200, 1.3300, and 1.3400; Amended subsection (C) effective August 9, 1983 (Supp. 83-4). Section repealed by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1); Historical Note updated (Supp. 06-2).

R4-23-104. Repealed

Historical Note

Former Rules 1.4011, 1.4110, 1.4120, 1.4200, 1.4210, 1.4220, 1.4300, 1.4400, 1.5500, 1.5600, 1.5700, and 1.4500; Amended effective August 23, 1978 (Supp. 78-5); Amended by deleting subsection (B) and renumbering subsections (C) through (J) as subsections (B) through (I) effective August 9, 1983 (Supp. 83-4). Amended effective February 8, 1991 (Supp. 91-1). Section repealed by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1); Historical Note updated (Supp. 06-2).

R4-23-105. Repealed

Historical Note

Former Rules 1.5100, 1.5200, 1.5300, and 1.5400; Amended subsection (B) effective August 9, 1983 (Supp. 83-4). Section repealed by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1); Historical Note updated (Supp. 06-2).

ical Note updated (Supp. 06-2).

R4-23-106. Repealed

Historical Note

Former Rules 1.5800 and 1.5900. Section repealed by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1); Historical Note updated (Supp. 06-2).

R4-23-107. Repealed

Historical Note

Former Rules 1.5910, 1.5920, 1.5921, and 1.5922. Section repealed by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1); Historical Note updated (Supp. 06-2).

R4-23-108. Repealed

Historical Note

Former Rule 1.5930. Section repealed by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1); Historical Note updated (Supp. 06-2).

R4-23-109. Repealed

Historical Note

Former Rules 1.7100, 1.7200, and 1.7300. Amended effective July 14, 1977 (Supp. 77-4). Amended effective February 8, 1991 (Supp. 91-1). Section repealed by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1); Historical Note updated (Supp. 06-2).

R4-23-110. Definitions

In addition to definitions in A.R.S. § 32-1901, the following definitions apply to this Chapter:

“Active ingredient” means any component that furnishes pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease or that affects the structure or any function of the body of man or other animals. The term includes those components that may undergo chemical change in the manufacture of the drug, that are present in the finished drug product in a modified form, and that furnish the specified activity or effect.

“AHCCCS” means the Arizona Health Care Cost Containment System.

“Annual family income” means the combined yearly gross earned income and unearned income of all adult individuals within a family unit.

“Approved course in pharmacy law” means a continuing education activity that addresses practice issues related to state or federal pharmacy statutes, rules, or regulations.

“Approved Provider” means an individual, institution, organization, association, corporation, or agency that is approved by the Accreditation Council for Pharmacy Education (ACPE) in accordance with ACPE’s policy and procedures or by the Board as meeting criteria indicative of the ability to provide quality continuing education.

“Assisted living facility” means a residential care institution as defined in A.R.S. § 36-401.

“Authentication of product history” means identifying the purchasing source, the ultimate fate, and any intermediate handling of any component of a radiopharmaceutical or other drug.

“Automated dispensing system” means a mechanical system in a long-term care facility that performs operations or activities, other than compounding or administration, relative to the

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storage, packaging, counting, labeling, and dispensing of medications, and which collects, controls, and maintains all transaction information.

“Automated storage and distribution system” means a mechanical system that performs operations or activities other than counting, compounding, or administration, relative to the storage, packaging, or distributing of drugs or devices and that collects, controls, and maintains all transaction information.

“Batch” means a specific quantity of drug that has uniform character and quality, within specified limits, and is produced according to a single manufacturing order during the same cycle of manufacture.

“Beyond-use date” means:

A date determined by a pharmacist and placed on a prescription label at the time of dispensing to indicate a time beyond which the contents of the prescription are not recommended to be used; or

A date determined by a pharmacist and placed on a compounded pharmaceutical product’s label at the time of preparation as specified in R4-23-410(B)(3)(d), R4-23-410(I)(6)(e), or R4-23-410(J)(1)(d) to indicate a time beyond which the compounded pharmaceutical product is not recommended to be used.

“Biological safety cabinet” means a containment unit suitable for the preparation of low to moderate risk agents when there is a need for protection of the product, personnel, and environment, consistent with National Sanitation Foundation (NSF) standards, published in the National Sanitation Foundation Standard 49, Class II (Laminar Flow) Biohazard Cabinetry, NSF International P. O. Box 130140, Ann Arbor, MI, revised June 1987 edition, (and no future amendments or editions), incorporated by reference and on file with the Board.

“Care-giver” means a person who cares for someone who is sick or disabled or an adult who cares for an infant or child and includes a patient’s husband, wife, son, daughter, mother, father, sister, brother, legal guardian, nurse, or medical practitioner.

“Community pharmacy” means any place under the direct supervision of a pharmacist where the practice of pharmacy occurs or where prescription orders are compounded and dispensed other than a hospital pharmacy or a limited service pharmacy.

“Component” means any ingredient used in compounding or manufacturing drugs in dosage form, including an ingredient that may not appear in the finished product.

“Compounding and dispensing counter” means a pharmacy counter working area defined in this Section where a pharmacist or a graduate intern, pharmacy intern, pharmacy technician, or pharmacy technician trainee under the supervision of a pharmacist compounds, mixes, combines, counts, pours, or prepares and packages a prescription medication to dispense an individual prescription order or prepackages a drug for future dispensing.

“Computer system” means an automated data-processing system that uses a programmable electronic device to store, retrieve, and process data.

“Computer system audit” means an accounting method, involving multiple single-drug usage reports and audits, used to determine a computer system’s ability to store, retrieve, and process original and refill prescription dispensing information.

“Contact hour” means 50 minutes of participation in a continuing education activity sponsored by an Approved Provider.

“Container” means:

A receptacle, as described in the official compendium or the federal act, that is used in manufacturing or compounding a drug or in distributing, supplying, or dispensing the finished dosage form of a drug; or

A metal receptacle designed to contain liquefied or vaporized compressed medical gas and used in manufacturing, transfilling, distributing, supplying, or dispensing a compressed medical gas.

“Continuing education” means a structured learning process required of a licensee to maintain licensure that includes study in the general areas of socio-economic and legal aspects of health care; the properties and actions of drugs and dosage forms; etiology, characteristics and therapeutics of disease status; or pharmacy practice.

“Continuing education activity” means continuing education obtained through an institute, seminar, lecture, conference, workshop, mediated instruction, programmed learning course, or postgraduate study in an accredited college or school of pharmacy.

“Continuing education unit” or “CEU” means 10 contact hours of participation in a continuing education activity sponsored by an Approved Provider.

“Continuous quality assurance program” or “CQA program” means a planned process designed by a pharmacy permittee to identify, evaluate, and prevent medication errors.

“Correctional facility” has the same meaning as in A.R.S. §§ 13-2501 and 31-341.

“CRT” means a cathode ray tube or other mechanism used to view information produced or stored by a computer system.

“CSPMP” means the Controlled Substances Prescription Monitoring Program established under A.R.S. Title 36, Chapter 28.

“Current good compounding practices” means the minimum standards for methods used in, and facilities or controls used for, compounding a drug to ensure that the drug has the identity and strength and meets the quality and purity characteristics it is represented to possess.

“Current good manufacturing practice” means the minimum standard for methods used in, and facilities or controls used for manufacturing, processing, packing, or holding a drug to ensure that the drug meets the requirements of the federal act as to safety, and has the identity and strength and meets the quality and purity characteristics it is represented to possess.

“Cytotoxic” means a pharmaceutical that is capable of killing living cells.

“Day” means a calendar day unless otherwise specified.

“DEA” means the Drug Enforcement Administration as defined in A.R.S. § 32-1901.

“Declared disaster areas” means areas designated by the governor or by a county, city, or town under A.R.S. § 32-1910 as those areas that have been adversely affected by a natural disaster or terrorist attack and require extraordinary measures to provide adequate, safe, and effective health care for the affected population.

“Delinquent license” means a pharmacist, pharmacy intern, graduate intern, or pharmacy technician license the Board sus-

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pends for failure to renew or pay all required fees on or before the date the renewal is due.

“Dietary supplement or food supplement” means a product (other than tobacco) that:

Is intended to supplement the diet that contains one or more of the following dietary ingredients: a vitamin, a mineral, an herb or other botanical, an amino acid, a dietary substance for use by humans to supplement the diet by increasing the total daily intake, or a concentrate, metabolite, constituent, extract, or combinations of these ingredients;

Is intended for ingestion in pill, capsule, tablet, or liquid form;

Is not represented for use as a conventional food or as the sole item of a meal or diet; and

Is labeled as a “dietary supplement” or “food supplement.”

“Digital signature” has the same meaning as in A.R.S. § 41-132(E).

“Dispensing pharmacist” means a pharmacist who, in the process of dispensing a prescription medication after the complete preparation of the prescription medication and before delivery of the prescription medication to a patient or patient’s agent, verifies, checks, and initials the prescription medication label, as required in R4-23-402(A).

“Drug sample” means a unit of a prescription drug that a manufacturer provides free of charge to promote the sale of the drug.

“Durable medical equipment” or “DME” means technologically sophisticated medical equipment that may be used by a patient or consumer in a home or residence. DME may be prescription-only devices as defined in A.R.S. § 32-1901(75). DME includes:

Air-fluidized beds,

Apnea monitors,

Blood glucose monitors and diabetic testing strips,

Continuous Positive Airway Pressure (CPAP) machines,

Electronic and computerized wheelchairs and seating systems,

Feeding pumps,

Home phototherapy devices,

Hospital beds,

Infusion pumps,

Medical oxygen and oxygen delivery systems excluding compressed medical gases,

Nebulizers,

Respiratory disease management devices,

Sequential compression devices,

Transcutaneous electrical nerve stimulation (TENS) unit, and

Ventilators.

“Earned income” means monetary payments received by an individual as a result of work performed or rental property owned or leased by the individual, including:

Wages,

Commissions and fees,

Salaries and tips,

Profit from self-employment,

Profit from rent received from a tenant or boarder, and

Any other monetary payments received by an individual for work performed or rental of property.

“Electronic signature” has the same meaning as in A.R.S. § 44-7002.

“Eligible patient” means a patient who a pharmacist determines is eligible to receive an immunization using professional judgment after consulting with the patient regarding the patient’s current health condition, recent health condition, and allergies.

“Emergency drug supply unit” means those drugs that may be required to meet the immediate and emergency therapeutic needs of long-term care facility residents and hospice inpatient facility patients, and which are not available from any other authorized source in sufficient time to prevent risk of harm to residents or patients.

“Extreme emergency” means the occurrence of a fire, water leak, electrical failure, public disaster, or other catastrophe constituting an imminent threat of physical harm to pharmacy personnel or patrons.

“Family unit” means:

A group of individuals residing together who are related by birth, marriage, or adoption; or

An individual who:

Does not reside with another individual; or

Resides only with another individual or group of individuals to whom the individual is unrelated by birth, marriage, or adoption.

“FDA” means the Food and Drug Administration, a federal agency within the United States Department of Health and Human Services, established to set safety and quality standards for foods, drugs, cosmetics, and other consumer products.

“Health care decision maker” has the same meaning as in A.R.S. § 12-2291.

“Health care institution” has the same meaning as in A.R.S. § 36-401.

“Hospice inpatient facility” means a health care institution licensed under A.R.S. § 36-401 and Article 8 that provides hospice services to a patient requiring inpatient services.

“Immediate notice” means a required notice sent by mail, facsimile, or electronic mail to the Board Office within 24 hours.

“Immunizations training program” means an immunization training program for pharmacists, pharmacy interns, and graduate interns that meets the requirements of R4-23-411(E).

“Inactive ingredient” means any component other than an “active ingredient” present in a drug.

“Internal test assessment” means performing quality assurance or other procedures necessary to ensure the integrity of a test.

“ISO Class 5 environment” means an atmospheric environment that complies with the ISO/TC209 International Clean-

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room Standards, specifically ANSI/IES/T/ISO-14644-1:1999: Cleanrooms and associated controlled environments--Part 1: Classification of air cleanliness, first edition dated May 1, 1999, (and no future amendments or editions), incorporated by reference and on file in the Board office.

“ISO Class 7 environment” means an atmospheric environment that complies with the ISO/TC209 International Cleanroom Standards, specifically ANSI/IES/T/ISO-14644-1:1999: Cleanrooms and associated controlled environments--Part 1: Classification of air cleanliness, first edition dated May 1, 1999, (and no future amendments or editions), incorporated by reference and on file in the Board office.

“Licensed health care professional” means an individual who is licensed and regulated under A.R.S. Title 32, Chapter 7, 11, 13, 14, 15, 16, 17, 18, 25, 29, or 35.

“Limited-service correctional pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that:

Holds a current Board permit under A.R.S. § 32-1931;

Is located in a correctional facility; and

Uses pharmacists, interns, and support personnel to compound, produce, dispense, and distribute drugs.

“Limited-service long-term care pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that holds a current Board-issued permit and dispenses prescription medication or prescription-only devices to patients in long-term care facilities.

“Limited-service mail-order pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that holds a current Board permit under A.R.S. § 32-1931 and dispenses a majority of its prescription medication or prescription-only devices by mailing or delivering the prescription medication or prescription-only device to an individual by the United States mail, a common or contract carrier, or a delivery service.

“Limited-service nuclear pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that holds a current Board permit under A.R.S. § 32-1931 and provides radiopharmaceutical services.

“Limited-service pharmacy permittee” means a person who holds a current limited-service pharmacy permit in compliance with A.R.S. §§ 32-1929, 32-1930, 32-1931, and A.A.C. R4-23-606.

“Limited-service sterile pharmaceutical products pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that holds a current Board permit under A.R.S. § 32-1931 and dispenses a majority of its prescription medication or prescription-only devices as sterile pharmaceutical products.

“Long-term care consultant pharmacist” means a pharmacist providing consulting services to a long-term care facility.

“Long-term care facility” or “LTCF” means a nursing care institution as defined in A.R.S. § 36-401.

“Lot” means a batch or any portion of a batch of a drug, or if a drug produced by a continuous process, an amount of drug produced in a unit of time or quantity in a manner that assures its uniformity. In either case, a lot is identified by a distinctive lot number and has uniform character and quality with specified limits.

“Lot number” or “control number” means any distinctive combination of letters or numbers, or both, from which the complete history of the compounding or manufacturing, control,

packaging, and distribution of a batch or lot of a drug can be determined.

“Low-income subsidy” means Medicare-provided assistance that may partially or fully cover the costs of drugs and is based on the income of an individual and, if applicable, the individual's spouse.

“Materials approval unit” means any organizational element having the authority and responsibility to approve or reject components, in-process materials, packaging components, and final products.

“Mechanical counting device for a drug in solid, oral dosage form” means a mechanical device that counts drugs in solid, oral dosage forms for dispensing and includes an electronic balance when used to count drugs.

“Mechanical storage and counting device for a drug in solid, oral dosage form” means a mechanical device that stores and counts and may package or label drugs in solid, oral dosage forms for dispensing.

“Mediated instruction” means information transmitted via intermediate mechanisms such as audio or video tape or telephone transmission.

“Medical practitioner-patient relationship” means that before prescribing, dispensing, or administering a prescription-only drug, prescription-only device, or controlled substance to a person, a medical practitioner, as defined in A.R.S. § 32-1901, shall first conduct a physical examination of that person or have previously conducted a physical examination. This subdivision does not apply to:

A medical practitioner who provides temporary patient supervision on behalf of the patient's regular treating medical practitioner;

Emergency medical situations as defined in A.R.S. § 41-1831;

Prescriptions written to prepare a patient for a medical examination; or

Prescriptions written, prescription-only drugs, prescription-only devices, or controlled substances issued for use by a county or tribal public health department for immunization programs, emergency treatment, in response to an infectious disease investigation, public health emergency, infectious disease outbreak or act of bioterrorism. For purposes of this subsection, “bioterrorism” has the same meaning as in A.R.S. § 36-781.

“Medicare” means a federal health insurance program established under Title XVIII of the Social Security Act.

“Medication error” means any unintended variation from a prescription or medication order. Medication error does not include any variation that is corrected before the medication is dispensed to the patient or patient's care-giver, or any variation allowed by law.

“Mobile pharmacy” means a pharmacy that is self-propelled or movable by another vehicle that is self-propelled.

“MPJE” means Multistate Pharmacy Jurisprudence Examination, a Board-approved national pharmacy law examination written and administered in cooperation with NABP.

“NABP” means National Association of Boards of Pharmacy.

“NABPLEX” means National Association of Boards of Pharmacy Licensure Examination.

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"NAPLEX" means North American Pharmacist Licensure Examination.

"Order" means either of the following:

A prescription order as defined in A.R.S. § 32-1901; or

A medication order as defined in A.A.C. R4-23-651.

"Other designated personnel" means a non-pharmacist individual who is permitted in the pharmacy area, for a limited time, under the direct supervision of a pharmacist, to perform non-pharmacy related duties, such as trash removal, floor maintenance, and telephone or computer repair.

"Outpatient" means an individual who is not a residential patient in a health care institution.

"Outpatient setting" means a location that provides medical treatment to an outpatient.

"Patient profile" means a readily retrievable, centrally located information record that contains patient demographics, allergies, and medication profile.

"Pharmaceutical patient care services" means the provision of drug selection, drug utilization review, drug administration, drug therapy monitoring, and other drug-related patient care services intended to achieve outcomes related to curing or preventing a disease, eliminating or reducing a patient's symptoms, or arresting or slowing a disease process, by identifying and resolving or preventing potential and actual drug-related problems.

"Pharmaceutical product" means a medicinal drug.

"Pharmacy counter working area" means a clear and continuous working area that contains no major obstacles such as a desktop computer, computer monitor, computer keyboard, external computer drive device, printer, facsimile machine, pharmacy balance, typewriter, or pill-counting machine, but may contain individual documents or prescription labels, pens, prescription blanks, refill log, pill-counting tray, spatula, stapler, or other similar items necessary for the prescription-filling process.

"Pharmacy law continuing education" means a continuing education activity that addresses practice issues related to state or federal pharmacy statutes, rules, or regulations, offered by an Approved Provider.

"Pharmacy permittee" means a person who holds a current pharmacy permit that complies with A.R.S. §§ 32-1929, 32-1930, 32-1931, 32-1934, and R4-23-606 and R4-23-652.

"Physician" means a medical practitioner licensed under A.R.S. Title 32, Chapter 13 or 17.

"Physician-in-charge" means a physician who is responsible to the Board for all aspects of a prescription medication donation program required in A.R.S. § 32-1909 and operated in the physician's office or in a health care institution.

"Poverty level" means the annual family income for a family unit of a particular size, as specified in the poverty guidelines updated annually in the *Federal Register* by the U.S. Department of Health and Human Services.

"Precursor chemical" means a precursor chemical I as defined in A.R.S. § 13-3401(26) and a precursor chemical II as defined in A.R.S. § 13-3401(27).

"Prepackaged drug" means a drug that is packaged in a frequently prescribed quantity, labeled in compliance with A.R.S. §§ 32-1967 and 32-1968, stored, and subsequently dispensed

by a pharmacist or a graduate intern or pharmacy intern under the supervision of a pharmacist, who verifies at the time of dispensing that the drug container is properly labeled, in compliance with A.R.S. § 32-1968, for the patient.

"Prep area" means a specified area either within an ISO class 7 environment or adjacent to but outside an ISO class 7 environment that:

Allows the assembling of necessary drugs, supplies, and equipment for compounding sterile pharmaceutical products, but does not allow the use of paper products such as boxes or bulk drug storage;

Allows personnel to don personnel protective clothing, such as gown, gloves, head cover, and booties before entering the clean compounding area; and

Is a room or a specified area within a room, such as an area specified by a line on the floor.

"Primary care provider" means the medical practitioner who is treating an individual for a disease or medical condition.

"Proprietor" means the owner of a business permitted by the Board under A.R.S. §§ 32-1929, 32-1930, 32-1931, and 32-1934.

"Provider pharmacy" means a pharmacy that contracts with a long-term care facility to supply prescription medication or other services for residents of a long-term care facility.

"Radiopharmaceutical" means any drug that emits ionizing radiation and includes:

Any nonradioactive reagent kit, nuclide generator, or ancillary drug intended to be used in the preparation of a radiopharmaceutical, but does not include drugs such as carbon-containing compounds or potassium-containing salts, that contain trace quantities of naturally occurring radionuclides; and

Any biological product that is labeled with a radionuclide or intended to be labeled with a radionuclide.

"Radiopharmaceutical quality assurance" means performing and interpreting appropriate chemical, biological, and physical tests on radiopharmaceuticals to determine the suitability of the radiopharmaceutical for use in humans and animals. Radiopharmaceutical quality assurance includes internal test assessment, authentication of product history, and appropriate record retention.

"Radiopharmaceutical services" means procuring, storing, handling, compounding, preparing, labeling, quality assurance testing, dispensing, distributing, transferring, recordkeeping, and disposing of radiochemicals, radiopharmaceuticals, and ancillary drugs. Radiopharmaceutical services include quality assurance procedures, radiological health and safety procedures, consulting activities associated with the use of radiopharmaceuticals, and any other activities required for the provision of pharmaceutical care.

"Red C stamp" means a device used with red ink to imprint an invoice with a red letter C at least one inch high, to make an invoice of a Schedule III through IV controlled substance, as defined in A.R.S. § 36-2501, readily retrievable, as required by state and federal rules.

"Refill" means other than the original dispensing of the prescription order, dispensing a prescription order in the same quantity originally ordered or in multiples of the originally ordered quantity when specifically authorized by the prescriber, if the refill is authorized by the prescriber:

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In the original prescription order;

By an electronically transmitted refill order that the pharmacist promptly documents and files; or

By an oral refill order that the pharmacist promptly documents and files.

"Regulated chemical" means the same as in A.R.S. § 13-3401(30).

"Remodel" means to alter structurally the pharmacy area or location.

"Remote drug storage area" means an area that is outside the premises of the pharmacy, used for the storage of drugs, locked to deny access by unauthorized persons, and secured against the use of force.

"Resident" means:

An individual admitted to and living in a long-term care facility or an assisted living facility;

An individual who has a place of habitation in Arizona and lives in Arizona as other than a tourist, or

A person who owns or operates a place of business in Arizona.

"Responsible person" means the owner, manager, or other employee who is responsible to the Board for a permitted establishment's compliance with the laws and administrative rules of this state and of the federal government pertaining to distribution of drugs, devices, precursor chemicals, and regulated chemicals. Nothing in this definition relieves other individuals from the responsibility to comply with state and federal laws and administrative rules.

"Score transfer" means the process that enables an applicant to take the NAPLEX in a jurisdiction and be eligible for licensure by examination in other jurisdictions.

"Security features" means attributes incorporated into the paper of a prescription order, referenced in A.R.S. § 32-1968(A)(4), that are approved by the Board or its staff and include one or more of the following designed to prevent duplication or aid the authentication of a paper document: laid lines, enhanced laid lines, thermochromic ink, artificial watermark, fluorescent ink, chemical void, persistent void, penetrating numbers, high-resolution border, high-resolution latent images, micro-printing, prismatic printing, embossed images, abrasion ink, holograms, and foil stamping.

"Shared order filling" means the following:

Preparing, packaging, compounding, or labeling an order, or any combination of these functions, that are performed by:

A person with a current Arizona Board license, located at an Arizona pharmacy, on behalf of and at the request of another resident or nonresident pharmacy; or

A person, located at a nonresident pharmacy, on behalf of and at the request of an Arizona pharmacy; and

Returning the filled order to the requesting pharmacy for delivery to the patient or patient's care-giver or, at the request of this pharmacy, directly delivering the filled order to the patient.

"Shared order processing" means the following:

Interpreting the order, performing order entry verification, drug utilization review, drug compatibility and drug allergy review, final order verification, and when neces-

sary, therapeutic intervention, or any combination of these order processing functions, that are performed by:

A pharmacist or intern, under pharmacist supervision, with a current Arizona Board license, located at an Arizona pharmacy, on behalf of and at the request of another resident or nonresident pharmacy; or

A pharmacist or intern, under pharmacist supervision, located at a nonresident pharmacy, on behalf of and at the request of an Arizona pharmacy; and

After order processing is completed, returning the processed order to the requesting pharmacy for order filling and delivery to the patient or patient's care-giver or, at the request of this pharmacy, returning the processed order to another pharmacy for order filling and delivery to the patient or patient's care-giver.

"Shared services" means shared order filling or shared order processing, or both.

"Sight-readable" means that an authorized individual is able to examine a record and read its information from a CRT, microfiche, microfilm, printout, or other method acceptable to the Board or its designee.

"Single-drug audit" means an accounting method that determines the numerical and percentage difference between a drug's beginning inventory plus purchases and ending inventory plus sales.

"Single-drug usage report" means a computer system printout of original and refill prescription order usage information for a single drug.

"Standard-risk sterile pharmaceutical product" means a sterile pharmaceutical product compounded from sterile commercial drugs using sterile commercial devices or a sterile pharmaceutical optic or ophthalmic product compounded from non-sterile ingredients.

"State of emergency" means a governmental declaration issued under A.R.S. § 32-1910 as a result of a natural disaster or terrorist attack that results in individuals being unable to refill existing prescriptions.

"Sterile pharmaceutical product" means a medicinal drug free from living biological organisms.

"Strength" means:

The concentration of the drug substance (for example, weight/weight, weight/volume, or unit dose/volume basis); or

The potency, that is, the therapeutic activity of a drug substance as indicated by bioavailability tests or by controlled clinical data (expressed, for example, in terms of unity by reference to a standard).

"Substantial-risk sterile pharmaceutical product" means a sterile pharmaceutical product compounded as a parenteral or injectable dosage form from non-sterile ingredients.

"Supervision" means a pharmacist is present, assumes legal responsibility, and has direct oversight of activities relating to acquiring, preparing, distributing, administering, and selling prescription medications by pharmacy interns, graduate interns, pharmacy technicians, or pharmacy technician trainees and when used in connection with the intern training requirements means that, in a pharmacy where intern training occurs, a pharmacy intern preceptor assumes the primary responsibil-

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ity of teaching the intern during the entire period of the training.

“Supplying” means selling, transferring, or delivering to a patient or a patient’s agent one or more doses of:

A nonprescription drug in the manufacturer’s original container for subsequent use by the patient, or

A compressed medical gas in the manufacturer’s or compressed medical gas distributor’s original container for subsequent use by the patient.

“Support personnel” means an individual, working under the supervision of a pharmacist, trained to perform clerical duties associated with the practice of pharmacy, including cashiering, bookkeeping, pricing, stocking, delivering, answering non-professional telephone inquiries, and documenting third-party reimbursement. Support personnel shall not perform the tasks of a pharmacist, pharmacy intern, graduate intern, pharmacy technician, or pharmacy technician trainee.

“Temporary pharmacy facility” means a facility established as a result of a declared state of emergency to temporarily provide pharmacy services within or adjacent to declared disaster areas.

“Tourist” means an individual who is living in Arizona but maintains a place of habitation outside of Arizona and lives outside of Arizona for more than six months during a calendar year.

“Transfill” means a manufacturing process by which one or more compressed medical gases are transferred from a bulk container to a properly labeled container for subsequent distribution or supply.

“Unearned income” means monetary payment received by an individual that is not compensation for work performed or rental of property owned or leased by the individual, including:

Unemployment insurance,

Workers’ compensation,

Disability payments,

Payments from the Social Security Administration,

Payments from public assistance,

Periodic insurance or annuity payments,

Retirement or pension payments,

Strike benefits from union funds,

Training stipends,

Child support payments,

Alimony payments,

Military family allotments,

Regular support payments from a relative or other individual not residing in the household,

Investment income,

Royalty payments,

Periodic payments from estates or trusts, and

Any other monetary payments received by an individual that are not:

As a result of work performed or rental of property owned by the individual,

Gifts,

Lump-sum capital gains payments,

Lump-sum inheritance payments,

Lump-sum insurance payments, or

Payments made to compensate for personal injury.

“Verified signature” or “signature verifying” means in relation to a Board license or permit application or report, form, or agreement, the hand-written or electronic signature of an individual who, by placing a hand-written or electronic signature on a hard-copy or electronic license or permit application or report, form, or agreement agrees with and verifies that the statements and information within or attached to the license or permit application or report, form, or agreement are true in every respect and that inaccurate reporting can result in denial or loss of a license or permit or report, form, or agreement.

“Veteran” means an individual who has served in the United States Armed Forces.

“Wholesale distribution” means distribution of a drug to a person other than a consumer or patient, but does not include:

Selling, purchasing, or trading a drug or offering to sell, purchase, or trade a drug for emergency medical reasons. For purposes of this Section, “emergency medical reasons” includes transferring a prescription drug by a community or hospital pharmacy to another community or hospital pharmacy to alleviate a temporary shortage;

Selling, purchasing, or trading a drug, offering to sell, purchase, or trade a drug, or dispensing a drug as specified in a prescription;

Distributing a drug sample by a manufacturers’ or distributors’ representative; or

Selling, purchasing, or trading blood or blood components intended for transfusion.

“Wholesale distributor” means any person engaged in wholesale distribution of drugs, including: manufacturers; repackers; own-label distributors; private-label distributors; jobbers; brokers; warehouses, including manufacturers’ and distributors’ warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; and retail pharmacies that conduct wholesale distributions in the amount of at least 5% of gross sales.

Historical Note

Adopted effective August 24, 1992 (Supp. 92-2).

Amended effective December 18, 1992 (Supp. 92-4).

Amended effective November 1, 1993 (Supp. 93-4).

Amended effective April 1, 1995; filed with the Secretary of State January 31, 1995 (Supp. 95-1). Amended effective April 5, 1996 (Supp. 96-2). Amended effective July 8, 1997; amended effective August 5, 1997 (Supp. 97-3).

Amended effective January 12, 1998 (Supp. 98-1).

Amended effective July 7, 1998 (Supp. 98-3). Amended by final rulemaking at 5 A.A.R. 862, effective March 3, 1999 (Supp. 99-1). Amended by final rulemaking at 5 A.A.R. 4441, effective November 2, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 4589, effective

November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 7 A.A.R. 646, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 409 and 8 A.A.R. 646, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 416, effective January 10, 2002 (Supp. 02-1). Amended by

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final rulemaking at 8 A.A.R. 1256, effective March 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4052, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 8 A.A.R. 4898 and 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1064, effective May 4, 2003 (Supp. 03-1). Amended by final rulemaking at 9 A.A.R. 5030, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 3391, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 10 A.A.R. 3967, effective November 13, 2004 (Supp. 04-3). Amended by final rulemaking at 10 A.A.R. 4356, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 2258, effective August 6, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 12 A.A.R. 3981, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 13 A.A.R. 520, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 440, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 616, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3477, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 14 A.A.R. 3405, effective October 4, 2008; amended by final rulemaking at 14 A.A.R. 3410, effective October 4, 2008 (Supp. 08-3). Amended by final rulemaking at 14 A.A.R. 4400, effective January 3, 2009; amended by final rulemaking at 14 A.A.R. 4320, effective January 3, 2009 (Supp. 08-4). Amended by final rulemaking at 18 A.A.R. 2603, effective December 2, 2012 (Supp. 12-4). Amended by final rulemaking at 18 A.A.R. 2609, effective December 2, 2012 (Supp. 12-4). Amended by final rulemaking at 19 A.A.R. 2894, effective November 10, 2013 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 1364, effective August 2, 2014 (Supp. 14-2). Amended by exempt rulemaking under Laws 2016, Ch. 284, § 3 at 22 A.A.R. 2606, effective August 31, 2016 (Supp. 16-3).

R4-23-111. Notice of Hearing

- A. Except as provided in A.R.S. § 32-1928(B), the Board shall revoke, suspend, place on probation, or fine a licensee or permittee only after:
 - 1. Notice is served under this Section, and
 - 2. A hearing is conducted under R4-23-122.
- B. The Board shall give notice of hearing to a party at least 30 days before the date set for the hearing in the manner described in R4-23-115(E) and (F). The notice shall include:
 - 1. A statement of the date, time, place, and nature of the hearing;
 - 2. A statement of the legal authority and jurisdiction for the hearing;
 - 3. A reference to the particular section or sections of statute and rule involved; and
 - 4. A statement of the violation or issue asserted by the Board.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

R4-23-112. Ex Parte Communications

A party shall not communicate, either directly or indirectly, with a Board member about any substantive issue in a pending matter unless:

1. All parties are present;
2. It is during a scheduled proceeding, where an absent party fails to appear after proper notice; or
3. It is by written motion with copies to all parties.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

R4-23-113. Motions

- A. Purpose. A party requesting a ruling from the Board shall file a motion. Motions may be made for rulings such as:
 1. Continuing or expediting a hearing under R4-23-116;
 2. Vacating a hearing under R4-23-117;
 3. Scheduling a prehearing conference under R4-23-118;
 4. Quashing a subpoena under R4-23-119;
 5. Requesting telephonic testimony under R4-23-120; and
 6. Reconsidering a previous order under R4-23-121.
- B. Form. Unless made during a prehearing conference or hearing, motions shall be made in writing and shall conform to the requirements of R4-23-115. All motions, whether written or oral, shall state the factual and legal grounds supporting the motion, and the requested action.
- C. Time limits. Absent good cause, or unless otherwise provided by law or these rules, written motions shall be filed with the Board office at least 15 days before the hearing. A party demonstrates good cause by showing that the grounds for the motion could not have been known in time, using reasonable diligence and:
 1. A ruling on the motion will further administrative convenience, expedition or economy; or
 2. A ruling on the motion will avoid undue prejudice to any party.
- D. Response to motion. A party shall file a written response stating any objection to the motion within five days of service, or as directed by the Board.
- E. Oral argument. A party may request oral argument when filing a motion or response. If necessary to develop a complete record, the Board shall grant oral argument.
- F. Rulings. Rulings on motions, other than those made during a prehearing conference or the hearing, shall be in writing and served on all parties.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

R4-23-114. Computing Time

In computing any time period, the Board shall exclude the day from which the designated time period begins to run. The Board shall include the last day of the period unless it falls on a Saturday, Sunday, or legal holiday. When the time period is 10 days or less, the Board shall exclude Saturdays, Sundays, and legal holidays.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

R4-23-115. Filing Documents

- A. Docket. The Board shall open a docket for each hearing. All documents filed in a matter with the Board shall be date stamped on the day received by the Board office and entered in the docket.
- B. Definition. "Documents" include papers such as complaints, answers, motions, responses, notices, and briefs.
- C. Form. A party shall state on the document the name and address of each party served and how service was made under subsection (E). A document shall contain the Board caption and the Board's docket number.

- D. Signature. A document filed with the Board shall be signed by the party or the party's attorney. A signature constitutes a certification that the signer has read the document, has a good faith basis for submission of the document, and that it is not filed for the purpose of delay or harassment.
- E. Filing and service. A copy of a document filed with the Board shall be served on all parties. Filing with the Board office and service shall be completed by personal delivery; first-class, certified, or express mail; or facsimile.
- F. Date of filing and service. A document is filed with the Board on the date it is received by the Board office, as established by the Board office's date stamp on the face of the document. A copy of a document is served on a party as follows:
 1. On the date it is personally served,
 2. Five days after it is mailed by first-class or express mail,
 3. On the date of the return receipt if it is mailed by certified mail, or
 4. On the date indicated on the facsimile transmission.

Historical Note

New Section made by final rulemaking at 10 A.A.R.
1132, effective May 1, 2004 (Supp. 04-1).

R4-23-116. Continuing or Expediting a Hearing; Reconvening a Hearing

- A. Continuing or expediting a hearing. When ruling on a motion to continue or expedite, the Board shall consider such factors as:
 1. The time remaining between the filing of the motion and the hearing date;
 2. The position of other parties;
 3. The reasons for expediting the hearing or for the unavailability of the party, representative, or counsel on the date of the scheduled hearing;
 4. Whether testimony of an unavailable witness can be taken telephonically or by deposition; and
 5. The status of settlement negotiations.
- B. Reconvening a hearing. The Board may recess a hearing and reconvene at a future date by a verbal ruling.

Historical Note

New Section made by final rulemaking at 10 A.A.R.
1132, effective May 1, 2004 (Supp. 04-1).

R4-23-117. Vacating a Hearing

The Board shall vacate a calendared hearing and return the matter to the Board office for further action, if:

1. The parties agree to vacate the hearing;
2. The Board dismisses the matter;
3. The non-Board party withdraws the appeal; or
4. Facts demonstrate to the Board that it is appropriate to vacate the hearing for the purpose of informal disposition, or if the action will further administrative convenience, expedition, and economy and does not conflict with law or cause undue prejudice to any party.

Historical Note

New Section made by final rulemaking at 10 A.A.R.
1132, effective May 1, 2004 (Supp. 04-1).

R4-23-118. Prehearing Conference

- A. Procedure. The Board may hold a prehearing conference. The conference may be held telephonically. The Board may issue a prehearing order outlining the issues to be discussed.
- B. Record. The Board may record any agreements reached during a prehearing conference by electronic or mechanical means, or memorialize them in an order.

Historical Note

New Section made by final rulemaking at 10 A.A.R.
1132, effective May 1, 2004 (Supp. 04-1).

R4-23-119. Subpoenas

- A. Form. A party shall request a subpoena in writing from the Board and shall include:
 1. The caption and docket number of the matter;
 2. A list or description of any documents sought;
 3. The full name and home or business address of the custodian of the documents sought or all persons to be subpoenaed;
 4. The date, time, and place to appear or to produce documents pursuant to the subpoena; and
 5. The name, address, and telephone number of the party, or the party's attorney, requesting the subpoena.
- B. The Board may require a brief statement of the relevance of testimony or documents.
- C. Service of subpoena. Any person who is not a party and is at least 18 years of age may serve a subpoena. The person shall serve the subpoena by delivering a copy to the person to be served. The person serving the subpoena shall provide proof of service by filing with the Board office a certified statement of the date and manner of service and the names of the persons served.
- D. Objection to subpoena. A party, or the person served with a subpoena who objects to the subpoena, or any portion of it, may file an objection with the Board. The objection shall be filed within five days after service of the subpoena, or at the outset of the hearing if the subpoena is served fewer than five days before the hearing.
- E. Quashing, modifying subpoenas. The Board shall quash or modify a subpoena if:
 1. It is unreasonable or oppressive, or
 2. The desired testimony or evidence may be obtained by an alternative method.

Historical Note

New Section made by final rulemaking at 10 A.A.R.
1132, effective May 1, 2004 (Supp. 04-1).

R4-23-120. Telephonic Testimony

The Board may grant a motion for telephonic testimony if:

1. Personal attendance by a party or witness at the hearing will present an undue hardship for the party or witness;
2. Telephonic testimony will not cause undue prejudice to any party; and
3. The proponent of the telephonic testimony pays for any cost of obtaining the testimony telephonically.

Historical Note

New Section made by final rulemaking at 10 A.A.R.
1132, effective May 1, 2004 (Supp. 04-1).

R4-23-121. Rights and Responsibilities of Parties

- A. Generally. A party may present testimony and documentary evidence and argument with respect to the contested issue and may examine and cross-examine witnesses.
- B. Preparation. A party shall have all witnesses, documents, and exhibits available on the date of the hearing.
- C. Exhibits. A party shall provide a copy of each exhibit to all other parties at the time the exhibit is offered to the Board, unless the exhibit was previously provided to all other parties.
- D. Responding to orders. A party shall comply with an order issued by the Board concerning the conduct of a hearing. Unless an objection is made orally during a pre-hearing conference or hearing, a party shall file a motion requesting the Board to reconsider the order.

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Historical Note

New Section made by final rulemaking at 10 A.A.R.
1132, effective May 1, 2004 (Supp. 04-1).

R4-23-122. Conduct of Hearing

- A. Public access. Unless otherwise provided by law, all hearings are open to the public and may be conducted in an informal manner as prescribed in A.R.S. § 41-1092 et seq.
- B. Opening. The Board shall begin the hearing by reading the caption, stating the nature and scope of the hearing, and identifying the parties, counsel, and witnesses for the record.
- C. Stipulations. The Board shall enter into the record any stipulation, settlement agreement, or consent order entered into by any of the parties before or during the hearing.
- D. Opening statements. The party with the burden of proof may make an opening statement at the beginning of a hearing. All other parties may make statements in a sequence determined by the Board.
- E. Order of presentation. After opening statements, the party with the burden of proof shall begin the presentation of evidence, unless the parties agree otherwise or the Board determines that requiring another party to proceed first would be more expeditious or appropriate, and would not prejudice any other party. Copies of documentary evidence may be received in the discretion of the Board. Upon request, parties shall be given an opportunity to compare the copy with the original.
- F. Examination. A party shall conduct direct and cross examination of witnesses in the order and manner determined by the Board to expedite and ensure a fair hearing. The Board shall make rulings necessary to prevent argumentative, repetitive, or irrelevant questioning and to expedite the examination to the extent consistent with the disclosure of all relevant testimony and information. The Board may take notice of judicially cognizable facts. In addition, the Board may take notice of generally recognized technical or scientific facts within the Board's or its staff's specialized knowledge. A party shall be notified either before or during the hearing or by reference in preliminary reports of the material the Board notices. The Board may use the Board's or its staff's experience, technical competence, and specialized knowledge in the evaluation of the evidence.
- G. Closing argument. When all evidence has been received, parties shall have the opportunity to present closing oral argument, in a sequence determined by the Board. The Board may permit or require closing oral argument to be supplemented by written memoranda. The Board may permit or require written memoranda to be submitted simultaneously or sequentially, within time periods the Board may prescribe.
- H. Conclusion of hearing. Unless otherwise provided by the Board, the hearing is concluded upon the submission of all evidence, the making of final argument, and the issuing of a final decision or order of the Board.
- I. Decisions and orders. Unless otherwise provided by law, any final decisions or order adverse to a party in a hearing 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 shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Unless otherwise provided by law, each party shall be notified either personally or by mail to the party's last known address of record of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed to each party and to each party's attorney of record.

Historical Note

New Section made by final rulemaking at 10 A.A.R.
1132, effective May 1, 2004 (Supp. 04-1).

R4-23-123. Failure of Party to Appear for Hearing

If a party fails to appear at a hearing, the Board may proceed with the presentation of the evidence of the appearing party, or vacate the hearing and return the matter to the Board office for any further action.

Historical Note

New Section made by final rulemaking at 10 A.A.R.
1132, effective May 1, 2004 (Supp. 04-1).

R4-23-124. Witnesses; Exclusion from Hearing

All witnesses at the hearing shall testify under oath or affirmation. At the request of a party, or at the discretion of the Board, the Board may exclude witnesses who are not parties from the hearing room so that they cannot hear the testimony of other witnesses.

Historical Note

New Section made by final rulemaking at 10 A.A.R.
1132, effective May 1, 2004 (Supp. 04-1).

R4-23-125. Proof

- A. Standard of proof. Unless otherwise provided by law, the standard of proof is a preponderance of the evidence.
- B. Burden of proof. Unless otherwise provided by law:
 - 1. The party asserting a claim, right, or entitlement has the burden of proof;
 - 2. A party asserting an affirmative defense has the burden of establishing the affirmative defense; and
 - 3. The proponent of a motion shall establish the grounds to support the motion.

Historical Note

New Section made by final rulemaking at 10 A.A.R.
1132, effective May 1, 2004 (Supp. 04-1).

R4-23-126. Disruptions

A person shall not interfere with access to or from the hearing room, or interfere, or threaten interference with the hearing. If a person interferes, threatens interference, or disrupts the hearing, the Board may order the disruptive person to leave or be removed.

Historical Note

New Section made by final rulemaking at 10 A.A.R.
1132, effective May 1, 2004 (Supp. 04-1).

R4-23-127. Hearing Record

- A. Maintenance. The Board shall maintain the official administrative record of a matter.
- B. Transfer of record. Any party requesting a copy of the administrative record or any portion of the administrative record shall make a request to the Board office and shall pay the reasonable costs of duplication.
- C. Release of exhibits. Exhibits shall be released:
 - 1. Upon the order of a court of competent jurisdiction; or
 - 2. Upon motion of the party who submitted the exhibits if the time for judicial appeal has expired and no appeal is pending.

Historical Note

New Section made by final rulemaking at 10 A.A.R.
1132, effective May 1, 2004 (Supp. 04-1).

R4-23-128. Rehearing or Review and Appeal of Decision

- A. The Board shall provide for a rehearing and review of it decisions under A.R.S. Title 41, Chapter 6, Article 10, and this Section. For purposes of these rules, the terms "contested case" and "party" are defined in A.R.S. § 41-1001.
- B. A party to a contested case shall exhaust the party's administrative remedies by filing a motion for rehearing or review within 30 days after the service of the Board decision that is subject to rehearing or review in order to be eligible for judicial review under A.R.S. Title 12, Chapter 7, Article 6. The

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- Board shall notify a party in its decision, that is subject to rehearing or review, that the party may file a motion for rehearing or review, and that failure to file a motion for rehearing or review within 30 days after service of the decision has the effect of prohibiting the party from seeking judicial review of the Board's decision.
- C. A party may amend a motion for rehearing or review at any time before the Board rules on the motion.
- D. The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
1. Irregularity in the proceedings of the Board, or any order or abuse of discretion, that deprived the moving party of a fair hearing;
 2. Misconduct of the Board, its staff, its hearing officer, or the prevailing party;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
 5. Excessive or insufficient penalty;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings;
 7. That the Board's decision is a result of passion or prejudice; or
 8. That the findings of fact or decision is not justified by the evidence or is contrary to law.
- E. The Board may affirm or modify a decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (D). An order modifying a decision or granting a rehearing shall specify with particularity the grounds for the order.
- F. If a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. The Board may extend this period for a maximum of 20 days, for good cause as described in subsection (I).
- G. Not later than 10 days after the date of a decision, after giving parties notice and an opportunity to be heard, the Board may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on the motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.
- H. If a rehearing is granted, the Board shall hold the rehearing within 60 days after the order granting the rehearing is issued.
- I. The Board may extend all time limits listed in this Section upon a showing of good cause. A party demonstrates good cause by showing that the grounds for the party's motion or other action could not have been known in time, using reasonable diligence, and a ruling on the motion will:
1. Further administrative convenience, expedition, or economy; or
 2. Avoid undue prejudice to any party.

Historical Note

New Section made by final rulemaking at 10 A.A.R.
1132, effective May 1, 2004 (Supp. 04-1).

R4-23-129. Notice of Judicial Appeal; Transmitting the Transcript

- A. Notification to the Board office. Within 10 days of filing a complaint for judicial review of a final administrative decision of the Board, the party shall file a copy of the complaint with the Board office. The Board office shall then transmit the administrative record to the Superior Court.

- B. Transcript. A party requesting a transcript shall arrange for transcription at the party's expense. The Board office shall make a copy of the audio taped record available to the transcriber. The party arranging for transcription shall deliver the transcript, certified by the transcriber under oath to be a true and accurate transcription of the audio taped record, to the Board office, together with one unbound copy.

Historical Note

New Section made by final rulemaking at 10 A.A.R.
1132, effective May 1, 2004 (Supp. 04-1).

ARTICLE 2. PHARMACIST LICENSURE**R4-23-201. General**

- A. License required. Before practicing as a pharmacist in Arizona, a person shall possess a valid pharmacist license issued by the Board. There is no temporary licensure.
- B. Methods of licensure. Licensure as a pharmacist shall be either:
1. By practical examination, using paper and pencil written testing, computer adaptive testing, or other Board-approved testing method; or
 2. By reciprocity.
- C. Practicing pharmacist holding a delinquent license. Before the Board reinstates an Arizona pharmacist license, a pharmacist, whose Arizona pharmacist license is delinquent for five or more years and who is practicing pharmacy outside the Board's jurisdiction with a pharmacist license issued by another jurisdiction, shall:
1. Pass the MPJE or other Board-approved jurisprudence examination,
 2. Pay all delinquent annual renewal fees, and
 3. Pay penalty fees.
- D. Non-practicing pharmacist holding a delinquent license. Before the Board reinstates an Arizona pharmacist license, a pharmacist, whose Arizona pharmacist license is delinquent for five or more years and who did not practice pharmacy within the last 12 months before seeking reinstatement, shall:
1. Complete the requirements in subsection (C), and
 2. Appear before the Board to furnish satisfactory proof of fitness to be licensed as a pharmacist.
- E. Verification of license. A pharmacy permittee or pharmacist-in-charge shall not permit a person to practice as a pharmacist until the pharmacy permittee or pharmacist-in-charge verifies that the person is currently licensed by the Board as a pharmacist.

Historical Note

Former Rules 2.1100, 2.1310, 2.1320, and 2.1400.

Amended effective August 23, 1978 (Supp. 78-4).

Amended by deleting subsection (E) effective April 20, 1982 (Supp. 82-2). Amended subsections (C) and (D) effective August 12, 1988 (Supp. 88-3). Amended effective February 8, 1991 (Supp. 91-1). Amended effective

January 12, 1998 (Supp. 98-1). Amended by final rulemaking at 10 A.A.R. 4356, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 19 A.A.R. 2911, effective November 10, 2013 (Supp. 13-3).

R4-23-202. Licensure by Examination

- A. Eligibility. To be eligible for licensure as a pharmacist by examination, a person shall:
1. Have a degree in pharmacy from a school or college of pharmacy approved by the Board as specified in A.R.S. § 32-1935, and whose professional degree program, at the time the person graduates, is accredited by the Accreditation Council for Pharmacy Education; or

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2. Qualify under the requirements of A.R.S. § 32-1922(D); and
3. Complete not less than 1500 hours of intern training as specified in R4-23-303.
- B. Application.**
1. An applicant for licensure by examination shall:
 - a. Submit a completed application for licensure by examination electronically or manually on a form furnished by the Board, and
 - b. Submit with the application form:
 - i. The documents specified in the application form, and
 - ii. The application fee specified in R4-23-205(C).
 2. The Board office shall deem an application form received on the date the Board office electronically or manually date-stamps the form.
 3. An applicant for licensure by examination shall register for NAPLEX and MPJE through NABP's registration process.
 4. The Board shall deem an application for licensure by examination invalid after 12 months from the date the application is received. An applicant whose application form is invalid and who wishes to continue licensure procedures, shall submit a new application form and fee as specified in R4-23-205(C).
- C. Passing grade; notification; re-examination.**
1. To pass the required examinations, an applicant shall obtain a score of at least 75 on both the NAPLEX and MPJE.
 2. The Board office shall:
 - a. Retrieve an applicant's NAPLEX and MPJE score from the NABP database no later than two weeks after the applicant's examination date, and
 - b. Provide written notice by mail to an applicant who fails the NAPLEX or MPJE no later than seven days after the Board office retrieves the applicant's score from NABP.
 3. An applicant who fails the NAPLEX or MPJE may register with the NABP to retake the examination within the 12-month period defined in subsection (B)(4). An applicant who fails the NAPLEX or MPJE three times shall petition the Board as specified in R4-23-401 for Board approval before retaking the examination.
 4. For the purpose of licensure by examination, the Board office shall deem a passing score on the NAPLEX or MPJE invalid after 24 months from the applicant's examination date. An applicant who fails to complete the licensure process within the 24-month period, and who wishes to continue licensure procedures, shall retake the examination(s).
- D. NAPLEX score transfer.**
1. The Board office shall deem a score transfer received on the date the NABP transmits the applicant's official score transfer report to the Board office.
 2. An applicant who receives a passing score on the NAPLEX taken in another jurisdiction shall, within 12 months from the date the Board office receives the applicant's official NABP score transfer report from the NABP, make application for licensure according to subsection (B). After 12 months, an applicant may reapply for licensure in this state under the provisions of subsection (B) or R4-23-203(B).
 3. An applicant who takes the NAPLEX in another jurisdiction and fails the examination may apply for licensure in this state under the provisions of subsection (B).
- E. Licensure.**
1. The Board office shall issue a certificate of licensure and a wall license to a successful applicant upon receipt of:
 - a. The initial licensure fee specified in R4-23-205(A)(1)(a), and
 - b. The wall license fee specified in R4-23-205(E)(1)(a).
 2. A licensee shall maintain the certificate of licensure in the practice site for inspection by the Board or its designee or review by the public.
- F. Time-frames for licensure by examination.**
1. The Board office shall complete an administrative completeness review within 60 days from the date the application form is received.
 - a. The Board office shall issue a written notice of administrative completeness to the applicant if no deficiencies are found in the application form.
 - b. If the application form is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 60-day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
 - c. If the Board office does not provide the applicant with written notice regarding administrative completeness, the application form shall be deemed complete 60 days after receipt by the Board office.
 2. An applicant with an incomplete application form shall submit all of the missing information within 90 days of service of the notice of incompleteness.
 - a. If an applicant cannot submit all missing information within 90 days of service of the notice of incompleteness, the applicant may send a written request for an extension to the Board office postmarked or delivered no later than 90 days from service of the notice of incompleteness.
 - b. The written request for an extension shall document the reasons the applicant is unable to meet the 90-day deadline.
 - c. The Board office shall review the request for an extension of the 90-day deadline and grant the request if the Board office determines that an extension of the deadline will enable the applicant to assemble and submit the missing information. An extension shall be for no more than 30 days. The Board office shall notify the applicant in writing of its decision to grant or deny the request for an extension.
 3. If an applicant fails to submit a complete application form within the time allowed, the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a license shall apply again according to subsection (B).
 4. The Board office shall complete a substantive review of the applicant's qualifications in no more than 120 days from the date on which the administrative completeness review of an application form is complete.
 - a. If an applicant is found to be ineligible for licensure by examination, the Board office shall issue a written notice of denial to the applicant.
 - b. If an applicant is found to be eligible to take the NAPLEX, the Board office shall notify the NABP that the applicant is eligible to test. The NABP shall issue the applicant an authorization to test letter.

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- c. If an applicant is found to be eligible to take the MPJE, the Board office shall notify the NABP that the applicant is eligible to test. The NABP shall issue the applicant an authorization to test letter.
 - d. The Board office shall deem an applicant's eligibility to test invalid after 12 months from the date the application for licensure by examination is received.
 - e. If the Board office finds deficiencies during the substantive review of an application form, the Board office shall issue a written request to the applicant for additional documentation.
 - f. The 120-day time-frame for a substantive review of eligibility to take the NAPLEX or MPJE is suspended from the date of a written request for additional documentation until the date that all documentation is received. The applicant shall submit the additional documentation according to subsection (F)(2).
 - g. If the applicant and the Board office mutually agree in writing, the 120-day substantive review time-frame may be extended once for no more than 45 days.
 - 5. For the purpose of A.R.S. § 41-1072 et seq., the Board establishes the following time-frames for licensure by examination.
 - a. Administrative completeness review time-frame: 60 days.
 - b. Substantive review time-frame: 120 days.
 - c. Overall time-frame: 180 days.
- G. License renewal.**
1. To renew a license, a pharmacist shall submit a completed license renewal application electronically or manually on a form furnished by the Board with the biennial renewal fee specified in R4-23-205(A)(1)(b).
 2. If the biennial renewal fee is not paid by November 1 of the renewal year specified in A.R.S. § 32-1925, the pharmacist license is suspended and the licensee shall not practice as a pharmacist. The licensee shall pay a penalty as provided in A.R.S. § 32-1925 and R4-23-205(G)(1) to vacate the suspension.
 3. A licensee shall maintain the renewal certificate of licensure in the practice site for inspection by the Board or its designee or review by the public.
 4. Time-frames for license renewals. The Board office shall follow the time-frames established in subsection (F).

Historical Note

Former Rules 2.2100, 2.2200, 2.2300, 2.2400, 2.2500, 2.2600, 2.2700, 2.2800, 2.2910, 2.2920, 2.2930, 2.3000, 2.3010, 2.3100; Amended effective August 23, 1978 (Supp. 78-5). Amended effective June 10, 1981 (Supp. 81-3). Former Section R4-23-202 repealed, new Section R4-23-202 adopted effective July 24, 1985 (Supp. 85-4). Amended effective March 13, 1991 (Supp. 91-1). Amended effective January 12, 1998 (Supp. 98-1). Amended by final rulemaking at 8 A.A.R. 409 and 8 A.A.R. 646, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 10 A.A.R. 4356, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 12 A.A.R. 4689, effective February 3, 2007 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 3605, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 2911, effective November 10, 2013 (Supp. 13-3).

R4-23-203. Licensure by Reciprocity

- A. Eligibility.** A person is eligible for licensure by reciprocity who:
 - 1. Is licensed as a pharmacist in a jurisdiction that provides reciprocity to Arizona licensees,
 - 2. Has passed the NABPLEX or NAPLEX with a score of 75 or better or was licensed by examination in another jurisdiction having essentially the same standards for licensure as this state at the time the pharmacist was licensed,
 - 3. Provides evidence to the Board of having completed the required secondary and professional education and training specified in R4-23-202(A),
 - 4. Has engaged in the practice of pharmacy for at least one year or has met the internship requirements of Article 3 within the year immediately before the date of application, and
 - 5. Has actively practiced as a pharmacist for 400 or more hours within the last calendar year or has an Arizona graduate intern license and has completed 400 hours of internship training in a Board-approved internship training site.
- B. Application.**
 - 1. An applicant for licensure by reciprocity shall:
 - a. Submit a completed application for licensure by reciprocity electronically or manually on a form furnished by the Board, and
 - b. Submit with the application form:
 - i. The documents specified in the application form, and
 - ii. The reciprocity fee specified in R4-23-205(B).
 - 2. The Board office shall deem an application form received on the date the Board office electronically or manually date-stamps the form.
 - 3. An applicant for licensure by reciprocity shall register for MPJE through NABP's registration process.
 - 4. The Board office shall deem an application for licensure by reciprocity invalid after 12 months from the date the application is received. An applicant whose application form is invalid and who wishes to continue licensure procedures, shall submit a new application form and fee as specified in R4-23-205(B).
- C. Passing grade; notification; re-examination.**
 - 1. To pass the required examination, an applicant shall obtain a score of at least 75 on the MPJE.
 - 2. The Board office shall:
 - a. Retrieve an applicant's MPJE score from the NABP database no later than two weeks after the applicant's examination date, and
 - b. Provide written notice by mail to an applicant who fails the MPJE no later than seven days after the Board office retrieves the applicant's score from NABP.
 - 3. An applicant who fails the MPJE may register with the NABP to retake the examination within the 12-month period specified in subsection (B)(4). An applicant who fails the MPJE three times shall petition the Board as specified in R4-23-401 for Board approval before retaking the examination.
 - 4. For the purpose of licensure by reciprocity, the Board office shall deem a passing score on the MPJE invalid after 24 months from the applicant's examination date. An applicant who fails to complete the licensure process within the 24-month period, and who wishes to continue licensure procedures, shall retake the examination.
- D. Licensure.**

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1. The Board office shall issue a certificate of licensure and a wall license to a successful applicant upon receipt of:
 - a. The initial licensure fee specified in R4-23-205(A)(1)(a), and
 - b. The wall license fee specified in R4-23-205(E)(1)(a).
 2. A licensee shall maintain the certificate of licensure in the practice site for inspection by the Board or its designee or review by the public.
- E.** Time-frames for licensure by reciprocity. The Board office shall follow the time-frames established for licensure by examination in R4-23-202(F).
- F.** License renewal. License renewal shall be the same as specified in R4-23-202(G).

Historical Note

Former Rules 2.4100, 2.4200, 2.4310, 2.4320, 2.4330, 2.4340, 2.4350, 2.4360, 2.4400, 2.4510, 2.4520, 2.4522, 2.4523, 2.4530, 2.4540, 2.4550, 2.4560, 2.4610, 2.4620, and 2.4700; Amended effective August 23, 1978 (Supp. 78-4). Amended subsections (H), (L), (O) through (Q) effective June 10, 1981 (Supp. 81-3). Former Section R4-23-203 repealed, new Section R4-23-203 adopted effective July 24, 1985 (Supp. 85-4). Amended effective March 13, 1991 (Supp. 91-1). Amended effective January 12, 1998 (Supp. 98-1). Amended effective January 12, 1998 (Supp. 98-1). Amended by final rulemaking at 8 A.A.R. 409 and 8 A.A.R. 646, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 10 A.A.R. 4356, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 14 A.A.R. 3605, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 2911, effective November 10, 2013 (Supp. 13-3).

R4-23-204. Continuing Education Requirements

- A.** General. In accordance with A.R.S. § 32-1925(G), the Board shall not renew a license unless the applicant has, during the two years preceding the application for renewal, participated in 30 contact hours (3.0 CEU's) of continuing education activity sponsored by an Approved Provider as defined in R4-23-110, of which at least three contact hours (0.3 CEU's) are approved courses in pharmacy law. Subject to A.R.S. § 32-1937, a pharmacist licensed for less than 24 months shall obtain continuing education units in an amount determined by multiplying 1.25 hours times the number of months between the date of initial licensure and the next license renewal date.
- B.** Acceptance of continuing education units (CEU's). The Board shall:
1. Only accept CEU's for continuing education activities sponsored by an Approved Provider;
 2. Only accept CEU's accrued during the two-year period immediately before licensure renewal;
 3. Not allow CEU's accrued in a biennial renewal period in excess of the 3.0 CEU's required to be carried forward to the succeeding biennial renewal period;
 4. Allow a pharmacist who leads, instructs, or lectures to a group of health professionals on pharmacy-related topics in continuing education activities sponsored by an Approved Provider to receive CEU's for a presentation by following the same attendance procedures as any other attendee of the continuing education activity; and
 5. Not accept as CEU's the performance of normal teaching duties within a learning institution by a pharmacist whose primary responsibility is the education of health professionals.

- C. Continuing education records and reporting CEU's. A pharmacist shall:
 1. Maintain continuing education records that:
 - a. Verify the continuing education activities the pharmacist participated in during the preceding five years; and
 - b. Consist of a statement of credit or a certificate issued by an Approved Provider at the conclusion of a continuing education activity;
 2. At the time of licensure renewal, attest to the number of CEU's the pharmacist participated in during the renewal period on the biennial renewal form; and
 3. When requested by the Board office, submit proof of continuing education participation within 20 days of the request.
- D. The Board may revoke, suspend, or place on probation the license of a pharmacist who fails to comply with continuing education participation, recording, or reporting requirements of this Section.
- E. A pharmacist who is aggrieved by any decision of the Board or its administrative staff concerning continuing education units may request a hearing before the Board.

Historical Note

Adopted effective September 1, 1981 (Supp. 81-5).

Amended effective March 13, 1991 (Supp. 91-1).

Amended by final rulemaking at 8 A.A.R. 409 and 8 A.A.R. 646, effective January 10, 2002 (Supp. 02-1).

R4-23-205. Fees

- A.** The Board shall collect the full biennial fee for all initial and renewal license and permit applications listed in subsections (B) and (C).
1. If a license or permit is issued from November of an odd-numbered year through October of an even-numbered year, the licensee or permittee shall renew on or before November 1 of the next odd-numbered year.
 2. If a license or permit is issued from November of an even-numbered year through October of an odd-numbered year, the licensee or permittee shall renew on or before November 1 of the next even-numbered year.
- B.** Licensure fees:
1. Pharmacist:
 - a. Initial licensure: \$180.
 - b. Licensure renewal: \$180.
 2. Pharmacy or graduate intern. Initial licensure: \$50.
 3. Pharmacy technician:
 - a. Initial licensure: \$72.
 - b. Licensure renewal: \$72.
- C.** Vendor permit fees (Resident and nonresident):
1. Pharmacy: \$480 biennially (Including hospital, and limited service).
 2. Drug wholesaler or manufacturer:
 - a. Manufacturer: \$1000 biennially.
 - b. Full-service drug wholesaler: \$1000 biennially.
 - c. Nonprescription drug wholesaler: \$500 biennially.
 3. Drug packager or repackager: \$1000 biennially.
 4. Nonprescription drug, retail:
 - a. Category I (30 or fewer items): \$120 biennially.
 - b. Category II (more than 30 items): \$200 biennially.
 5. Compressed medical gas distributor: \$200 biennially.
 6. Durable medical equipment and compressed medical gas supplier: \$100 biennially.
- D.** Pharmacy technician trainee 36-month, non-renewable, license: \$50.
1. If an individual obtained an initial pharmacy technician trainee license before August 9, 2017, the Board shall

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- allow the individual to reapply once for a pharmacy technician trainee license if the individual reapplies before the initial license expires and pays a reapplication fee of \$36; and
2. If a pharmacy technician trainee's initial license expires before August 9, 2017, and the pharmacy technician trainee does not reapply before August 9, 2017, the Board shall not allow the former pharmacy technician trainee to reapply.
- E. Reciprocity fee:** \$300.
- F. Application fee:** \$50.
- G. Certificate fees:**
1. Certificate of free sale: \$200 per certificate.
 2. Certificate of good manufacturing practice: \$200 per certificate.
 3. Annual inspection fee calculated at the average hourly rate of a pharmacy inspector multiplied by the duration of the inspection measured in 10-minute increments or portion of a 10-minute increment.
- H. Other fees:**
1. Wall license.
 - a. Pharmacist: \$20.
 - b. Pharmacy or graduate intern: \$10.
 - c. Pharmacy technician: \$10.
 - d. Pharmacy technician trainee: \$10.
 2. Duplicate of any Board-issued license, registration, certificate, or permit: \$10.
 3. Duplicate current renewal license: \$10.
 4. License, permit, or certificate verification: \$15.
- I. Fees** are not refunded under any circumstances except for the Board's failure to comply with its established licensure or permit time frames under R4-23-202 or R4-23-602.
- J. Penalty.** Renewal applications submitted after the expiration date are subject to a penalty as provided in A.R.S. §§ 32-1925 and 32-1931.
1. Licensees: A penalty equal to half the licensee's biennial licensure renewal fee under subsection (B) and not to exceed \$350.
 2. Permittees: A penalty equal to half the permittee's biennial permit fee under subsection (C) and not to exceed \$350.

Historical Note

Adopted effective July 24, 1985 (Supp. 84-5). Amended subsection (A) paragraph (1) effective May 20, 1988 (Supp. 88-2). Amended effective August 12, 1988 (Supp. 88-3). Amended effective February 8, 1991 (Supp. 91-1). Amended effective April 1, 1995; filed with the Secretary of State January 31, 1995 (Supp. 95-1). Amended effective January 12, 1998 (Supp. 98-1). Amended by final rulemaking at 6 A.A.R. 4589, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 8 A.A.R. 409 and 8 A.A.R. 646, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 416, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 15 A.A.R. 173, effective March 7, 2009 (Supp. 09-1). Amended by final rulemaking at 20 A.A.R. 1364, effective August 2, 2014 (Supp. 14-2). Amended by exempt rulemaking under Laws 2016, Ch. 284, § 3 at 22 A.A.R. 2606, effective August 31, 2016 (Supp. 16-3). Amended by final exempt rulemaking at 23 A.A.R. 2058, effective August 9, 2017; amended by final exempt rulemaking with amendments to subsection (D), at 23 A.A.R. 2383 (Supp. 17-3).

ARTICLE 3. INTERN TRAINING AND PHARMACY INTERN PRECEPTORS**R4-23-301. Intern Licensure**

- A. Licensure as a pharmacy intern or graduate intern is for the purpose of complementing the individual's academic or experiential education in preparation for licensure as a pharmacist. An applicant may request a waiver of intern licensure requirements by submitting a written request as specified in R4-23-401 and appearing in person at a Board meeting.
- B. The prerequisites for licensure as a pharmacy intern are:
1. Current enrollment, in good standing, in a Board-approved college or school of pharmacy; or
 2. Graduation from a college or school of pharmacy that is not approved by the Board; and
 3. Proof that the applicant is certified by the Foreign Pharmacy Graduate Examination Committee (FPGEC); or
 4. By order of the Board if the Board determines the applicant needs intern training.
- C. If a pharmacy intern licensee stops attending pharmacy school classes before completing the pharmacy school's requirements for graduation, the licensee shall immediately stop practicing as a pharmacy intern and surrender the pharmacy intern license to the Board or the Board's designee no later than 30 days after the date of the last attended class, unless the licensee petitions the Board as specified in R4-23-401 and receives Board approval to continue working as a pharmacy intern. A student re-entering a pharmacy program who wishes to continue internship training shall reapply for pharmacy intern licensure.
- D. The prerequisites for licensure as a graduate intern are:
1. Graduation from a Board-approved college or school of pharmacy, and
 2. Application for licensure as a pharmacist by examination or reciprocity, or
 3. By order of the Board if the Board determines that the applicant needs intern training.
- E. Experiential training. Intern training shall include the activities and services encompassed by the term "practice of pharmacy" as defined in A.R.S. § 32-1901.
- F. Out-of-state experiential training. An intern shall receive credit for intern training received outside this state if the Board determines that the intern training requirements of the jurisdiction in which the training was received are equal to the minimum requirements for intern training in this state. An applicant seeking credit for intern training received outside this state shall furnish a certified copy of the records of intern training from:
1. The Board of Pharmacy or the intern licensing agency of the other jurisdiction where the training was received; or
 2. In a jurisdiction without an intern licensing agency, the director of the applicant's Board-approved college or school of pharmacy's experiential training program.
- G. Verification of license. A pharmacy permittee or pharmacist-in-charge shall not permit a person to practice as a pharmacy or graduate intern until the pharmacy permittee or pharmacist-in-charge verifies that the person is currently licensed by the Board as a pharmacy or graduate intern.
- H. Intern application.
1. An applicant for licensure as a pharmacy intern or graduate intern shall:
 - a. Submit a completed application electronically or manually on a form furnished by the Board, and
 - b. Submit with the application form:
 - i. The documents specified in the application form,

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- ii. The initial licensure fee specified in R4-23-205(A)(2), and
 - iii. The wall license fee specified in R4-23-205(E)(1)(b).
2. The Board office shall deem an application form received on the date the Board office electronically or manually date-stamps the form.
- I. Licensure.**
1. If an applicant is found to be ineligible for intern licensure under statute and rule, the Board office shall issue a written notice of denial to the applicant.
 2. If an applicant is found to be eligible for intern licensure under statute and rule, the Board office shall issue a certificate of licensure and a wall license. An applicant who is assigned a license number and who has been granted "open" status on the Board's license verification site may begin practice as a pharmacy intern or graduate intern prior to receiving the certificate of licensure.
 3. An applicant who is assigned a license number and who has a "pending" status on the Board's license verification site shall not practice as a pharmacy intern or graduate intern until the Board office issues a certificate of licensure as specified in subsection (2).
 4. A licensee shall maintain the certificate of licensure in the practice site for inspection by the Board or its designee or review by the public.
- J. Time-frames for intern licensure.** The Board office shall follow the time-frames established in R4-23-202(F).
- K. License renewal.**
1. A pharmacy intern whose license expires before the intern completes the education or training required for licensure as a pharmacist but less than six years after the issuance of the initial pharmacy intern license may renew the intern license for a period equal to the difference between the expiration date of the initial intern license and six years from the issue date of the initial intern license by payment of a prorated renewal fee based on the initial license fee specified in R4-23-205(A)(2).
 2. If a pharmacy intern fails to graduate from a Board-approved college or school of pharmacy within six years from the date the Board issues the initial intern license, the intern is not eligible for relicensure as an intern unless the intern obtains Board approval as specified in A.R.S. § 32-1923(E) and R4-23-401. To remain in good standing, an intern who receives Board approval for relicensure shall pay a prorated renewal fee for the number of months of licensure approved by the Board based on the initial license fee specified in R4-23-205(A)(2) before the license expiration date.
 3. If an intern receives Board approval for relicensure and does not pay the renewal fee specified in subsection (2) before the license expiration date, the intern license is suspended and the licensee shall not practice as an intern. The licensee shall pay a penalty as provided in A.R.S. § 32-1925 and R4-23-205(G)(1) to vacate the suspension.
- L. Notification of training.**
1. A pharmacy intern who is employed as an intern outside the experiential training program of a Board-approved college or school of pharmacy or a graduate intern shall notify the Board within ten days of starting or terminating training, or changing training site.
 2. The director of a Board-approved college or school of pharmacy's experiential training program shall provide the Board an intern training report as specified in R4-23-304(B)(3).

Historical Note

Former Rules 3.1000, 3.1100, 3.1200, 3.2000, 3.2100, and 3.2200; Amended effective August 23, 1978 (Supp. 78-4). Amended effective April 20, 1982 (Supp. 82-2). Amended subsections (A), (F) and (G) effective August 12, 1988 (Supp. 88-3). Amended effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 416, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 10 A.A.R. 4356, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 3565, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 3670, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 2911, effective November 10, 2013 (Supp. 13-3).

R4-23-302. Training Site and Pharmacy Intern Preceptors

- A.** To receive credit for intern training hours, a pharmacy or graduate intern shall train in a site that:
 1. Holds a valid Arizona pharmacy permit and employs a pharmacy intern preceptor who supervises the intern; or
 2. Is an alternative training site. For purposes of this Section, the term alternative training site is a non-pharmacy training site established and monitored by a Board-approved college or school of pharmacy or other non-pharmacy site where pharmacy related activities are performed and where an intern gains experience as specified in R4-23-301(E).
- B.** The Board shall inform a pharmacy or alternative training site that an intern will not get credit for training received at the site if the Board determines that a pharmacy or alternative training site fails to provide experiential training as specified in R4-23-301(E) or violates A.R.S. Chapter 18 Title 32 or Chapter 27 Title 36 or the federal act.
- C. Pharmacy intern preceptor.** To be a pharmacy intern preceptor, a pharmacist shall:
 1. Hold a current unrestricted pharmacist license;
 2. Have a minimum of one year of experience as an actively practicing pharmacist before acting as a pharmacy intern preceptor;
 3. If a pharmacist has been found guilty of violating any federal or state law relating to the practice of pharmacy, drug or device distribution or recordkeeping, or unprofessional conduct, enter into an agreement satisfactory to the Board that places restrictions on the pharmacist's license; and
 4. Hold a faculty position in the experiential training program of a Board-approved college or school of pharmacy; or
 5. Be approved by the Board as being otherwise qualified as a pharmacy intern preceptor.
- D. Revocation of preceptorship privileges.** The Board shall revoke a pharmacy intern preceptor's privilege to train pharmacy or graduate interns if the Board determines that a pharmacy intern preceptor fails to provide experiential training as specified in R4-23-301(E) or violates A.R.S. Title 32, Chapter 18 or Title 36, Chapter 27 or the federal act. R4-23-111 applies to revocation of preceptor privileges.
- E. Pharmacist-to-intern ratio.** A pharmacy intern preceptor may supervise the training of more than one pharmacy or graduate intern during a calendar quarter. The ratio of pharmacist to intern shall not exceed one pharmacist to two interns in a community pharmacy or limited-service pharmacy setting unless approved by the Board. In considering a request to exceed the ratio, the Board will consider pharmacy space limitations and

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whether exceeding the ratio poses a safety risk to the public health. Subject to R4-23-609 and the safety of public health, there is no pharmacist-to-intern ratio in a practice setting directed by a Board-approved college or school of pharmacy experiential training program.

- F.** Preceptor responsibilities. A pharmacy intern preceptor assumes the responsibilities of a teacher and mentor in addition to those of a pharmacist. A preceptor shall thoroughly review pharmacy policy and procedure with each intern. A preceptor is responsible for the pharmacy-related actions of an intern during the specific training period. A preceptor shall give an intern the opportunity for skill development and provide an intern with timely and realistic feedback regarding their progress.

Historical Note

Former Rules 3.3000, 3.3100, 3.3200, 3.3300, 3.3310, 3.3320, 3.3330, 3.3340, 3.3400, 3.4000, 3.4100, 3.4200, 3.4300, and 3.4400; Amended effective August 9, 1983 (Supp. 83-4). Amended by final rulemaking at 8 A.A.R. 416, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 3605, effective November 8, 2008 (Supp. 08-3).

R4-23-303. Training Time

- A.** Training. The minimum hours of internship training required for licensure by examination shall be 1,500.
1. After enrolling in a Board-approved college or school of pharmacy as prescribed in R4-23-301(B) and receiving a Board-issued pharmacy intern license, a pharmacy intern shall complete all required internship training as part of the pharmacy intern's Board-approved college or school of pharmacy experiential training program.
 2. After receiving a Board-issued pharmacy intern license, an individual who is a graduate of a college or school of pharmacy that is not approved by the Board shall complete a minimum of 1,500 hours of internship training in a training site or sites as defined in R4-23-302(A).
 3. After receiving a Board-issued graduate intern license, a graduate intern shall complete the number of internship training hours required by the Board in a training site or sites as defined in R4-23-302(A).
- B.** Start of training and limitation of credit. To receive credit as internship training, the practical experience shall take place in a pharmacy or an alternative training site as specified in R4-23-302(A) and under the supervision of a pharmacy intern preceptor, except for a non-pharmacy site either as part of a Board-approved college or school of pharmacy experiential training program or as approved by the Board or its designee. The Board shall credit no more than 500 hours internship training as a pharmacy or graduate intern in an alternative training site specified in R4-23-302(A)(2).

Historical Note

Former Rules 3.5000 and 3.5200; Amended effective August 23, 1978 (Supp. 78-4). Amended effective August 9, 1983 (Supp. 83-4). Amended by final rulemaking at 8 A.A.R. 416, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2619, effective December 2, 2012 (Supp. 12-4).

R4-23-304. Reports

- A.** Change of employment or mailing address. A pharmacy intern or graduate intern shall notify the Board within ten days of change of employment or mailing address.
- B.** Annual reports.
1. A pharmacy intern who is a graduate of a college or school of pharmacy that is not approved by the Board or

is a graduate intern shall provide the Board annual intern training reports for the duration of training. The pharmacy intern shall file an annual intern training report on a report form provided by the Board by calendar year (January 1st through December 31st). An annual intern training report shall be received at the Board's office no later than 30 days after the end of the calendar year. Any intern training hours reported to the Board office more than 30 days after the end of the calendar year in which the training hours were performed shall not be credited toward the total intern training hours required for licensure.

2. After graduation and before sitting for the NAPLEX or MPJE, a pharmacy intern who is a graduate of a Board-approved college or school of pharmacy shall ensure that the director of the Board-approved college or school of pharmacy's experiential training program provides the Board an intern training report that includes:
 - a. The dates and number of training hours experienced, by training site and total; and
 - b. The date signed and experiential training program director's signature verifying that the pharmacy intern successfully completed the experiential training program.

Historical Note

Former Rules 3.6100, 3.6200, 3.6300, and 3.6400; Amended effective August 23, 1978 (Supp. 78-4). Amended by final rulemaking at 8 A.A.R. 416, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 10 A.A.R. 4356, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 18 A.A.R. 2619, effective December 2, 2012 (Supp. 12-4). Amended by final rulemaking at 19 A.A.R. 2911, effective November 10, 2013 (Supp. 13-3).

R4-23-305. Miscellaneous Intern Training Provisions

To prevent a loss of intern hour credit and before beginning training, an intern may ask the Board if a training site meets the requirements specified in R4-23-301(E) and R4-23-302(A).

Historical Note

Former Rule 3.7000; Amended effective August 23, 1978 (Supp. 78-4). Amended by final rulemaking at 8 A.A.R. 416, effective January 10, 2002 (Supp. 02-1).

ARTICLE 4. PROFESSIONAL PRACTICES**R4-23-401. Time-frames for Board Approvals and Special Requests**

- A.** To request a Board approval required by this Chapter or a special request to deviate from or waive compliance with a requirement of this Chapter, a person shall send a letter by regular mail, e-mail, or facsimile to the Board office, detailing the nature of the approval or special request, including the applicable Arizona Revised Statute or administrative code citation. This Section does not apply to a request from a person regarding the probation, suspension, or revocation of a license or permit.
- B.** The Board office shall complete an administrative completeness review within 15 days from the date of receipt of a written request and immediately open a request file for the applicant.
1. The Board office shall issue a written notice of administrative completeness to the applicant if no deficiencies are found in the request.
 2. If the request is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 15-day time-frame for the Board office to finish the adminis-

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- trative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
3. If the Board office does not provide the applicant with notice regarding administrative completeness, the request is deemed complete 15 days after receipt by the Board office.
- C. An applicant with an incomplete request shall submit all of the missing information within 30 days of service of the notice of incompleteness.
1. If an applicant cannot submit all missing information within 30 days of service of the notice of incompleteness, the applicant may send a written request for an extension to the Board office post-marked or delivered no later than 30 days from service of the notice of incompleteness.
 2. The written request for an extension shall document the reasons the applicant cannot meet the 30-day deadline.
 3. The Board office shall review the request for an extension of the 30-day deadline and grant the request if the Board office determines that an extension of the deadline will enable the applicant to assemble and submit the missing information. An extension shall be for no more than 30 days. The Board office shall notify the applicant in writing of its decision to grant or deny the request for an extension. An applicant who requires an additional extension shall submit an additional written request according to subsections (C)(1) and (C)(2).
- D. If an applicant fails to submit a complete request within the time allowed, the Board office shall close the applicant's request file. An applicant whose request file is closed and who later wishes to obtain an approval or special request shall apply again according to subsection (A).
- E. From the date on which the administrative completeness review of a request is finished, the Board shall complete a substantive review of the applicant's request in no more than 120 days.
1. The Board shall:
 - a. Approve the request,
 - b. Deny the request, or
 - c. If the Board determines deficiencies exist, request that the applicant produce additional documentation.
 2. If the Board approves or denies, the Board office shall issue a written approval or denial.
 3. If the Board finds deficiencies during the substantive review of a request, the Board office shall issue a written request to the applicant for additional documentation.
 4. The 120-day time-frame for a substantive review of a request for approval or special request is suspended from the date of a written request for additional documentation until the date of the next Board meeting after all documentation is received. The applicant shall submit the additional documentation according to subsection (C).
 5. If the applicant and the Board office mutually agree in writing, the 120-day substantive review time-frame may be extended once for no more than 30 days.
- F. If the applicant fails to submit the additional information requested within the time allowed, the Board office shall close the applicant's request file. An applicant whose request file is closed and who later wishes to obtain an approval or special request shall apply again according to subsection (A).
- G. For the purpose of A.R.S. § 41-1072 et seq., the Board establishes the following time-frames for a Board approval required by this Chapter or a special request to deviate from or waive compliance with a requirement of this Chapter:
1. Administrative completeness review time-frame: 15 days;

2. Substantive review time-frame: 120 days; and
3. Overall time-frame: 135 days.

Historical Note

Former Rule 4.1000; Former Section R4-23-401 repealed, new Section R4-23-401 adopted effective August 9, 1983 (Supp. 83-4). Amended effective May 16, 1990 (Supp. 90-2). Repealed effective August 24, 1992 (Supp. 92-3). New Section made by final rulemaking at 9 A.A.R. 3184, effective August 30, 2003 (Supp. 03-3).

R4-23-402. Pharmacist, Graduate Intern, and Pharmacy Intern

- A. A pharmacist or a graduate intern or pharmacy intern under the supervision of a pharmacist shall perform the following professional practices in dispensing a prescription medication from a prescription order:
1. Receive, reduce to written form, and manually initial oral prescription orders;
 2. Obtain and record the name of the individual who communicates an oral prescription order;
 3. Obtain, or assume responsibility to obtain, from the patient, patient's agent, or medical practitioner and record, or assume responsibility to record, in the patient's profile, the following information:
 - a. Name, address, telephone number, date of birth (or age), and gender;
 - b. Individual history including known diseases and medical conditions, known drug allergies or drug reactions, and if available a comprehensive list of medications currently taken and medical devices currently used;
 4. Record, or assume responsibility to record, in the patient's profile, a pharmacist's, graduate intern's, or pharmacy intern's comments relevant to the patient's drug therapy, including other information specific to the patient or drug;
 5. Verify the legality and pharmaceutical feasibility of dispensing a drug based upon:
 - a. The patient's allergies,
 - b. Incompatibilities with medications the patient currently takes,
 - c. The patient's use of unusual quantities of dangerous drugs or narcotics,
 - d. A medical practitioner's signature, and
 - e. The frequency of refills;
 6. Verify that a dosage is within proper limits;
 7. Interpret the prescription order, which includes exercising professional judgment in determining whether to dispense a particular prescription;
 8. Compound, mix, combine, or otherwise prepare and package the prescription medication needed to dispense individual prescription orders;
 9. Prepackage or supervise the prepackaging of drugs by a pharmacy technician or pharmacy technician trainee under R4-23-1104. For drugs prepackaged by a pharmacy technician or pharmacy technician trainee, a pharmacist shall:
 - a. Verify the drug to be prepackaged;
 - b. Verify that the label meets the official compendium's standards;
 - c. Check the completed prepackaging procedure and product; and
 - d. Manually initial the completed label; or
 - e. For automated packaging systems, manually initial the completed label or a written log or initial a computer-stored log;

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10. Check prescription order data entry to ensure that the data input:
 - a. Is for the correct patient by verifying the patient's name, address, telephone number, gender, and date of birth or age;
 - b. Is for the correct drug by verifying the drug name, strength, and dosage form;
 - c. Communicates the prescriber's directions precisely by verifying dose, dosage form, route of administration, dosing frequency, and quantity; and
 - d. Is for the correct medical practitioner by verifying the medical practitioner's name, address, and telephone number;
 11. Except as provided in subsection (A)(12), make a final accuracy check of the completed prescription label including verification of medication, accuracy of patient's name, consistency with prescription order, and drug utilization review and initial in handwriting or by another method approved by the Board or its designee the finished label;
 12. If a technology-assisted verification of product program is used, make a final accuracy check of the completed prescription label including accuracy of patient's name, consistency with prescription order, and drug utilization review and initial in handwriting or by another method approved by the Board or its designee the finished label. If a technology-assisted verification of product program is used, verification of product is not required.
 13. Record, or assume responsibility to record, a prescription serial number and date dispensed on the original prescription order;
 14. Obtain, or assume responsibility to obtain, permission to refill a prescription order and record, or assume responsibility to record on the original prescription order:
 - a. Date dispensed,
 - b. Quantity dispensed, and
 - c. Name of medical practitioner or medical practitioner's agent who communicates permission to refill the prescription order;
 15. Reduce to written or printed form, or assume responsibility to reduce to written or printed form, a new prescription order received by:
 - a. Fax,
 - b. E-mail, or
 - c. Other means of communication;
 16. Verify, or assume responsibility to verify, that a completed prescription medication is sold only to the correct patient, patient's care-giver, or authorized agent;
 17. Record on the original prescription order the name or initials of the pharmacist, graduate intern, or pharmacy intern who originally dispenses the prescription order; and
 18. Record on the original prescription order the name or initials of the pharmacist, graduate intern, or pharmacy intern who dispenses each refill.
- B.** Only a pharmacist, graduate intern, or pharmacy intern shall provide oral consultation about a prescription medication to a patient or patient's care-giver in an outpatient setting, including a patient discharged from a hospital. The oral consultation is required whenever the following occurs:
1. The prescription medication has not been previously dispensed to the patient in the same strength or dosage form or with the same directions;
 2. The pharmacist, through the exercise of professional judgment, determines that oral consultation is warranted; or
3. The patient or patient's care-giver requests oral consultation.
- C.** Oral consultation shall include:
1. Reviewing the name and strength of a prescription medication or name of a prescription-only device and the labeled indication of use for the prescription medication or prescription-only device;
 2. Reviewing the prescription's directions for use;
 3. Reviewing the route of administration; and
 4. Providing oral information regarding special instructions and written information regarding side effects, procedure for missed doses, or storage requirements.
- D.** When, in the professional judgment of the pharmacist or graduate intern or pharmacy intern under the supervision of a pharmacist, or when circumstance precludes it, oral consultation may be omitted if the pharmacist, graduate intern, or pharmacy intern:
1. Personally provides written information to the patient or patient's care-giver that summarizes the information that would normally be orally communicated;
 2. Documents, or assumes responsibility to document, both the circumstance and reason for not providing oral consultation by a method approved by the Board or its designee; and
 3. Offers the patient or patient's care-giver the opportunity to communicate with a pharmacist, graduate intern, or pharmacy intern at a later time and provides a method for the patient or patient's care-giver to contact a pharmacist, graduate intern, or pharmacy intern at the pharmacy.
- E.** The pharmacist or graduate intern or pharmacy intern under the supervision of a pharmacist, through the exercise of professional judgment, may provide oral consultation that includes:
1. Common severe adverse effects, interactions, or therapeutic contraindications, and the action required if they occur;
 2. Techniques of self-monitoring drug therapy;
 3. The duration of the drug therapy; and
 4. Prescription refill information.
- F.** Nothing in subsection (B) requires a pharmacist, graduate intern, or pharmacy intern to provide oral consultation if a patient or patient's care-giver refuses the consultation.
- G.** Using a method approved by the Board or its designee, a pharmacist, graduate intern, or pharmacy intern shall document, or assume responsibility to document, that oral consultation is or is not provided.
- H.** Oral consultation documentation. When oral consultation is required as specified in subsection (B), a pharmacist, graduate intern, or pharmacy intern shall:
1. Document, or assume responsibility to document, that oral consultation is provided; or
 2. When a patient refuses oral consultation or a person other than the patient or patient's care-giver picks up a prescription and oral consultation is not provided, document, or assume responsibility to document, that oral consultation is not provided; or
 3. When a pharmacist, graduate intern, or pharmacy intern determines to omit oral consultation under subsection (D) and oral consultation is not provided, document, or assume responsibility to document, both the circumstance and reason that oral consultation is not provided; and
 4. Document, or assume responsibility to document, the name, initials, or identification code of the pharmacist, graduate intern, or pharmacy intern who did or did not provide oral consultation.

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- I.** When a prescription is delivered to the patient or patient's care-giver outside the immediate area of a pharmacy and a pharmacist is not present, the prescription shall be accompanied by written or printed patient medication information that, in addition to the requirements in subsection (C), includes:
 - 1. Approved use for the prescription medication;
 - 2. Possible adverse reactions;
 - 3. Drug-drug, food-drug, or disease-drug interactions;
 - 4. Missed dose information; and
 - 5. Telephone number of the dispensing pharmacy or another method approved by the Board or its designee that allows a patient or patient's care-giver to consult with a pharmacist.
- J.** A prescription medication or prescription-only device, delivered to a patient at a location where a licensed health care professional is responsible for administering the prescription medication to the patient, is exempt from the requirement of subsection (C).
- K.** A pharmacist, graduate intern, or pharmacy intern shall wear a badge indicating name and title while on duty.
- L.** Nothing in this Section prevents a hospital pharmacist from accepting a prescription order according to rules pertaining specifically to hospital pharmacies.

Historical Note

Former Rule 4.1100; Amended effective August 10, 1978 (Supp. 78-4). Amended effective August 9, 1983 (Supp. 83-4). Amended effective May 16, 1990 (Supp. 90-2). Amended effective July 7, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 4656, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 9 A.A.R. 5030, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 2258, effective August 6, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 274, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 12 A.A.R. 4691, effective February 3, 2007 (Supp. 06-4). Amended by final rulemaking at 23 A.A.R. 3257, effective January 8, 2018 (Supp. 17-4).

R4-23-403. Repealed**Historical Note**

Former Rule 4.1200; Amended effective August 10, 1978 (Supp. 78-4). Amended effective March 28, 1980 (Supp. 80-2). Amended effective August 9, 1983 (Supp. 83-4). Section repealed, new Section adopted effective May 16, 1990 (Supp. 90-2). Amended effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 5 A.A.R. 4441, effective November 2, 1999 (Supp. 99-4). Section repealed by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1).

R4-23-404. Unethical Practices

- A.** Rebates prohibited. A pharmacist or pharmacy permittee shall not offer, deliver, receive, or accept any unearned rebate, refund, commission, preference, patronage dividend, discount, or other unearned consideration, whether in the form of money or otherwise, as compensation or inducement to refer a patient, client, or customer to any person, except for a rebate or premium paid completely and directly to a patient. A pharmacist or pharmacy permittee shall not:
 - 1. Make payment to a medical practitioner in money or other consideration for a prescription order prescribed by the medical practitioner; or
 - 2. Make payment to a long-term care or assisted living facility or other health care institution in money, discount,

rental, or other consideration in an amount above the prevailing rate for:

- a. Prescription medication or devices dispensed or sold for a patient or resident of the facility or institution; or
- b. Drug selection or drug utilization review services, drug therapy management services, or other pharmacy consultation services provided for a patient or resident of the facility or institution.

- B.** Prescription order-blank advertising prohibited. A pharmacist or pharmacy permittee shall not:
 - 1. Directly or indirectly furnish to a medical practitioner a prescription order-blank that refers to a specific pharmacist or pharmacy in any manner; or
 - 2. Actively or passively participate in any arrangement or agreement where a prescription order-blank is prepared, written, or issued in a manner that refers to a specific pharmacist or pharmacy.
- C.** Fraudulent claim for service. A pharmacist or pharmacy permittee shall not claim the performance of a service that the pharmacist or pharmacy permittee knows or should know was not performed, such as, claiming to dispense a prescription medication that is not dispensed.
- D.** Fraudulent claim for a fee. A pharmacist or pharmacy permittee:
 - 1. Shall not claim a fee for a service that is not performed or earned;
 - 2. May divide a prescription order into two or more portions of prescription medication at the request of a patient, or for some other ethical reason, and charge a dispensing fee for the additional service; and
 - 3. Shall not divide a prescription order merely to obtain an additional fee.
- E.** Prohibiting a prescription-only drug or device from being dispensed over the counter. A pharmacist shall ensure that:
 - 1. A prescription-only drug or device is dispensed only after receipt of a valid prescription order from a licensed medical practitioner;
 - 2. The dispensed prescription-only drug or device is properly prepared, packaged, and labeled according to this Chapter; and
 - 3. The prescription order is filed according to this Chapter.
- F.** Drugs dispensed in the course of the conduct of a business of dispensing drugs through diagnosis by mail or the internet.
 - 1. A pharmacist shall not dispense a drug from a prescription order if the pharmacist has knowledge, or reasonably should know under the circumstances, that the prescription order was issued on the basis of an internet-based questionnaire or an internet-based consultation without a medical practitioner-patient relationship as defined in R4-23-110.
 - 2. A pharmacist who dispenses a prescription-only drug, prescription-only device, or controlled substance in violation of this Section is engaging in unethical conduct in violation of A.R.S. § 32-1901.01.

Historical Note

Former Rules 4.2110, 4.2120, 4.2130, 4.2210, 4.2230, 4.2400, 4.2500, 4.2600, 4.4100, 4.4200, 4.4310, 4.4320, 4.4400, and 4.4500; Amended effective August 10, 1978 (Supp. 78-4); Amended subsection (I) effective August 9, 1983 (Supp. 83-4). Amended by deleting subsections (H) through (M) effective November 18, 1983 (Supp. 83-6). Amended by final rulemaking at 8 A.A.R. 1256, effective March 7, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 3405, effective October 4, 2008 (Supp.

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08-3).

R4-23-405. Change of Responsibility

A pharmacist designated as the pharmacist-in-charge for a pharmacy, manufacturer, or other establishment shall give immediate notice, as defined in R4-23-110, when:

1. The pharmacist's responsibility as a pharmacist-in-charge is terminated; or
2. The pharmacist knows of a pending termination of the pharmacist's responsibility as the pharmacist-in-charge.

Historical Note

Former Rules 4.5100 and 4.5200; Amended effective August 9, 1983 (Supp. 83-4). Amended effective February 8, 1991 (Supp. 91-1). Amended effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 1256, effective March 7, 2002 (Supp. 02-1).

R4-23-406. Repealed**Historical Note**

Adopted as an emergency effective January 10, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Amended as an emergency effective April 2, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days. Adopted effective April 10, 1979 (Supp. 79-1). Former Section R4-23-406 repealed, new Section R4-23-406 adopted effective August 9, 1983 (Supp. 83-4). Amended effective April 1, 1995; filed with the Secretary of State January 31, 1995 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 1256, effective March 7, 2002 (Supp. 02-1). Section repealed by final rulemaking at 10 A.A.R. 230, effective March 6, 2004 (Supp. 04-1).

R4-23-407. Prescription Requirements

A. Prescription orders. A pharmacist shall ensure that:

1. A prescription order dispensed by the pharmacist includes the following information:
 - a. Date of issuance;
 - b. Name and address of the patient for whom or the owner of the animal for which the drug or device is dispensed;
 - c. Drug name, strength, and dosage form or device name;
 - d. Name of the drug's or device's manufacturer or distributor if the prescription order is written generically or a substitution is made;
 - e. Prescribing medical practitioner's directions for use;
 - f. Date of dispensing;
 - g. Quantity prescribed and if different, quantity dispensed;
 - h. For a prescription order for a controlled substance, the medical practitioner's address and DEA number;
 - i. For a written prescription order, the medical practitioner's signature;
 - j. For an electronically transmitted prescription order, the medical practitioner's digital or electronic signature;
 - k. For an oral prescription order, the medical practitioner's name and telephone number; and
 - l. Name or initials of the dispensing pharmacist;
2. A prescription order is kept by the pharmacist or pharmacy permittee as a record of the dispensing of a drug or device for seven years from the date the drug or device is dispensed, except for a drug or device personally administered by a medical practitioner to the medical practitioner's patient; and

3. The dispensing of a drug or device complies with the packaging requirements of the official compendium and state and federal law.

B. Prescription refills. A pharmacist shall ensure that the following information is recorded on the back of a prescription order when it is refilled:

1. Date refilled,
2. Quantity dispensed,
3. Name or approved abbreviation of the manufacturer or distributor if the prescription order is written generically or a substitution is made, and
4. The name or initials of the dispensing pharmacist.

C. A pharmacist may furnish a copy of a prescription order to the patient for whom it is prescribed or to the authorized representative of the patient if the copy is clearly marked "COPY FOR REFERENCE PURPOSES ONLY" or other similar statement. A copy of a prescription order is not a valid prescription order and a pharmacist shall not dispense a drug or device from the information on a copy.

D. Transfer of prescription order information. For a transfer of prescription order information to be valid, a pharmacy permittee or pharmacist-in-charge shall ensure that:

1. Both the original and the transferred prescription order are maintained for seven years after the last dispensing date;
2. The original prescription order information for a Schedule III, IV, or V controlled substance is transferred only as specified in 21 CFR 1306.25, published April 1, 2008, and no future amendments or editions, incorporated by reference, and on file with the Board, and available from the U.S. Government Printing Office, U.S. Superintendent of Documents, Washington, DC 20402-0001;
3. The original prescription order information for a non-controlled substance drug is transferred without limitation only up to the number of originally authorized refills; For a transfer within Arizona:
 - a. The transfer of original prescription order information for a non-controlled substance drug meets the following conditions:
 - i. The transfer of information is communicated directly between:
 - (1) Two licensed pharmacists,
 - (2) A licensed pharmacist and a licensed pharmacy or graduate intern, or
 - (3) Two licensed pharmacy or graduate interns;
 - ii. The following information is recorded by the transferring pharmacist or pharmacy or graduate intern:
 - (1) The word "void" is written on the face of the invalidated original prescription unless it is an electronic or oral transfer and the transferred prescription order information is invalidated in the transferring pharmacy's computer system; and
 - (2) The name and identification code, number, or address and telephone number of the pharmacy to which the prescription is transferred, the name of the receiving pharmacist or pharmacy or graduate intern, the date of transfer, and the name of the transferring pharmacist or pharmacy or graduate intern is written on the back of the prescription or entered into the transferring pharmacy's computer system; and

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- iii. The following information is recorded by the receiving pharmacist or pharmacy or graduate intern on the transferred prescription order:
- (1) The word "transfer;"
 - (2) Date of issuance of the original prescription order;
 - (3) Original number of refills authorized on the original prescription order;
 - (4) Date of original dispensing;
 - (5) Number of valid refills remaining and the date of the last refill;
 - (6) Name and identification code, number, or address, telephone number, and original prescription number of the pharmacy from which the prescription is transferred;
 - (7) Name of the transferring pharmacist or pharmacy or graduate intern; and
 - (8) Name of the receiving pharmacist or pharmacy or graduate intern;
- b. The transfer of original prescription order information for a Schedule III, IV, or controlled substance meets the following conditions:
- i. The transfer of information is communicated directly between two licensed pharmacists;
 - ii. The following information is recorded by the transferring pharmacist:
 - (1) The word "void" is written on the face of the invalidated original prescription order unless it is an electronic or oral transfer and the transferred prescription order information is invalidated in the transferring pharmacy's computer system; and
 - (2) The name, address, and DEA number of the pharmacy to which the prescription is transferred, the name of the receiving pharmacist, the date of transfer, and the name of the transferring pharmacist is written on the back of the prescription order or entered into the transferring pharmacy's computer system; and
 - iii. The following information is recorded by the receiving pharmacist on the transferred prescription order:
 - (1) The word "transfer;"
 - (2) Date of issuance of original prescription order;
 - (3) Original number of refills authorized on the original prescription order;
 - (4) Date of original dispensing;
 - (5) Number of valid refills remaining and the date of the last refill;
 - (6) Name, address, DEA number, and original prescription number of the pharmacy from which the prescription is transferred;
 - (7) Name of the transferring pharmacist; and
 - (8) Name of the receiving pharmacist;
5. For a transfer from out-of-state:
- a. The transfer of original prescription order information for a non-controlled substance drug meets the conditions in subsections (D)(4)(a)(i) and (D)(4)(a)(iii); and
 - b. The transfer of original prescription order information for a Schedule III, IV, or V controlled substance meets the conditions in subsections (D)(4)(b)(i) and (D)(4)(b)(iii); and
6. For an electronic transfer, the electronic transfer of original prescription order information meets the following conditions:
- a. The electronic transfer is between pharmacies owned by the same company using a common or shared database;
 - b. The electronic transfer of original prescription order information for a non-controlled substance drug is performed by a pharmacist or a pharmacy or graduate intern, pharmacy technician trainee, or pharmacy technician under the supervision of a pharmacist;
 - c. The electronic transfer of original prescription order information for a controlled substance is performed between two licensed pharmacists;
 - d. The electronic transfer of original prescription order information for a non-controlled substance drug meets the following conditions:
 - i. The transferring pharmacy's computer system:
 - (1) Invalidates the transferred original prescription order information;
 - (2) Records the identification code, number, or address of the pharmacy to which the prescription order information is transferred;
 - (3) Records the name or identification code of the receiving pharmacist, pharmacy or graduate intern, pharmacy technician trainee, or pharmacy technician; and
 - (4) Records the date of transfer; and
 - ii. The receiving pharmacy's computer system:
 - (1) Records that a prescription transfer occurred;
 - (2) Records the date of issuance of the original prescription order;
 - (3) Records the original number of refills authorized on the original prescription order;
 - (4) Records the date of original dispensing;
 - (5) Records the number of valid refills remaining and the date of the last refill;
 - (6) Records the identification code, number, or address and original prescription number of the pharmacy from which the prescription is transferred;
 - (7) Records the name or identification code of the receiving pharmacist or pharmacy or graduate intern, pharmacy technician trainee, or pharmacy technician; and
 - (8) Records the date of transfer;
 - e. The electronic transfer of original prescription order information for a controlled substance meets the following conditions:
 - i. The transferring pharmacy's computer system:
 - (1) Invalidates the transferred original prescription order information;
 - (2) Records the identification code, number, or address, and DEA number of the pharmacy to which the prescription order information is transferred;
 - (3) Records the name or identification code of the receiving pharmacist;
 - (4) Records the date of transfer; and
 - (5) Records the name or identification code of the transferring pharmacist; and
 - ii. The electronic prescription order information received by the computer system of the receiv-

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- ing pharmacy includes the information required in subsection (D)(4)(b)(iii); and
- f. In addition to electronic documentation of a transferred prescription order in the computer system, an original prescription order containing the requirements of this Section is filed in compliance with A.R.S. § 32-1964.
- E. Transmission of a prescription order from a medical practitioner to a pharmacy by facsimile machine.**
1. A medical practitioner or medical practitioner's agent may transmit a prescription order for a Schedule III, IV, or V controlled substance, prescription-only drug, or non-prescription drug to a pharmacy by facsimile under the following conditions:
 - a. The prescription order is faxed only to the pharmacy of the patient's choice;
 - b. The faxed prescription order:
 - i. Contains all the information required for a prescription order in A.R.S. §§ 32-1968 and 36-2525; and
 - ii. Is only faxed from the medical practitioner's practice location, except that a nurse in a hospital, long-term care facility, or inpatient hospice may send a facsimile of a prescription order for a patient of the facility; and
 - c. The faxed prescription order shall contain the following additional information:
 - i. The date the prescription order is faxed;
 - ii. The facsimile number of the prescribing medical practitioner or the facility from which the prescription order is faxed, and the telephone number of the facility; and
 - iii. The name of the person who transmits the facsimile, if other than the medical practitioner.
 2. A medical practitioner or medical practitioner's agent may fax a prescription order for a Schedule II controlled substance for information purposes only, unless the faxed prescription order meets the requirements of A.R.S. § 36-2525(F) and (G).
 3. A pharmacy may receive a faxed prescription order for a Schedule II controlled substance for information purposes only, except a faxed prescription order for a Schedule II controlled substance that meets the requirements of A.R.S. § 36-2525(F) and (G) may serve as the original written prescription order.
 4. To meet the seven-year record retention requirement of A.R.S. § 32-1964, a pharmacy shall receive a faxed prescription order on a plain paper facsimile machine, except a pharmacy that does not have a plain paper facsimile machine may make a Xerox copy of a faxed prescription order received on a non-plain paper facsimile machine.
 5. A medical practitioner or the medical practitioner's agent may fax refill authorizations to a pharmacy if the faxed authorization includes the medical practitioner's telephone number and facsimile number, the medical practitioner's signature or medical practitioner's agent's name, and date of authorization.
- F. Electronic transmission of a prescription order from a medical practitioner to a pharmacy.**
1. Unless otherwise prohibited by law, a medical practitioner or medical practitioner's agent may transmit a prescription order by electronic means, directly or through an intermediary, including an E-prescribing network, to the dispensing pharmacy as specified in A.R.S. § 32-1968.
2. For electronic transmission of a Schedule II, III, IV, or V controlled substance prescription order, the medical practitioner and pharmacy shall ensure that the transmission complies with any security or other requirements of federal law.
3. The medical practitioner and pharmacy shall ensure that all electronic transmissions comply with all the security requirements of state or federal law related to the privacy of protected health information.
4. In addition to the information required to be included on a prescription order as specified in A.R.S. § 32-1968, an electronically transmitted prescription order shall include:
 - a. The date of transmission; and
 - b. If the individual transmitting the prescription is not the medical practitioner, the name of the medical practitioner's authorized agent who transmits the prescription order.
5. A pharmacy receiving an electronically transmitted prescription order shall maintain the prescription order as specified in A.R.S. § 32-1964.
6. A medical practitioner or medical practitioner's agent shall transmit an electronic prescription order only to the pharmacy of the patient's choice.

Historical Note

Adopted effective November 18, 1983 (Supp. 83-6). Amended by final rulemaking at 8 A.A.R. 1256, effective March 7, 2002 (Supp. 02-1). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 13 A.A.R. 440, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 3605, effective November 8, 2008 (Supp. 08-3).

R4-23-407.1. Dispensing an Opioid Antagonist

- A. As used in this Section:**
1. "Community member" means any person in position to assist an individual at risk of experiencing an opioid-related overdose. This includes emergency first responders, peace officers or other law enforcement personnel, fire department personnel, school district employees, and personnel of a facility or center that provides services to individuals at risk of experiencing an opioid-related overdose.
 2. "Opioid antagonist" means any drug approved by the U.S. Food and Drug Administration that binds to opioid receptors, effectively blocking or inhibiting the receptor and preventing the body from responding to the opioid. Naloxone hydrochloride is an opioid antagonist.
 3. "Opioid-related overdose" means an acute condition caused by excessive opioids. An opioid-related overdose can be identified by a triad of symptoms: decreased level of consciousness, pinpoint pupils, and respiratory depression. Other symptoms may include seizures, muscle spasms, and coma or death. An opioid-related overdose requires medical assistance.
- B. Before allowing an opioid antagonist to be dispensed under A.R.S. § 32-1979, a pharmacy permit holder shall have written policies and procedures regarding:**
1. Documentation of opioid antagonists dispensed under A.R.S. § 32-1979. The documentation shall:
 - a. Be maintained in a manner consistent with R4-23-407(A)(2);
 - b. Include the information required under R4-23-407(A)(1)(c), (d), (f), and (l); and
 - c. Include the following:

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- i. Quantity dispensed;
 - ii. Directions for use; and
 - iii. The patient's name, address, telephone number, and birth date; or
 - iv. Name, address, telephone number, and birth date of a family member in position to assist the individual at risk of an opioid-related overdose; or
 - v. Name, address, telephone number, and employer of a community member in position to assist an individual at risk of an opioid-related overdose; and
 - vi. Name of the individual providing the education required under subsection (B)(2);
2. Education to be provided to the individual to whom the opioid antagonist is dispensed. The education shall include:
- a. How to prevent an opioid-related overdose;
 - b. How to recognize an opioid-related overdose;
 - c. How to administer an opioid antagonist safely to an individual experiencing an opioid-related overdose;
 - d. Precautions regarding:
 - i. Potential side effects, and
 - ii. Possible adverse events associated with administration of the opioid antagonist; and
 - e. Importance of seeking emergency medical assistance for the individual experiencing an opioid-related overdose before or after administering the opioid antagonist; and
3. Confidentiality, security, and privileged nature of documentation of opioid antagonists dispensed under A.R.S. § 32-1979.
- C. Before dispensing an opioid antagonist under A.R.S. § 32-1979(A), a licensed pharmacist shall:
1. Complete an opioid prevention and treatment training program that includes the following information:
 - a. How to recognize the symptoms of an opioid-related overdose,
 - b. How to respond to a suspected opioid-related overdose,
 - c. How to administer all preparations of an opioid antagonist, and
 - d. The information needed by an individual to whom an opioid antagonist is dispensed, and
 2. Comply fully with the policies and procedures developed under subsection (B).
- D. A pharmacist who has completed an opioid prevention and treatment training program described in subsection (C):
1. May administer an opioid antagonist to an individual the pharmacist believes is experiencing an opioid-related overdose, and
 2. Is exempt from civil liability under the terms of A.R.S. § 36-2267(B).
- E. Dispensing an opioid antagonist under A.R.S. § 32-1979 by invoice to a community member is not wholesale distribution as defined at A.R.S. § 32-1981.

Historical Note

New Section made by emergency rulemaking at 23 A.A.R. 31, effective December 15, 2016 for 180 days (Supp. 16-4). New Section made by final rulemaking before emergency expired at 23 A.A.R. 967, effective June 3, 2017 (Supp. 17-2).

R4-23-408. Computer Records

- A. Systems manual. A pharmacy permittee or pharmacist-in-charge shall:

- 1. Develop, implement, and comply with policies and procedures for the following operational aspects of a computer system:
 - a. Examples of all output documentation provided by the computer system that contains original or refill prescription order or patient profile information;
 - b. Steps a pharmacy employee follows when the computer system is not operational due to scheduled or unscheduled system interruption;
 - c. Regular and routine backup file procedure and file maintenance, including secure storage of backup files;
 - d. Audit procedures, personnel code assignments, and personnel responsibilities; and
 - e. Quality assurance mechanism for data entry validation;
 - 2. Review biennially and, if necessary, revise the policies and procedures required under this Section;
 - 3. Document the review required under subsection (A)(2);
 - 4. Assemble the policies and procedures as a written manual or by another method approved by the Board or its designee; and
 - 5. Make the policies and procedures available within the pharmacy for reference by pharmacy personnel and inspection by the Board or its designee.
- B. Computer system data storage and retrieval. A pharmacy permittee or pharmacist-in-charge shall ensure that the computer system is capable of:
1. Producing sight-readable information on all original and refill prescription orders and patient profiles;
 2. Providing online retrieval (via CRT display or hard-copy printout) of original prescription order information required in A.R.S. § 32-1968(C), R4-23-402(A), and R4-23-407(A);
 3. Providing online retrieval (via CRT display or hard-copy printout) of patient profile information required in R4-23-402(A);
 4. Providing documentation identifying the pharmacist responsible for dispensing each original or refill prescription order, except a pharmacy permittee with a computer system that is in use before the effective date of this Section that cannot provide documentation identifying the dispensing pharmacist may continue to use the computer system by providing manual documentation identifying the dispensing pharmacist;
 5. Producing a printout of all prescription order information, including a single-drug usage report that contains:
 - a. The name of the prescribing medical practitioner;
 - b. The name and address of the patient;
 - c. The quantity dispensed on each original or refill prescription order;
 - d. The date of dispensing for each original or refill prescription order;
 - e. The name or identification code of the dispensing pharmacist; and
 - f. The serial number of each prescription order; and
 6. Providing a printout of requested prescription order information to an individual pharmacy within 72 hours of the request if prescription order information is maintained in a centralized computer record system.
- C. A pharmacy permittee or pharmacist-in-charge of a pharmacy that uses a pharmacy computer system:
1. Shall notify the D.E.A. and the Board in writing that original and refill prescription information and patient profiles are stored in a pharmacy computer system;

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2. Shall comply with this Section if the pharmacy computer system's refill records are used as an alternative to the manual refill records required in R4-23-407(B);
3. Is exempt from the manual refill recordkeeping requirements of R4-23-407(B), if the pharmacy computer system complies with the requirements of this Section; and
4. Shall ensure that documentation of the accuracy of original and refill information entered into a computer system is provided by each pharmacist using the computer system and kept on file in the pharmacy for seven years from the date of the last refill. Documentation includes one of the following:
- a. A hard-copy printout of each day's original and refill data that:
 - i. States original and refill data for prescriptions dispensed by each pharmacist is reviewed for accuracy;
 - ii. Includes the printed name of each dispensing pharmacist; and
 - iii. Is signed and initialed by each dispensing pharmacist; or
 - b. A log book or separate file of daily statements that:
 - i. States original and refill data for prescriptions dispensed by each pharmacist is reviewed for accuracy;
 - ii. Includes the printed name of each dispensing pharmacist; and
 - iii. Is signed and initialed by each dispensing pharmacist.
- D. If a pharmacy computer system does not comply with the requirements of subsections (A), (B), and (F), the pharmacy permittee or pharmacist-in-charge shall bring the computer system into compliance within three months of a notice of noncompliance or violation letter. If the computer system is still noncompliant with subsection (A), (B), or (F) after three months, the pharmacy permittee or pharmacist-in-charge shall immediately comply with the manual recordkeeping requirements of R4-23-402 and R4-23-407.
- E. If a pharmacy's personnel perform manual recordkeeping under subsection (D), the pharmacy's personnel shall continue manual recordkeeping until the pharmacist-in-charge sends proof, verified by a Board compliance officer, that the computer system complies with subsections (A), (B), and (F).
- F. Security. To maintain the confidentiality of patient records, a pharmacy permittee or pharmacist-in-charge shall ensure that:
1. The computer system has security and systems safeguards designed to prevent and detect unauthorized access, modification, or manipulation of prescription order information and patient profiles; and
 2. After a prescription order is dispensed, any alteration of prescription order information is documented, including the identification of the pharmacist responsible for the alteration.
- G. A computer system that does not comply with all the requirements of subsections (A), (B), and (F) may be used in a pharmacy if:
1. The computer system was in use in the pharmacy before July 11, 2001, and
 2. The pharmacy complies with the manual recordkeeping requirements of R4-23-402 and R4-23-407.
- H. Prescription records and retention.
1. Instead of filing the original hard-copy prescription as required in A.R.S. § 32-1964, a pharmacy permittee or pharmacist-in-charge may use an electronic imaging recordkeeping system, if:
 - a. The system is capable of capturing, storing, and reproducing the exact image of a prescription, including the reverse side of the prescription if necessary;
 - b. Any notes of clarification of and alterations to a prescription are directly associated with the electronic image of the prescription;
 - c. The prescription image and any associated notes of clarification to or alterations to a prescription are retained for a period not less than seven years from the date the prescription is last dispensed;
 - d. The original hard-copy prescription is maintained for no less than 30 days after the date dispensed;
 - e. Policies and procedures for the use of an electronic imaging recordkeeping system are developed, implemented, reviewed, and revised in the same manner described in subsection (A) and complied with; and
 - f. The prescription is not for a schedule II controlled substance.
2. If a pharmacy's computer system fields are automatically populated by an electronically transmitted prescription order, the automated record constitutes the original prescription and a hard-copy or electronic image is not required if the computer system is capable of maintaining, printing, and providing all the prescription information required in A.R.S. §§ 32-1968 and 36-2525 and R4-23-407(A) within 72 hours of a request by the Board, the Board's compliance officers, other authorized regulatory board agents, or authorized officers of the law.

Historical Note

Adopted effective November 18, 1983 (Supp. 83-6).

Amended by final rulemaking at 7 A.A.R. 646, effective

January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 9 A.A.R. 5030, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 11 A.A.R. 4270, effective December 6, 2005 (Supp. 05-4).

Amended by final rulemaking at 12 A.A.R. 274, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 13 A.A.R. 440, effective April 7, 2007 (Supp. 07-1).

R4-23-409. Returning Drugs and Devices

- A. After a person for whom a drug is prescribed or the person's agent takes the drug from the premises where sold, distributed, or dispensed, a pharmacist or pharmacy permittee shall not accept the drug for return or exchange for the purpose of resale unless the pharmacist determines that:
1. The drug is in its original, manufacturer's, unopened container; and
 2. The drug or its container has not been subjected to contamination or deterioration.
- B. The provisions of subsection (A) of this Section do not apply to a drug dispensed to:
1. A hospital inpatient as defined in R4-23-651; or
 2. A resident of a long-term care facility where a licensed health care professional administers the drug, and the pharmacist ensures and documents that the drug:
 - a. Has been stored in compliance with the requirements of the official compendium; and
 - b. Is not obviously contaminated or deteriorated.
- C. After a person for whom a device is prescribed or the person's agent takes the device from the premises where sold, distributed, or dispensed, a pharmacist or pharmacy permittee shall

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not accept the device for return or exchange for the purpose of resale or reuse unless the pharmacist determines that:

1. The device is inspected and is free of defects;
2. The device is rendered incapable of transferring disease; and
3. The device, if resold or reused, is not claimed to be new or unused.

Historical Note

Adopted effective November 18, 1983 (Supp. 83-6). Amended by final rulemaking at 8 A.A.R. 1256, effective March 7, 2002 (Supp. 02-1).

R4-23-410. Current Good Compounding Practices

- A. This Section establishes the current good compounding practices to be used by a pharmacist licensed by the Board, in a pharmacy permitted by the Board, and in compliance with applicable federal and state law governing the practice of pharmacy.
- B. A pharmacy permittee shall ensure compliance with the provisions in this subsection.
 1. All substances for compounding that are received, stored, or used by the pharmacy permittee:
 - a. Meet official compendium requirements;
 - b. Are of high quality, such as Chemically Pure (CP), Analytical Reagent (AR), certified American Chemical Society (ACS), or Food Chemical Codex (FCC) grade; or
 - c. Are obtained from a source that, in the professional judgment of the pharmacist, is acceptable and reliable.
 2. Before compounding a pharmaceutical product in excess of the quantity dispensed in anticipation of receiving valid prescriptions for the pharmaceutical product, a pharmacist, employed by the pharmacy permittee, shall establish a history of compounding valid prescriptions for the pharmaceutical product.
 3. Neither the pharmacy permittee nor a pharmacist employed by the pharmacy permittee provides a compounded pharmaceutical product to a pharmacy, medical practitioner, or other person for dispensing or distributing except that a compounded pharmaceutical product may be provided to a medical practitioner to administer to a patient of the medical practitioner if each container is accompanied by the written list required in subsection (I)(5) and has a label that includes the following:
 - a. The pharmacy's name, address, and telephone number;
 - b. The pharmaceutical product's name and the information required in subsection (I)(4);
 - c. A lot or control number;
 - d. A beyond-use-date based upon the pharmacist's professional judgment, but not more than the maximum guidelines recommended in the Pharmacy Compounding Practices chapter of the official compendium unless there is published or unpublished stability test data that shows a longer period is appropriate;
 - e. The statement "Not For Dispensing;" and
 - f. The statement "For Office or Hospital Administration Only."
 4. A pharmacy or pharmacist may advertise or otherwise promote the fact that the pharmacy or pharmacist provides prescription compounding services.
- C. A pharmacy permittee shall ensure compliance with the organization, training, and personnel issues in this subsection.

1. Before dispensing a compounded pharmaceutical product, a pharmacist:

- a. Inspects and approves or rejects, or assumes responsibility for inspecting and approving or rejecting, components, pharmaceutical product containers and closures, in-process materials, and labeling;
 - b. Prepares or assumes responsibility for preparing all compounding records;
 - c. Reviews all compounding records to ensure that no errors occur in the compounding process;
 - d. Ensures the proper use, cleanliness, and maintenance of all compounding equipment; and
 - e. Documents by hand-written initials or signature in the compounding record the completion of the requirements of subsections (C)(1)(a), (b), (c), and (d).
2. A pharmacist engaged in compounding:
 - a. Complies with the current good compounding practices and applicable state pharmacy laws;
 - b. Maintains compounding proficiency through current awareness, training, and continuing education; and
 - c. Ensures that personnel engaged in compounding wear:
 - i. Clean clothing appropriate to the work performed; and
 - ii. Protective apparel, such as coats, aprons, gowns, gloves or masks to protect the personnel from chemical exposure and prevent pharmaceutical product contamination.

- D. A pharmacy permittee shall ensure the security, safety, and quality of a compounded pharmaceutical product by conforming with the following standards:

1. Implement procedures to exclude from direct contact with components, pharmaceutical product containers and closures, in-process materials, labeling, and pharmaceutical products, any person with an apparent illness or open lesion that may adversely affect the safety or quality of a compounded pharmaceutical product, until the illness or lesion, as determined by competent medical personnel, does not jeopardize the safety or quality of a compounded pharmaceutical product; and
2. Require all personnel to inform a pharmacist of any health condition that may adversely affect a compounded pharmaceutical product.

- E. A pharmacy permittee shall provide compounding facilities that conform with the standards in this subsection.

1. In addition to the minimum area requirements of R4-23-609, R4-23-655, or R4-23-673, the compounding area:
 - a. Complies with the requirements in R4-23-611; and
 - b. Has sufficient space to permit efficient pharmacy practice, free movement of personnel, and visual surveillance by a pharmacist.
2. If sterile pharmaceutical product or radiopharmaceutical product compounding is performed, the compounding area complies with the requirements of R4-23-670, R4-23-681, and R4-23-682.
3. A clean, dry, and temperature-controlled area and, if required, a refrigerated area, in which to store properly labeled containers of bulk drugs, chemicals, and materials used in compounding, that complies with state statutes and rules.

- F. To protect pharmaceutical product safety, identity, strength, quality, and purity, a pharmacy permittee shall ensure that equipment and utensils used in pharmaceutical product compounding are:

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1. Of appropriate design, adequate size, and suitably located for proper operation, cleaning, and maintenance;
 2. Made of material that is not reactive, additive, or absorptive when exposed to components, in-process materials, or pharmaceutical products;
 3. Cleaned and protected from contamination before use;
 4. Inspected and determined suitable for use before initiation of compounding operations; and
 5. Routinely inspected, calibrated, or checked to make proper performance certain.
- G.** A pharmacy permittee shall ensure that the pharmacist-in-charge establishes, implements, and complies with procedures to prevent cross-contamination when pharmaceutical products that require special precautions to prevent cross-contamination, such as penicillin, are used in a compounding procedure. The procedures shall include either the dedication of equipment or the meticulous cleaning of contaminated equipment before its use in compounding other pharmaceutical products.
- H.** A pharmacy permittee shall ensure that the pharmacist-in-charge establishes, implements, and complies with control procedures for components and pharmaceutical product containers and closures, either written or electronically stored with printable documentation, that conform with the standards in this subsection.
1. Components and pharmaceutical product containers and closures are:
 - a. Stored off the floor,
 - b. Handled and stored to prevent contamination, and
 - c. Rotated so the oldest approved stock is used first.
 2. Container closure systems comply with official compendium standards.
 3. Pharmaceutical product containers and closures are clean and made of material that is not reactive, additive, or absorptive.
- I.** A pharmacy permittee shall ensure that the pharmacist-in-charge establishes, implements, and complies with pharmaceutical product compounding controls that conform with the standards in this subsection.
1. Pharmaceutical product compounding procedures are available in either written form or electronically stored with printable documentation:
 - a. To ensure that a finished pharmaceutical product has the identity, strength, quality, and purity it is purported or represented to possess, the procedures include, for each pharmaceutical product compounded, a description of:
 - i. The components, their manufacturer, lot number, expiration date, and amounts, the order of component addition, if applicable, and the compounding process;
 - ii. The equipment and utensils used; and
 - iii. The pharmaceutical product container and closure system proper for the sterility and stability of the pharmaceutical product as it is intended to be used.
 - b. To test the pharmaceutical product being compounded, the procedures monitor the output and validate the performance of compounding processes that may cause variability in the final pharmaceutical product, including assessing:
 - i. Dosage form weight variation;
 - ii. Adequacy of mixing to ensure uniformity and homogeneity; and
 - iii. Clarity, completeness, and pH of solutions, if applicable.
2. Components for pharmaceutical product compounding are accurately weighed, measured, or subdivided. To ensure that each weight, measure, or subdivision is correct as stated in the compounding procedures, a pharmacist:
 - a. Checks and rechecks, or assumes responsibility for checking and re-checking, the operations at each stage of the compounding process; and
 - b. Documents by hand-written initials or signature the completion and accuracy of the compounding process.
 3. Compounding equipment and utensils are properly cleaned and maintained.
 4. In addition to the labeling requirements of A.R.S. § 32-1968(D), the label contains:
 - a. A statement, symbol, designation, or abbreviation that the pharmaceutical product is a compounded pharmaceutical product, and
 - b. A beyond-use-date as specified in subsection (B)(3)(d).
 5. A written list of the compounded pharmaceutical product's active ingredients is given to the patient at the time of dispensing.
 6. When a component is removed from its original container and transferred to another container, the new container label contains, in full text or an abbreviated code system, the following:
 - a. The component name,
 - b. The manufacturer's or supplier's name,
 - c. The lot or control number,
 - d. The weight or measure,
 - e. The beyond-use-date as specified in subsection (B)(3)(d), and
 - f. The transfer date.
- J.** A pharmacy permittee shall ensure that the pharmacist-in-charge stores any quantity of compounded pharmaceutical product produced in excess of the quantity dispensed in accordance with subsection (B):
1. In an appropriate container with a label that contains:
 - a. A complete list of components or the pharmaceutical product's name;
 - b. The preparation date;
 - c. The assigned lot or control number; and
 - d. A beyond-use-date as specified in subsection (B)(3)(d); and
 2. Under conditions, dictated by the pharmaceutical product's composition and stability characteristics, that ensure its strength, quality, and purity.
- K.** A pharmacy permittee shall ensure that the pharmacist-in-charge establishes, implements, and complies with record-keeping procedures that comply with this subsection:
1. Pharmaceutical product compounding procedures and other records required by this Section are maintained by the pharmacy for not less than seven years, and
 2. Pharmaceutical product compounding procedures and other records required by this Section are readily available for inspection by the Board or its designee.

Historical Note

Adopted effective August 5, 1997 (Supp. 97-3). Amended by final rulemaking at 10 A.A.R. 3391, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 12 A.A.R. 3981, effective December 4, 2006 (Supp. 06-4).

R4-23-411. Pharmacist-administered or Pharmacy or Graduate Intern-administered Immunizations

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- A.** Certification to administer immunizations, vaccines, and emergency medications, as defined at A.R.S. § 32-1974(N), to an eligible adult patient or eligible minor patient. As used in this Section, “eligible adult patient” means an eligible patient 13 years of age or older and “eligible minor patient” means an eligible patient at least three years of age but less than 13 years of age. A pharmacist or a pharmacy or graduate intern in the presence of and under the immediate personal supervision of a pharmacist, may administer, without a prescription, immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient, if:
1. Both the pharmacist and pharmacy or graduate intern meet the qualifications and standards specified by A.R.S. § 32-1974 and this Section;
 2. The Board certifies both the pharmacist and pharmacy or graduate intern as specified in subsection (D);
 3. For an eligible adult patient, the immunization or vaccine is:
 - a. Recommended for adults by the United States Centers for Disease Control and Prevention; or
 - b. Recommended by the United States Centers for Disease Control and Prevention’s Health Information for International Travel;
 4. For an eligible adult patient, the immunization or vaccine is not on the Arizona Department of Health Services list specified in A.A.C. R9-6-1301 as required under A.R.S. § 32-1974(I);
 5. For an eligible minor patient, the immunization or vaccine is for influenza or a booster dose as described under A.R.S. § 32-1974(B)(2); and
 6. For an eligible minor patient, any immunizations or vaccines other than influenza or a booster dose as described under A.R.S. § 32-1974(B)(2) are administered in response to a public health emergency declared by the Governor under A.R.S. § 36-787.
- B.** A pharmacist or a pharmacy or graduate intern in the presence of and under the immediate personal supervision of a pharmacist, may administer, with a prescription, any immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient, if:
1. Both the pharmacist and pharmacy or graduate intern meet the qualifications and standards specified by A.R.S. § 32-1974 and this Section; and
 2. The Board certifies both the pharmacist and pharmacy or graduate intern as specified in subsection (D).
- C.** A pharmacist or pharmacy or graduate intern who is certified to administer immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient shall:
1. Not delegate the authority to any other pharmacist, pharmacy or graduate intern, or employee; and
 2. Maintain their current certificate for inspection by the Board or its designee or review by the public.
- D.** Qualifications for certification to administer immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient. After receipt of a completed application form, the Board shall issue a certificate authorizing the administration of immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient to a pharmacist or pharmacy or graduate intern who meets the following qualifications:
1. Has a current license to practice pharmacy in this state,
 2. Successfully completes a training program specified in subsection (E), and
 3. Has a current certificate in basic cardiopulmonary resuscitation.
- E.** Immunizations training program requirements. A training program for pharmacists or pharmacy or graduate interns to administer immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient shall include the following courses of study:
1. Basic immunology and the human immune response;
 2. Mechanics of immunity, adverse effects, dose, and administration schedule of available vaccines;
 3. Response to an emergency situation as a result of the administration of an immunization, vaccine, or medication including administering an emergency medication to counteract the adverse effects of the immunization, vaccine, or medication given;
 4. Administration of intramuscular injections;
 5. Other immunization administration methods; and
 6. Recordkeeping and reporting requirements specified in subsection (F).
- F.** Recordkeeping and reporting requirements.
1. A pharmacist or pharmacy or graduate intern certified under this Section to administer immunizations, vaccines, and emergency medications to an eligible patient shall provide to the pharmacy the following information and documentation regarding each immunization, vaccine, or emergency medication administered:
 - a. The name, address, and date of birth of the patient;
 - b. The date of administration and site of injection;
 - c. The name, dose, manufacturer’s lot number, and expiration date of the vaccine, immunization, or emergency medication;
 - d. The name and address of the patient’s identified primary-care provider or physician;
 - e. The name of the pharmacist or pharmacy or graduate intern administering the immunization, vaccine, or emergency medication;
 - f. A record of the pharmacist’s or pharmacy or graduate intern’s consultation with the patient determining that the patient is an eligible patient as defined in R4-23-110;
 - g. The date and time that the written report specified in subsection (F)(2) was sent to the patient’s primary-care provider or physician;
 - h. Consultation or other professional information provided to the patient by the pharmacist or pharmacy or graduate intern;
 - i. The name and date of the immunization or vaccine information sheet provided to the patient; and
 - j. For an immunization or vaccine given to an eligible minor patient, a consent form signed by the minor’s parent or guardian.
 2. The pharmacist or pharmacy or graduate intern shall provide a written report to the patient’s primary-care provider or physician containing the documentation required in subsection (F)(1)(a) through (d) within 48 hours after the immunization or vaccination. The pharmacy shall make the required records specified in subsection (F)(1) and a record of compliance with this subsection available in the pharmacy for inspection by the Board or its designee.
 3. A pharmacy’s pharmacist-in-charge shall maintain the records required in subsection (F)(1) in the pharmacy for a minimum of seven years from the administration date.

G. Confidentiality of records. A pharmacist, pharmacy or graduate intern, pharmacy permittee, or pharmacist-in-charge shall comply with applicable state and federal privacy statutes and rules when releasing patient health information.

- H.** Renewal of a certificate for pharmacist-administered immunizations. A certificate authorizing a pharmacist to administer immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient expires after five years. A pharmacist who wishes to continue administering immunizations, vaccines, and emergency medications shall renew the certification by submitting a renewal request to the Board within the 30 days before the certificate's expiration date and provide to the Board proof of the following:

1. Current certification in basic cardiopulmonary resuscitation, and
2. Completion of a minimum of five contact hours (0.5 CEU) of continuing education related to immunizations during the five-year renewal period. A pharmacist may use the continuing education hours required in this subsection as part of the total continuing education hours required for pharmacist license renewal.

- I.** Pharmacist-administered or pharmacy or graduate intern-administered adult immunizations that require a prescription order. A pharmacist or pharmacy or graduate intern certified by the Board to administer adult immunizations or vaccines shall not administer any immunization or vaccine listed in A.A.C. R9-6-1301 without a prescription order. In addition to filing a prescription order as required in A.R.S. § 32-1964, a pharmacist or pharmacy or graduate intern who administers an immunization or vaccine listed in A.A.C. R9-6-1301 shall comply with the recordkeeping requirements of subsection (F)(1).

Historical Note

New Section made by final rulemaking at 10 A.A.R. 3967, effective November 13, 2004 (Supp. 04-3).

Amended by final rulemaking at 12 A.A.R. 279, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 3674, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 15 A.A.R. 1930, effective November 3, 2009 (Supp. 09-4).

Amended by final rulemaking at 17 A.A.R. 2596, effective February 4, 2012 (Supp. 11-4). Amended by final rulemaking at 23 A.A.R. 211, effective March 5, 2017 (Supp. 17-1).

R4-23-412. Emergency Refill Prescription Dispensing

- A.** When a state of emergency is declared under A.R.S. § 32-1910(A) or (B) and the state of emergency results in individuals being unable to refill existing prescriptions, a pharmacist may work in the affected county, city, or town and may dispense a one-time emergency refill prescription of up to a 30-day supply of a prescribed medication to an affected individual 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, and
 2. The pharmacist makes a good faith effort to reduce the information to a written prescription marked "emergency prescription" and files and maintains the prescription as required by law.
- B.** If the state of emergency declared under A.R.S. § 32-1910(A) or (B) continues for at least 21-days after the pharmacist dispenses an emergency prescription under subsection (A), the pharmacist may dispense one additional emergency refill prescription of up to a 30-day supply of the prescribed medication if the pharmacist complies with subsection (A)(2).
- C.** A pharmacist's authority to dispense emergency prescriptions under this Section ends when the declared state of emergency is terminated.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 4400, effective January 3, 2009 (Supp. 08-4).

R4-23-413. Temporary Recognition of Nonresident Licensure

- A.** When a state of emergency is declared under A.R.S. § 32-1910(A) or (B):
1. 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 under A.R.S. § 32-1910(A) or (B) if both of the following apply:
 - a. The pharmacist provides proof of current licensure in another state, and
 - b. The pharmacist is engaged in a relief effort during a state of emergency.
 2. Acting under the direct supervision of a pharmacist, a pharmacy technician or pharmacy intern not licensed in this state, but currently licensed or registered in another state, may assist a pharmacist in dispensing prescription medications in affected counties, cities, or towns in this state during the time that a declared state of emergency exists under A.R.S. § 32-1910(A) or (B) if both of the following apply:
 - a. The pharmacy technician or pharmacy intern provides proof of current licensure or registration in another state, and
 - b. The pharmacy technician or pharmacy intern is engaged in a relief effort during a state of emergency.
- B.** The recognition of nonresident licensure or registration shall end with the termination of the declared state of emergency.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 4400, effective January 3, 2009 (Supp. 08-4).

R4-23-414. Reserved

R4-23-415. Impaired Licensees – Treatment and Rehabilitation

- A.** The Board may contract with qualified organizations to operate a program for the treatment and rehabilitation of licensees impaired as the result of alcohol or other drug abuse, pursuant to A.R.S. § 32-1932.01.
- B.** Participants in the program are either "confidential" or "known." Confidential participants are self-referred and may remain unidentified to the Board, subject to maintaining compliance with their program contract. Known participants are under Board order to complete a minimum tenure in the program. After a known participant completes the minimum tenure, the Board may terminate the Board order and reinstate the participant's license to practice pharmacy.
- C.** The program contract with a qualified organization shall include as a minimum the following:
1. Duties and responsibilities of each party.
 2. Duration, not to exceed two years, of contract and terms of compensation.
 3. Quarterly reports from the program administrator to the Board indicating:
 - a. Identity of participants;
 - i. By name, if a known participant; or
 - ii. By case number, if a confidential participant;
 - b. Status of each participant, including;
 - i. Clinical findings;
 - ii. Diagnosis and treatment recommendations;
 - iii. Program activities; and

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- iv. General recovery and rehabilitation program information.
- 4. The program administrator shall report immediately to the Board the name of any impaired licensee who poses a danger to self or others.
- 5. The program administrator shall report to the Board, as soon as possible, the name of any impaired licensee:
 - a. Who refuses to submit to treatment,
 - b. Whose impairment is not substantially alleviated through treatment, or
 - c. Who violates the terms of their contract.
- 6. The program administrator shall periodically provide informational programs to the profession, including approved continuing education programs on the topic of drug and chemical impairment, treatment, and rehabilitation.
- D.** Under A.R.S. § 32-1903(F), the Board may publish the names of participants under current Board orders.
- E.** The Board or its executive director may request the treatment records for any participant. The program administrator shall provide treatment records within 10 working days of receiving a written request from the Board or its executive director for such records. Upon request of the program administrator or the Board or its executive director, a program participant shall authorize a drug and alcohol treatment facility or program or a private practitioner or treatment program to release the participant's records to the program administrator or the Board or its executive director.
- F.** On the recommendation of the program administrator or a Board member and by mutual consent, the program administrator, Board member, Board staff, and program participant may meet informally to discuss program compliance.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 467, effective January 4, 2000 (Supp. 00-1). Amended by final rulemaking at 14 A.A.R. 3611, effective November 8, 2008 (Supp. 08-3).

R4-23-416. Reserved

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R4-23-420. Reserved**R4-23-421. Repealed****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4052, effective November 9, 2002 (Supp. 02-3). Section repealed by final rulemaking at 17 A.A.R. 2600, effective February 4, 2012 (Supp. 11-4).

R4-23-422. Repealed**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4052, effective November 9, 2002 (Supp. 02-3). Section repealed by final rulemaking at 17 A.A.R. 2600, effective February 4, 2012 (Supp. 11-4).

R4-23-423. Repealed**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4052, effective November 9, 2002 (Supp. 02-3). Section repealed by final rulemaking at 17 A.A.R. 2600, effective February 4, 2012 (Supp. 11-4).

R4-23-424. Repealed**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4052, effective November 9, 2002 (Supp. 02-3). Section repealed by final rulemaking at 17 A.A.R. 2600, effective February 4, 2012 (Supp. 11-4).

R4-23-425. Repealed**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4052, effective November 9, 2002 (Supp. 02-3). Section repealed by final rulemaking at 17 A.A.R. 2600, effective February 4, 2012 (Supp. 11-4).

R4-23-426. Repealed**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4052, effective November 9, 2002 (Supp. 02-3). Section repealed by final rulemaking at 17 A.A.R. 2600, effective February 4, 2012 (Supp. 11-4).

R4-23-427. Repealed**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4052, effective November 9, 2002 (Supp. 02-3). Section repealed by final rulemaking at 17 A.A.R. 2600, effective February 4, 2012 (Supp. 11-4).

R4-23-428. Repealed**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4052, effective November 9, 2002 (Supp. 02-3). Section repealed by final rulemaking at 17 A.A.R. 2600, effective February 4, 2012 (Supp. 11-4).

R4-23-429. Repealed**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4052, effective November 9, 2002 (Supp. 02-3). Section repealed by final rulemaking at 17 A.A.R. 2600, effective February 4, 2012 (Supp. 11-4).

ARTICLE 5. CONTROLLED SUBSTANCES PRESCRIPTION MONITORING PROGRAM

New Article 5, consisting of Sections R4-23-501 through R4-23-505, made effective August 2, 2014 (Supp. 14-2).

Article 5, consisting of Sections R4-23-501 through R4-23-505, expired effective August 30, 2013 (Supp. 14-1).

Article 5, consisting of Sections R4-23-501 and R4-23-502, recodified to Article 8 at 9 A.A.R. 4011, effective August 18, 2003 (Supp. 03-3).

New Article 5, consisting of Sections R4-23-501 through R4-23-505, made by final rulemaking at 14 A.A.R. 3410, effective October 4, 2008 (Supp. 08-3).

R4-23-501. Controlled Substances Prescription Monitoring (CSPMP) Program Registration and Database Access

- A. Under A.R.S. § 36-2606, a medical practitioner who is issued a license under A.R.S. Title 32, Chapter 7, 11, 13, 14, 15, 16, 17, 21, 25, or 29 and possesses a current DEA registration under the Federal Controlled Substances Act shall have a current CSPMP registration issued by the Board.
- B. Application.
 1. An applicant for CSPMP registration shall:

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- a. Submit a completed application for CSPMP registration electronically or manually on a form furnished by the Board, and
- b. Submit with the application form the documents specified in the application form.
- 2. The Board office shall deem an application form received on the date the Board office electronically or manually date-stamps the form.
- C. Registration. Within seven business days of receipt of a completed application specified in subsection (B), the Board office shall determine whether an application is complete. If the application is complete, the Board office shall issue a registration number and provide a current registration certificate to the applicant by mail or electronic transmission. If the application is incomplete, the Board office shall issue a written notice of incompleteness. An applicant with an incomplete application shall comply with the requirements of R4-23-202(F).
- D. Registration renewal. As specified in A.R.S. § 36-2606(C), the Board shall automatically suspend the registration of any registrant that fails to renew the registration on or before May 1 of the year in which the renewal is due. The Board shall vacate a suspension if the registrant submits a renewal application. A suspended registrant with CSPMP database access credentials is prohibited from accessing information in the prescription monitoring program database.
- E. CSPMP database access.
 - 1. A medical practitioner that chooses to use the CSPMP database shall request access from the CSPMP Director by completing an access user registration form electronically. Upon receipt of the access user registration form, the CSPMP Director or designee shall issue access credentials provided the medical practitioner is in compliance with the registration requirements of this Section.
 - 2. A pharmacist that chooses to use the CSPMP database shall request access from the CSPMP Director by completing an access user registration form electronically. Upon receipt of the access user registration form, the CSPMP Director or designee shall issue access credentials provided the pharmacist has a current active pharmacist license.
 - 3. A medical practitioner or pharmacist who is not licensed in Arizona may request access from the CSPMP Director by:
 - a. Completing an access user registration form electronically;
 - b. Printing the access user registration form;
 - c. Having the access user registration form signed and notarized; and
 - d. Mailing the notarized access user form along with a current copy of the applicant's nonresident state license and driver's license. Upon receipt of the notarized access user registration form and other required documents, the CSPMP Director or designee shall issue access credentials provided the nonresident licensed medical practitioner or pharmacist credentials show an current active license in another state.

Historical Note

Former Rule 5.2110; Amended effective August 9, 1983 (Supp. 83-4). Amended by final rulemaking at 8 A.A.R. 4898, effective January 5, 2003 (Supp. 02-4). Recodified to R4-23-801 at 9 A.A.R. 4011, effective August 18, 2003 (Supp. 03-3). New Section made by final rulemaking at 14 A.A.R. 3410, effective October 4, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 94, effective March 10, 2013 (Supp. 13-1). Section expired

under A.R.S. § 41-1056(J) at 20 A.A.R. 133, effective August 30, 2013 (Supp. 14-1). New Section made by final rulemaking at 20 A.A.R. 1359, effective August 2, 2014 (Supp. 14-2).

R4-23-502. Requirements for Data Format and Transmission

- A. Each dispenser shall submit to the Board or its designee by electronic means information regarding each prescription dispensed for a controlled substance listed in Schedules II, III, and IV of A.R.S. Title 36, Chapter 27, the Arizona Uniform Controlled Substances Act. The information reported shall conform to the August 31, 2005 Version 003, Release 000 ASAP Rules-based Standard Implementation Guide for Prescription Monitoring Programs published by the American Society for Automation in Pharmacy as specified in A.R.S. § 36-2608(B). The information submitted for each prescription shall include:
 - 1. The name, address, telephone number, prescription number, and DEA registration number of the dispenser;
 - 2. The name, address, gender, date of birth, and telephone number of the person or, if for an animal, the owner of the animal for whom the prescription is written;
 - 3. The name, address, telephone number, and DEA registration number of the prescribing medical practitioner;
 - 4. The quantity and National Drug Code (NDC) number of the Schedule II, III, or IV controlled substance dispensed;
 - 5. The date the prescription was dispensed;
 - 6. The number of refills, if any, authorized by the medical practitioner;
 - 7. The date the prescription was issued;
 - 8. The method of payment identified as cash or third party; and
 - 9. Whether the prescription is new or a refill.
- B. A dispenser shall submit the required information electronically unless the Board or its designee approves a waiver as specified in subsection (D).
- C. A dispenser's electronic data transfer equipment including hardware, software, and internet connections shall meet the privacy and security standards of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as amended, and A.R.S. § 12-2292, in addition to common internet industry standards for privacy and security. A dispenser shall ensure that each electronic transmission meets the following data protection requirements:
 - 1. Data shall be at least 128-bit encryption in transmission and at rest; and
 - 2. Data shall be transmitted via secure e-mail, telephone modem, diskette, CD-ROM, tape, secure File Transfer Protocol(FTP), Virtual Private Network (VPN), or other Board-approved media.
- D. A dispenser who does not have an automated recordkeeping system capable of producing an electronic report in the Board established format may request a waiver from electronic reporting by submitting a written request to the Board or its designee. The Board or its designee shall grant the request if the dispenser agrees in writing to report the data by submitting a completed universal claim form supplied by the Board or its designee.
- E. Unless otherwise approved by the Board, a dispenser shall report by the close of business on each Friday the required information for the previous week, Sunday through Saturday. If a Friday falls on a state holiday, the dispenser shall report the information on the following business day. The Board or its designee may approve a less frequent reporting period if a dispenser makes a showing that a less frequent reporting period will not reduce the effectiveness of the system or jeopardize the public health.

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Historical Note

Former Rule 5.2510. Amended by final rulemaking at 8 A.R. 4898, effective January 5, 2003 (Supp. 02-4). Recodified to R4-23-802 at 9 A.A.R. 4011, effective August 18, 2003 (Supp. 03-3). New Section made by final rulemaking at 14 A.A.R. 3410, effective October 4, 2008 (Supp. 08-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 133, effective August 30, 2013 (Supp. 14-1). New Section made by final rulemaking at 20 A.A.R. 1359, effective August 2, 2014 (Supp. 14-2).

R4-23-503. Access to Controlled Substances Prescription Monitoring Program Data

- A. Except as provided in A.R.S. § 36-2604(B) and (C) and this Section, prescription information submitted to the Board or its designee is confidential and is not subject to public inspection.
- B. The Board or its designee shall review the prescription information collected under A.R.S. Title 36, Chapter 28 and R4-23-502. If the Board or its designee has reason to believe an act of unprofessional or illegal conduct has occurred, the Board or its designee shall notify the appropriate professional licensing board or law enforcement or criminal justice agency and provide the prescription information required for an investigation.
- C. The Board or its designee is authorized to release data collected by the program to the following:
 - 1. A person who is authorized to prescribe or dispense a controlled substance to assist that person to provide medical or pharmaceutical care to a patient or to evaluate a patient;
 - 2. An individual who requests the individual's own controlled substance prescription information under A.R.S. § 12-2293;
 - 3. A professional licensing board established under A.R.S. Title 32, Chapter 7, 11, 13, 14, 15, 16, 17, 18, 21, 25, or 29. Except as required under subsection (B), the Board or its designee shall provide this information only if the requesting board states in writing that the information is necessary for an open investigation or complaint;
 - 4. A local, state, or federal law enforcement or criminal justice agency. Except as required under subsection (B), the Board or its designee shall provide this information only if the requesting agency states in writing that the information is necessary for an open investigation or complaint;
 - 5. The Arizona Health Care Cost Containment System Administration regarding individuals who are receiving services under A.R.S. Title 36, Chapter 29. Except as required under subsection (B), the Board or its designee shall provide this information only if the Administration states in writing that the information is necessary for an open investigation or complaint;
 - 6. A person serving a lawful order of a court of competent jurisdiction;
 - 7. A person who is authorized to prescribe or dispense a controlled substance and who performs an evaluation on an individual under A.R.S. § 23-1026; and
 - 8. The Board staff for purposes of administration and enforcement of A.R.S. Title 36, Chapter 28 and this Article.
- D. The Board or its designee may provide data to public or private entities for statistical, research, or educational purposes after removing information that could be used to identify individual patients or persons who received prescriptions from dispensers.

Historical Note

Former Rules 5.3500, 5.3520, 5.3540, 5.3550, 5.3560, 5.3570, 5.3580, 5.3590, 5.4110, and 5.6110; Repealed

effective August 2, 1982 (Supp. 82-4). New Section made by final rulemaking at 14 A.A.R. 3410, effective October 4, 2008 (Supp. 08-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 133, effective August 30, 2013 (Supp. 14-1). New Section made by final rulemaking at 20 A.A.R. 1359, effective August 2, 2014 (Supp. 14-2).

R4-23-504. Computerized Central Database Tracking System Task Force

- A. The Board shall appoint a task force to help it administer the computerized central database tracking system as specified in A.R.S. § 36-2603.
- B. The Task Force shall meet at least once each year and at the call of the chairperson to establish the procedures and conditions relating to the release of prescription information specified in A.R.S. § 36-2604 and R4-23-503.
- C. The Task Force shall determine:
 - 1. The information to be screened;
 - 2. The frequency and thresholds for screening; and
 - 3. The parameters for using the information to notify medical practitioners, patients, and pharmacies to educate and provide for patient management and treatment options.
- D. The Board shall review and approve the procedures and conditions established by the Task Force as needed but at least once every calendar year.

Historical Note

Former Rule 5.7010; Amended effective August 10, 1978 (Supp. 78-4). Repealed effective August 2, 1982 (Supp. 82-4). New Section made by final rulemaking at 14 A.A.R. 3410, effective October 4, 2008 (Supp. 08-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 133, effective August 30, 2013 (Supp. 14-1). New Section made by final rulemaking at 20 A.A.R. 1359, effective August 2, 2014 (Supp. 14-2).

R4-23-505. Reports

- A. Before releasing prescription monitoring program data, the Board or its designee shall receive a written or electronic request for controlled substance prescription information.
- B. A person authorized to access CSPMP data under R4-23-503(C)(1) through (7) shall submit a written or electronic request that:
 - 1. Specifies the information requested for the report;
 - 2. For a medical practitioner, provides a statement that the report's purpose is to provide medical or pharmaceutical care to a patient or to evaluate a patient;
 - 3. For an individual obtaining the individual's own controlled substance prescription information, provides a form of non-expired government-issued photo identification;
 - 4. For a professional licensing board, states that the information is necessary for an open investigation or complaint;
 - 5. For a local, state, or federal law enforcement or criminal justice agency, states that the information is necessary for an open investigation or complaint;
 - 6. For the AHCCCS Administration, states that the information is necessary for an open investigation or complaint; and
 - 7. For a person serving a lawful order of a court of competent jurisdiction, provides a copy of the court order.
- C. The Board or its designee may provide reports through U.S. mail, other common carrier, facsimile, or secured electronic media or may allow reports to be picked up in-person at the Board office.

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Historical Note

Former Rules 5.7100, 5.8100, 5.8500, 5.9100, and 5.9500; Amended effective August 10, 1978 (Supp. 78-4). Repealed effective August 2, 1982 (Supp. 82-4). New Section made by final rulemaking at 14 A.A.R. 3410, effective October 4, 2008 (Supp. 08-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 133, effective August 30, 2013 (Supp. 14-1). New Section made by final rulemaking at 20 A.A.R. 1359, effective August 2, 2014 (Supp. 14-2).

R4-23-506. Repealed**Historical Note**

Adopted effective December 3, 1974 (Supp. 75-1). Repealed effective August 24, 1992 (Supp. 92-3).

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS**R4-23-601. General Provisions**

- A. Permit required to sell a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical. A person shall have a current Board permit to:
 - 1. Sell a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical in Arizona; or
 - 2. Sell a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical from outside Arizona and ship the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical into Arizona.
- B. A medical practitioner is exempt from subsection (A) to administer a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical for the emergency needs of a patient.
- C. Permit fee. Permits are issued biennially on an odd- and even-year expiration based on the assigned permit number. The fee, specified in R4-23-205, is not refundable under any circumstances except the Board's failure to comply with the permit time-frames established in R4-23-602.
- D. Record of receipt and disposal of narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals.
 - 1. Every person manufacturing a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical, including repackaging or relabeling, shall prepare and retain for not less than three years the manufacturing, repackaging, or relabeling date for each narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical.
 - 2. Every person receiving, selling, delivering, or disposing of a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical shall record and retain for not less than three years the following information:
 - a. The name, strength, dosage form, and quantity of each narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical received, sold, delivered, or disposed;
 - b. The name, address, and license or permit number, if applicable, of the person from whom each narcotic or other controlled substance, prescription-only drug

- or device, nonprescription drug, precursor chemical, or regulated chemical is received;
- c. The name, address, and license or permit number, if applicable, of the person to whom each narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is sold or delivered, or of the person who disposes of each narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical; and
- d. The receipt, sale, deliver, or disposal date of each narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical.
- 3. The record required in this subsection shall be available for inspection by the Board or its compliance officer during regular business hours.
- 4. If the record required in this subsection is stored in a centralized recordkeeping system and not immediately available for inspection, a permittee, manager, or pharmacist-in-charge shall provide the record within four working days of the Board's or its compliance officer's request.
- E. Narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals damaged by water, fire, or from human or animal consumption or use. No person shall sell or offer to sell any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical damaged by water, fire, or from human or animal consumption or use.

Historical Note

Former Rules 6.1100, 6.1200, 6.1300, 6.1400, and 6.1500. Amended effective August 10, 1978 (Supp. 78-4). Amended subsection (C) effective August 9, 1983 (Supp. 83-4). Amended subsection (C) effective August 12, 1988 (Supp. 88-3). Amended by final rulemaking at 6 A.A.R. 4656, effective November 14, 2000 (Supp. 00-4). 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).

R4-23-602. Permit Application Process and Time-frames

- A. A person applying for a permit shall:
 - 1. Submit a completed application for the desired permit electronically or manually on a form furnished by the Board, and
 - 2. Submit with the application form:
 - a. The documents specified in the application form, and
 - b. The permit fee specified in R4-23-205(D).
- B. The Board office shall deem an application form received on the date the Board office electronically or manually date-stamps the form.
- C. Time-frames for permits.
 - 1. The Board office shall finish an administrative completeness review within 60 days from the date the application form is received.
 - a. The Board office shall issue a written notice of administrative completeness to the applicant if no deficiencies are found in the application form.
 - b. If the application form is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 60-day time-frame for the

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- Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
- c. If the Board office does not provide the applicant with written notice regarding administrative completeness, the application form shall be deemed complete 60 days after receipt by the Board office.
 2. An applicant with an incomplete application form shall submit to the Board office all of the missing information within 90 days of service of the notice of incompleteness.
 - a. If an applicant cannot submit all missing information within 90 days of service of the notice of incompleteness, the applicant may send a written request for an extension to the Board office postmarked or delivered no later than 90 days from service of the notice of incompleteness;
 - b. The written request for an extension shall document the reasons the applicant is unable to meet the 90-day deadline; and
 - c. The Board office shall review the request for an extension of the 90-day deadline and grant the request if the Board office determines that an extension of the 90-day deadline will enable the applicant to assemble and submit the missing information. An extension shall be for no more than 30 days. The Board office shall notify the applicant in writing of its decision to grant or deny the request for an extension.
 3. If an applicant fails to submit a complete application form within the time allowed, the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a permit shall submit a new application and fee as specified in subsection (A).
 4. For a nonprescription drug permit applicant, a compressed medical gas distributor permit applicant, and a durable medical equipment and compressed medical gas supplier permit applicant, the Board office shall issue a permit on the day that the Board office determines an administratively complete application form is received.
 5. Except as described in subsection (C)(4), from the date on which the administrative completeness review of an application form is finished, the Board office shall complete a substantive review of the applicant's qualifications in no more than 120 days.
 - a. If an applicant is found to be ineligible, the Board office shall issue a written notice of denial to the applicant.
 - b. If an applicant is found to be eligible, the Board office shall recommend to the Board that the applicant be issued a permit. Upon receipt of the Board office's recommendation, the Board shall either issue a permit to the applicant or if the Board determines the applicant does not meet eligibility requirements, return the matter to the Board office.
 - c. If the Board office finds deficiencies during the substantive review of the application form, the Board office shall issue a written request to the applicant for additional documentation.
 - d. The 120-day time-frame for a substantive review for the issuance or denial of a permit is suspended from the date of the written request for additional documentation until the date that all documentation is received. The applicant shall submit the additional documentation according to subsection (C)(2).
- e. If the applicant and the Board office mutually agree in writing, the 120-day substantive review time-frame may be extended once for no more than 45 days.
 6. For the purpose of A.R.S. § 41-1072 et seq., the Board establishes the following time-frames for permits:
 - a. Administrative completeness review time-frame: 60 days.
 - b. Substantive review time-frame:
 - i. Nonprescription drug permit, compressed medical gas distributor permit, and durable medical equipment and compressed medical gas supplier permit: none.
 - ii. Except as described in subsection (C)(6)(b)(i): 120 days.
 - c. Overall time-frame:
 - i. Nonprescription drug permit, compressed medical gas distributor permit, and durable medical equipment and compressed medical gas supplier permit: 60 days.
 - ii. Except as described in subsection (C)(6)(c)(i): 180 days.
- D. Permit renewal.**
1. To renew a permit, a permittee shall submit a completed application for permit renewal electronically or manually on a form furnished by the Board with the biennial renewal fee specified in R4-23-205(D).
 2. If the biennial renewal fee is not paid by November 1 of the renewal year specified in A.R.S. § 32-1931, the permit is suspended. The permittee shall pay a penalty fee as provided in A.R.S. § 32-1931 and R4-23-205(G)(2) to vacate the suspension.
 3. Time-frames for permit renewals. The Board office shall follow the time-frames established in subsection (C).
- E. Display of permit.** A permittee shall conspicuously display the permit in the location to which it applies.

Historical Note

Former Rules 6.2100, 6.2200, 6.2300, 6.2400, 6.2500, 6.2600, 6.2610, 6.2620, 6.2630, 6.2640, and 6.2650.

Amended effective August 10, 1978 (Supp. 78-4).

Amended effective August 9, 1983 (Supp. 83-4).

Repealed effective August 12, 1988 (Supp. 88-3). New Section adopted effective August 5, 1997 (Supp. 97-3).

Amended by final rulemaking at 6 A.A.R. 4589, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 20 A.A.R. 1364, effective August 2, 2014 (Supp. 14-2).

R4-23-603. Resident-Nonprescription Drugs, Retail

- A. Permit. A person, including the following, shall not sell or distribute a nonprescription drug without a current Board-issued permit:
 1. A grocer;
 2. Other non-pharmacy retail outlet; or
 3. Mobile or non-fixed location retailer, such as a swap-meet vendor.
- B. A medical practitioner licensed under A.R.S. Title 32 is exempt from the requirements of subsection (A).
- C. Application. To obtain a permit to sell a nonprescription drug, a person shall submit:
 1. A completed application form and fee as specified in R4-23-602; and
 2. Documentation of compliance with local zoning laws, if required by the Board.
- D. Drug sales. A nonprescription drug permittee:

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1. Shall sell a drug only in the original container packaged and labeled by the manufacturer; and
2. Shall not package, repackage, label, or relabel any drug.
- E. Inspection.** A nonprescription drug permittee shall consent to inspection during business hours by a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).
- F. Quality control.** A nonprescription drug permittee shall:
1. Ensure that all drugs stocked, sold, or offered for sale are:
 - a. Kept clean;
 - b. Protected from contamination, excessive heat, cold, sunlight, and other deteriorating factors;
 - c. In compliance with federal law; and
 - d. Received from a supplier with a current Board-issued permit as specified in R4-23-601(A).
 2. Develop and implement a program to ensure that:
 - a. Any expiration-dated drug is reviewed regularly;
 - b. Any drug, that exceeds its expiration date, is deteriorated or damaged, or does not comply with federal law, is moved to a quarantine area and not sold or distributed; and
 - c. Any quarantined drug is destroyed or returned to its source of supply.
- G. Notification.** A nonprescription drug permittee shall provide written notice by mail, facsimile, or e-mail to the Board office within ten days of changes involving the telephone number, facsimile number, e-mail address, mailing address, or name of business.
- H. Change of ownership.** No less than 14 days before a change of ownership occurs that involves changes of stock ownership of 30% or more of the voting stock of a corporation or an existing and continuing corporation that is not actively traded on any securities market or over-the-counter market, the prospective owner shall submit a completed application form and fee as specified in subsection (C).
- I. Relocation.** No less than 30 days before an existing nonprescription drug permittee relocates, the permittee shall submit a completed application for relocation electronically or manually on a form furnished by the Board, and the documentation required in subsection (C).
- J. Records.** A nonprescription drug permittee shall:
1. Retain records of the receipt and disposal of nonprescription drugs as required in R4-23-601(D), and
 2. Comply with the requirements of A.R.S. § 32-1977 and federal law for the retail sale of methamphetamine precursors.
- K. Permit renewal.** Permit renewal shall be as specified in R4-23-602(D).
- L. Nonprescription drug vending machine outlet.** In addition to the requirements of R4-23-601, R4-23-602, and subsections (A) through (K), a person selling or distributing a nonprescription drug in a vending machine shall comply with the following requirements:
1. Each individual vending machine is considered an outlet and shall have a Board-issued nonprescription drug permit;
 2. Each nonprescription-drug-permitted vending machine shall display in public view an identification seal, furnished by the Board, containing the permit number, vending machine's serial number, owner's name, and telephone contact number;
 3. Each nonprescription-drug-permitted vending machine is assigned a specific location that is within a weather-tight structure, protected from direct sunlight, and maintained at a temperature not less than 59° F and not greater than 86° F;
4. Each nonprescription drug sold in a vending machine is packaged and labeled in the manufacturer's original FDA-approved container;
 5. A nonprescription-drug-permitted vending machine is subject to inspection by a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5) as follows:
 - a. The owner, manager, or other staff of the nonprescription drug permittee shall provide access to the contents of the vending machine within 24 hours of a request from a Board compliance officer or other authorized officer of the law; or
 - b. The Board compliance staff shall have independent access to the vending machine;
 6. Before relocating or retiring a nonprescription-drug-permitted vending machine, the owner or manager shall notify the Board in writing. The notice shall include:
 - a. Permit number;
 - b. Vending machine's serial number;
 - c. Action planned (relocate or retire); and
 - d. If retiring a vending machine, the disposition of the nonprescription drug contents of the vending machine;
 7. The sale or distribution of a precursor chemical or regulated chemical in a vending machine is prohibited; and
 8. Under no circumstance may expired drugs be sold or distributed.

Historical Note

Adopted effective August 10, 1978 (Supp. 78-4).
 Amended subsection (D) paragraph (1) and added subsection (G) effective April 20, 1982 (Supp. 82-2).
 Amended effective August 12, 1988 (Supp. 88-3).
 Amended effective February 8, 1991 (Supp. 91-1).
 Amended effective August 5, 1997 (Supp. 97-3).
 Amended by final rulemaking at 6 A.A.R. 4589, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 20 A.A.R. 1364, effective August 2, 2014 (Supp. 14-2).

R4-23-604. Resident Drug Manufacturer

- A. Permit.** A person shall not manufacture, package, repack, label, or relabel any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical without a current Board-issued drug manufacturer permit.
- B. Application.** To obtain a permit to operate a drug manufacturing firm in Arizona, a person shall submit a completed application, on a form furnished by the Board, that includes:
1. Business name, address, mailing address, if different, telephone number, and facsimile number;
 2. Owner's name, if corporation or partnership, officers or partners, including address and title, and any other trade or business names used;
 3. Whether the owner, corporation, or partnership has conducted a similar business in any other jurisdiction and if so, indicate under what name and location;
 4. Whether the owner, any officer, or active partner has ever been convicted of an offense involving moral turpitude, a felony offense, or any drug-related offense or has any currently pending felony or drug-related charges, and if so, indicate charge, conviction date, jurisdiction, and location;
 5. Whether the owner, any officer, or active partner has ever been denied a drug manufacturer permit in this state or any other jurisdiction, and if so, indicate where and when;
 6. A copy of the drug list required by the FDA;

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7. Plans or construction drawings showing facility size and security for the proposed business;
8. Applicant's and manager's name, address, emergency telephone number, and resumé indicating educational or experiential qualifications related to drug manufacturer operation;
9. The applicant's current FDA drug manufacturer or repackager registration number and expiration date;
10. Documentation of compliance with local zoning laws;
11. For an application submitted because of ownership change, the former owner's name and business name, if different;
12. Date signed, and applicant's, corporate officer's, partner's, or manager's verified signature and title; and
13. Fee specified in R4-23-205.
- C.** Before issuing a drug manufacturer permit, the Board shall:
1. Receive and approve a completed permit application;
 2. Interview the applicant and manager, if different from the applicant, at a Board meeting; and
 3. Receive a satisfactory compliance inspection report on the facility from a Board compliance officer.
- D.** Notification. A resident drug manufacturer permittee shall notify the Board of changes involving the drug list, ownership, address, telephone number, name of business, or manager, including manager's telephone number. The resident drug manufacturer permittee shall submit a written notice via mail, fax, or e-mail to the Executive Director within 24 hours of the change, except any change of ownership requires that the resident drug manufacturer permittee comply with subsection (E).
- E.** Change of ownership. Before a change of ownership occurs that involves changes of stock ownership of more than 30% of the voting stock of a corporation or an existing and continuing corporation that is not actively traded on any securities market or over-the-counter market, the prospective owner shall submit the application packet described under subsection R4-23-604(B).
- F.** Before an existing resident drug manufacturer permittee relocates, the drug manufacturer permittee shall submit the application packet described in subsection R4-23-604(B), excluding the fee. The facility at the new location shall pass a final inspection by a Board compliance officer before operations begin.
- G.** A resident drug manufacturer permittee shall submit the application packet described under subsection R4-23-604(B) for any change of officers in a corporation, excluding the fee and final inspection.
- H.** Manufacturing and distribution.
1. A drug manufacturer permittee shall manufacture and distribute a drug only:
 - a. To a pharmacy, drug manufacturer, or full-service or nonprescription drug wholesaler currently permitted by the Board;
 - b. To a medical practitioner currently licensed as a medical practitioner as defined in A.R.S. § 32-1901; or
 - c. To a properly permitted, registered, licensed, or certified person or firm of another jurisdiction.
 2. Before manufacturing and distributing a drug that is not listed on a drug manufacturer's permit application, the drug manufacturer permittee shall send to the Board office a written request to amend the permit application, including documentation of FDA approval to manufacture the drug not listed on the original permit application. If a request to amend a permit application includes the documentation required in this subsection, the Board or its designee shall approve the request to amend within 30 days of receipt.
- I.** A drug manufacturer permit is subject to denial, suspension, probation, or revocation under A.R.S. § 32-1927.02.
- J.** Current Good Manufacturing Practice. A drug manufacturer permittee shall comply with the current good manufacturing practice requirements of 21 CFR 210 through 211, (Revised April 1, 2011, incorporated by reference and on file with the Board and available at www.gpo.gov. This incorporated material includes no future editions or amendments.)
- K.** Records. A drug manufacturer permittee shall:
1. Establish and implement written procedures for maintaining records pertaining to production, process control, labeling, packaging, quality control, distribution, complaints, and any information required by federal or state law;
 2. Retain the records required by this Article and 21 CFR 210 through 211 as incorporated in subsection (J) for at least two years after distribution of a drug or one year after the expiration date of a drug, whichever is longer; and
 3. Make the records required by this Article and 21 CFR 210 through 211 as incorporated in subsection (J) available within 48 hours for review by a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).
- L.** Inspections. A drug manufacturer permittee shall make the drug manufacturer's facility available for inspection by the Board or its compliance officer under A.R.S. § 32-1904.
- M.** Nonresident drug manufacturer. A nonresident drug manufacturer shall comply with the requirements of R4-23-607.
- N.** Manufacturing radiopharmaceuticals. Before manufacturing a radiopharmaceutical, a drug manufacturer permittee shall:
1. Comply with the regulatory requirements of the Arizona Radiation Regulatory Agency, the U.S. Nuclear Regulatory Commission, the FDA, and this Section; and
 2. Hold a current Arizona Radiation Regulatory Agency Radioactive Materials License. If a drug manufacturer permittee who manufactures radiopharmaceuticals fails to maintain a current Arizona Radiation Regulatory Agency Radioactive Materials License, the permittee's drug manufacturer permit shall be immediately suspended pending a hearing by the Board.

Historical Note

Former Rules 6.4001, 6.4002, 6.4003, 6.4004, 6.4005, 6.4006, 6.4007, 6.4008, 6.4009, 6.4100, 6.4110, 6.4111, 6.4115, 6.4116, 6.4120, 6.4122, 6.4190, 6.4191, 6.4200, 6.4250, 6.4300, 6.4350, 6.4355, 6.4360, 6.4400, 6.4401, 6.4403, 6.4410, 6.4430, 6.4450, 6.4500, 6.4510, 6.4530, 6.4533, 6.4600, 6.4610, 6.4640, 6.4660, 6.4700, 6.4710, and 6.4750. Adopted effective December 3, 1974 (Supp. 75-1). Amended effective August 10, 1978 (Supp. 78-4). Amended subsection (B) paragraph (2) effective April 20, 1982 (Supp. 82-2). Amended subsections (B), (G), (K) and (L) effective August 12, 1988 (Supp. 88-3). Amended effective August 24, 1992 (Supp. 92-3). Amended effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 3815, effective August 9, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 1105, effective April 30, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 702, effective June 1, 2013 (Supp. 13-2).

R4-23-605. Resident Drug Wholesaler Permit

- A.** Permit. A person shall not operate a business or firm for the wholesale distribution of any drug, device, precursor chemi-

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cal, or regulated chemical without a current Board-issued full-service or nonprescription drug wholesale permit.

B. Application.

1. To obtain a permit to operate a full-service or nonprescription drug wholesale firm in Arizona, a person shall submit a completed application on a form furnished by the Board that includes:
 - a. Whether the application is for a full-service or nonprescription drug wholesale permit;
 - b. Business name, address, mailing address, if different, telephone number, and facsimile number;
 - c. Owner's name, if corporation or partnership, officers or partners, including address and title, and any other trade or business names used;
 - d. Whether the owner, corporation, or partnership has conducted a similar business in any other jurisdiction and if so, indicate under what name and location;
 - e. Whether the owner, any officer or active partner has ever been convicted of an offense involving moral turpitude, a felony offense, or any drug-related offense or has any currently pending felony or drug-related charges, and if so, indicate charge, conviction date, jurisdiction, and location;
 - f. Whether the owner or any officer or active partner has ever been denied a drug wholesale permit in this state or any other jurisdiction, and if so, indicate where and when;
 - g. For a full-service drug wholesale firm:
 - i. The designated representative's name, address, and emergency telephone number;
 - ii. Documentation that the designated representative meets the requirements of A.R.S. § 32-1982(B) and the following as specified in A.R.S. § 32-1982(C):
 - (1) A full set of fingerprints from the designated representative; and
 - (2) The state and federal criminal history record check fee specified by and made payable to the Arizona State Department of Public Safety by money order, certified check, or bank draft; and
 - iii. A \$100,000 bond as specified in A.R.S. § 32-1982(D) submitted on a form supplied by the Board;
 - h. The type of drugs, whether nonprescription, prescription-only, controlled substances, human, or veterinary, the applicant will distribute;
 - i. Plans or construction drawings showing facility size and security for the proposed business;
 - j. Documentation of compliance with local zoning laws;
 - k. For a nonprescription drug wholesale firm, the manager's or designated representative's name, address, emergency telephone number, and resumé indicating educational or experiential qualifications related to drug wholesale operation;
 - l. For an application submitted because of ownership change, the former owner's name and business name, if different;
 - m. Date signed, and applicant's, corporate officer's, partner's, manager's, or designated representative's verified signature and title; and
 - n. Fee specified in R4-23-205.
2. Before issuing a full-service or nonprescription drug wholesale permit, the Board shall:

- a. Receive and approve a completed permit application;
- b. Interview the applicant and the designated representative, if different from the applicant, at a Board meeting;
- c. Receive a satisfactory compliance inspection report on the facility from a Board compliance officer; and
- d. For a full-service drug wholesale permit, issue a fingerprint clearance to a qualified designated representative, as specified in subsection (L). If the fingerprint clearance of a designated representative for a full-service drug wholesale permit applicant is denied, the full-service drug wholesale permit applicant shall appoint another designated representative and submit the documentation, fingerprints, and fee required in subsection (B)(1)(g)(ii).

C. Notification. A resident full-service or nonprescription drug wholesale permittee shall notify the Board of changes involving the type of drugs sold or distributed, ownership, address, telephone number, name of business, or manager or designated representative, including the manager's or designated representative's telephone number.

1. The resident full-service or nonprescription drug wholesale permittee shall submit a written notice via mail, fax, or e-mail to the Executive Director within 10 days of the change, except any change of ownership requires that the resident full-service or nonprescription drug wholesale permittee comply with subsection (D).
2. For a change of designated representative, a resident full-service drug wholesale permittee shall submit the documentation, fingerprints, and fee required in subsection (B)(1)(g)(ii). If the fingerprint clearance of a designated representative for a full-service drug wholesale permit applicant is denied, the full-service drug wholesale permit applicant shall appoint another designated representative and submit the documentation, fingerprints, and fee required in subsection (B)(1)(g)(ii).

D. Change of ownership. Before a change of ownership occurs that involves changes of stock ownership of more than 30% of the voting stock of a corporation or an existing and continuing corporation that is not actively traded on any securities market or over-the-counter market, the prospective owner shall submit the application packet described under subsection (B).**E.** Before an existing resident full-service or nonprescription drug wholesaler permittee relocates, the resident full-service or nonprescription drug wholesale permittee shall submit the application packet described under subsection (B), excluding the fee. The facility at the new location shall pass a final inspection by a Board compliance officer before operations begin.**F.** A resident full-service or nonprescription drug wholesale permittee shall submit the application packet described under subsection (B) for any change of officers in a corporation, excluding the fee and final inspection.**G. Distribution restrictions.** In addition to the requirements of this subsection, a resident full-service wholesale permittee shall comply with the distribution restrictions specified in A.R.S. § 32-1983.

1. **Records.**
 - a. A full-service drug wholesale permittee shall:
 - i. Maintain records to ensure full accountability of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical including dates of receipt and sales, names, addresses, and DEA registration num-

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- bers, if required, of suppliers or sources of merchandise, and customer names, addresses, and DEA registration numbers, if required;
- ii. File the records required in subsection (G)(1)(a)(i) in a readily retrievable manner for a minimum of three years;
 - iii. Make the records required in subsection (G)(1)(a)(i) available upon request during regular business hours for inspection by a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5). Records kept at a central location apart from the business location and not electronically retrievable shall be made available within two business days; and
 - iv. In addition to the records requirements of subsection (G)(1)(a)(i), provide a pedigree as specified in A.R.S. § 32-1984(E) for all prescription-only drugs that leave the normal distribution channel as defined in A.R.S. § 32-1981.
- b. A nonprescription drug wholesale permittee shall:
- i. Maintain records to ensure full accountability of any nonprescription drug, precursor chemical, or regulated chemical including dates of receipt and sales, names, addresses, and DEA registration numbers, if required, of suppliers or sources of merchandise, and customer names, addresses, and DEA registration numbers, if required;
 - ii. File the records required in subsection (G)(1)(b)(i) in a readily retrievable manner for a minimum of three years; and
 - iii. Make the records required in subsection (G)(1)(b)(i) available upon request during regular business hours for inspection by a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5). Records kept at a central location apart from the business location and not electronically retrievable shall be made available within two business days.
2. Drug sales.
- a. A full-service drug wholesale permittee shall:
 - i. Not sell, distribute, give away, or dispose of, any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical, except in the original container packaged and labeled by the manufacturer or repackager;
 - ii. Not package, repackage, label, or relabel any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical;
 - iii. Not sell, distribute, give away, or dispose of, any narcotic or other controlled substance, or prescription-only drug or device, to anyone except a pharmacy, drug manufacturer, or full-service drug wholesaler currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
 - iv. Not sell, distribute, give away, or dispose of, any nonprescription drug, precursor chemical, or regulated chemical, to anyone except a pharmacy, drug manufacturer, full-service or non-prescription drug wholesaler, or
 - v. Provide pedigree records upon request, if immediately available, or within two business days from the date of a request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5);
 - vi. Maintain a copy of the current permit or license of each person or firm who buys, receives, or disposes of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical; and
 - vii. Provide permit and license records upon request, if immediately available, or within two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).
- b. A nonprescription drug wholesale permittee shall:
- i. Not sell, distribute, give away, or dispose of any nonprescription drug, precursor chemical, or regulated chemical, except in the original container packaged and labeled by the manufacturer or repackager;
 - ii. Not package, repackage, label, or relabel any nonprescription drug, precursor chemical, or regulated chemical;
 - iii. Not sell or distribute any nonprescription drug, precursor chemical, or regulated chemical, to anyone except a pharmacy, drug manufacturer, full-service or nonprescription drug wholesaler, or nonprescription drug retailer currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
 - iv. Maintain a record of the current permit or license of each person or firm who buys, receives, or disposes of any nonprescription drug, precursor chemical, or regulated chemical; and
 - v. Provide permit and license records upon request, if immediately available, or within two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).
- c. Nothing in this subsection shall be construed to prevent the return of a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical to the original source of supply.
3. Out-of-state drug sales.
- a. A full-service drug wholesale permittee shall:
 - i. Not sell, distribute, give away, or dispose of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical, except in the original container packaged and labeled by the manufacturer or repackager;
 - ii. Not package, repackage, label, or relabel any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical;
 - iii. Not sell, distribute, give away, or dispose of any narcotic or other controlled substance, pre-

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- scription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical, to anyone except a person or firm that is properly permitted, registered, licensed, or certified in another jurisdiction;
- iv. Provide pedigree records upon request, if immediately available, or within two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5);
 - v. Maintain a copy of the current permit, registration, license, or certificate of each person or firm who buys, receives, or disposes of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical; and
 - vi. Provide permit, registration, license, and certificate records upon request, if immediately available, or within two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5); and
- b. A nonprescription drug wholesale permittee shall:
- i. Not sell, distribute, give away, or dispose of any nonprescription drug, precursor chemical, or regulated chemical, except in the original container packaged and labeled by the manufacturer or repackager;
 - ii. Not package, repackage, label, or relabel any nonprescription drug, precursor chemical, or regulated chemical;
 - iii. Not sell or distribute any nonprescription drug, precursor chemical, or regulated chemical, to anyone except a person or firm that is properly permitted, registered, licensed, or certified in another jurisdiction;
 - iv. Maintain a record of the current permit, registration, license, or certificate of each person or firm who buys, receives, or disposes of any nonprescription drug, precursor chemical, or regulated chemical; and
 - v. Provide permit, registration, license, or certificate records upon request, if immediately available, or within two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).
4. Cash-and-carry sales.
- a. A full-service drug wholesale permittee shall complete a cash-and-carry sale or distribution of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical, only after:
 - i. Verifying the validity of the order;
 - ii. Verifying the identity of the pick-up person for each transaction by confirming that the person or firm represented placed the cash-and-carry order; and
 - iii. For a prescription-only drug order, verifying that the cash-and-carry sale or distribution is used only to meet the immediate needs of a particular patient of the person or firm who placed the cash-and-carry order; and
 - b. A nonprescription drug wholesale permittee shall complete a cash-and-carry sale or distribution of any nonprescription drug, precursor chemical, or regulated chemical, only after:
 - i. Verifying the validity of the order; and
 - ii. Verifying the identity of the pick-up person for each transaction by confirming that the person or firm represented placed the cash-and-carry order.
- H. Prescription-only drug returns or exchanges. A full-service drug wholesale permittee shall ensure that any prescription-only drug returned or exchanged by a pharmacy or chain pharmacy warehouse under A.R.S. § 32-1983(A) meets the following criteria:
1. The prescription-only drug is not adulterated or counterfeited, except an adulterated or counterfeited prescription-only drug that is the subject of an FDA or manufacturer recall may be returned for destruction or subsequent return to the manufacturer;
 2. The quantity of prescription-only drug returned or exchanged does not exceed the quantity of prescription-only drug that the full-service drug wholesale permittee or a full-service drug wholesale permittee under common ownership sold to the pharmacy or chain pharmacy warehouse; and
 3. The pharmacy or chain pharmacy warehouse provides documentation that:
 - a. Lists the name, strength, and manufacturer of the prescription-only drug being returned or exchanged; and
 - b. States that the prescription-only drug was maintained in compliance with storage conditions prescribed on the drug label or manufacturer's package insert.
- I. Returned, outdated, damaged, deteriorated, adulterated, misbranded, counterfeited, and contraband drugs.
1. Except as specified in subsection (H)(1) for a prescription-only drug, a full-service drug wholesale permittee shall ensure that the return of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical meets the following criteria.
 - a. Any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical that is outdated, damaged, deteriorated, adulterated, misbranded, counterfeited, or contraband or suspected of being adulterated, misbranded, counterfeited, or contraband, or otherwise deemed unfit for human or animal consumption shall be quarantined and physically separated from other narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals until the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA.
 - b. Any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical whose immediate or sealed outer or secondary containers or product labeling are misbranded, counterfeited, or contraband or suspected of being misbranded, counterfeited, or contraband shall be quarantined and physically separated from other narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals until the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA.

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- controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals until the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA. When the immediate or sealed outer or secondary containers or product labeling are determined to be misbranded, counterfeited, or contraband or suspected of being misbranded, counterfeited, or contraband, the full-service drug wholesale permittee shall provide notice of the misbranding, counterfeiting, or contrabandage or suspected misbranding, counterfeiting, or contrabandage within three business days of the determination to the Board, FDA, and manufacturer or wholesale distributor from which the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical was acquired.
- c. Any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical that has been opened or used, but is not adulterated, misbranded, counterfeited, or contraband or suspected of being misbranded, counterfeited, or contraband, shall be identified as opened or used, or both, and quarantined and physically separated from other narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals until the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA.
- d. If the conditions under which a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical has been returned cast doubt on the narcotic's or other controlled substance's, prescription-only drug's or device's, nonprescription drug's, precursor chemical's, or regulated chemical's safety, identity, strength, quality, or purity, the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical shall be quarantined and physically separated from other narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals until the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA, except as provided in subsection (I)(1)(d)(i).
- i. If examination, testing, or other investigation proves that the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical meets appropriate standards of safety, identity, strength, quality, and purity, it does not have to be destroyed or returned to the manufacturer or wholesale distributor.
- ii. In determining whether the conditions under which a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical has been returned cast doubt on the narcotic's or other controlled substance's, prescription-only drug's or device's, nonprescription drug's, precursor chemical's, or regulated chemical's safety, identity, strength, quality, or purity, the full-service drug wholesale permittee shall consider, among other things, the conditions under which the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical has been held, stored, or shipped before or during its return and the condition of the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical and the condition of its container, carton, or product labeling as a result of storage or shipping.
- e. For any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical identified under subsections (I)(1)(a) or (b), the full-service drug wholesale permittee shall ensure that the identified item or items and other evidence of criminal activity, and accompanying documentation is retained and not destroyed until its disposition is authorized by the Board and the FDA.
2. A nonprescription drug wholesale permittee shall ensure that the return of any nonprescription drug, precursor chemical, or regulated chemical meets the following criteria.
- a. Any nonprescription drug, precursor chemical, or regulated chemical that is outdated, damaged, deteriorated, adulterated, misbranded, counterfeited, or contraband or suspected of being adulterated, misbranded, counterfeited, or contraband, or otherwise deemed unfit for human or animal consumption shall be quarantined and physically separated from other nonprescription drugs, precursor chemicals, or regulated chemicals until the nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA.
- b. Any nonprescription drug, precursor chemical, or regulated chemical whose immediate or sealed outer or secondary containers or product labeling are misbranded, counterfeited, or contraband or suspected of being misbranded, counterfeited, or contraband shall be quarantined and physically separated from other nonprescription drugs, precursor chemicals, or regulated chemicals until the nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA. When the immediate or sealed outer or secondary containers or product labeling are determined to be misbranded, counterfeited, or contraband or suspected of being misbranded, counterfeited, or contraband, the non-

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prescription drug wholesale permittee shall provide notice of the misbranding, counterfeiting, or contrabandage or suspected misbranding, counterfeiting, or contrabandage within three business days of the determination to the Board, FDA, and manufacturer or wholesale distributor from which the nonprescription drug, precursor chemical, or regulated chemical was acquired.

- c. Any nonprescription drug, precursor chemical, or regulated chemical that has been opened or used, but is not adulterated, misbranded, counterfeited, or contraband or suspected of being misbranded, counterfeited, or contraband, shall be identified as opened or used, or both, and quarantined and physically separated from other nonprescription drugs, precursor chemicals, or regulated chemicals until the nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA.
- d. If the conditions under which a nonprescription drug, precursor chemical, or regulated chemical has been returned cast doubt on the nonprescription drug's, precursor chemical's, or regulated chemical's safety, identity, strength, quality, or purity, the nonprescription drug, precursor chemical, or regulated chemical shall be quarantined and physically separated from other nonprescription drugs, precursor chemicals, or regulated chemicals until the nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA, except as provided in subsection (I)(2)(d)(i).
 - i. If examination, testing, or other investigation proves that the nonprescription drug, precursor chemical, or regulated chemical meets appropriate standards of safety, identity, strength, quality, and purity, it does not need to be destroyed or returned to the manufacturer or wholesale distributor.
 - ii. In determining whether the conditions under which a nonprescription drug, precursor chemical, or regulated chemical has been returned cast doubt on the nonprescription drug's, precursor chemical's, or regulated chemical's safety, identity, strength, quality, or purity, the nonprescription drug wholesale permittee shall consider, among other things, the conditions under which the nonprescription drug, precursor chemical, or regulated chemical has been held, stored, or shipped before or during its return and the condition of the nonprescription drug, precursor chemical, or regulated chemical and the condition of its container, carton, or product labeling as a result of storage or shipping.
- e. For any nonprescription drug, precursor chemical, or regulated chemical identified under subsections (I)(2)(a) or (b), the nonprescription drug wholesale permittee shall ensure that the identified item or items and other evidence of criminal activity, and accompanying documentation is retained and not destroyed until its disposition is authorized by the Board and the FDA.

3. A full-service drug wholesale permittee and nonprescription drug wholesale permittee shall comply with the recordkeeping requirements of subsection (G) for all outdated, damaged, deteriorated, adulterated, misbranded, counterfeited and contraband narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals.

J. Facility. A full-service or nonprescription drug wholesale permittee shall:

- 1. Ensure that the facility occupied by the full-service or nonprescription drug wholesale permittee is of adequate size and construction, well-lighted inside and outside, adequately ventilated, and kept clean, uncluttered, and sanitary;
- 2. Ensure that the permittee's warehouse facility:
 - a. Is secure from unauthorized entry; and
 - b. Has an operational security system designed to provide protection against theft;
- 3. In a full-service drug wholesale facility, ensure that only authorized personnel may enter areas where any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is kept;
- 4. In a nonprescription drug wholesale facility, ensure that only authorized personnel may enter areas where any nonprescription drug, precursor chemical, or regulated chemical is kept;
- 5. In a full-service drug wholesale facility, ensure that any thermolabile narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is stored in an area where room temperature is maintained in compliance with storage conditions prescribed on the product label;
- 6. In a nonprescription drug wholesale facility, ensure that any thermolabile nonprescription drug, precursor chemical, or regulated chemical is stored in an area where room temperature is maintained in compliance with storage conditions prescribed on the product label;
- 7. Make the facility available for inspection by a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5) during regular business hours;
- 8. In a full-service drug wholesale facility, provide a quarantine area for storage of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical that is outdated, damaged, deteriorated, adulterated, misbranded, counterfeited, or contraband or suspected of being adulterated, misbranded, counterfeited, or contraband, otherwise deemed unfit for human or animal consumption, or that is in an open container; and
- 9. In a nonprescription drug wholesale facility, provide a quarantine area for storage of any nonprescription drug, precursor chemical, or regulated chemical that is outdated, damaged, deteriorated, adulterated, misbranded, counterfeited, or contraband or suspected of being adulterated, misbranded, counterfeited, or contraband, otherwise deemed unfit for human or animal consumption, or that is in an open container.

K. Quality controls.

- 1. A full-service drug wholesale permittee shall:
 - a. Ensure that any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated

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- chemical that meets the criteria specified in subsection (I)(1) is not sold, distributed, or delivered to any person for human or animal consumption;
- b. Ensure that a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is not manufactured, packaged, repackaged, labeled, or relabeled by any of its employees;
 - c. Ensure that any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical stocked, sold, offered for sale, or delivered is:
 - i. Kept clean,
 - ii. Protected from contamination and other deteriorating environmental factors, and
 - iii. Stored in a manner that complies with applicable federal and state law and official compendium storage requirements;
 - d. Maintain manual or automatic temperature and humidity recording devices or logs to document conditions in areas where any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is stored; and
 - e. Develop and implement a program to ensure that:
 - i. Any expiration-dated narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is reviewed regularly;
 - ii. Any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical that has less than 120 days remaining on the expiration date, or is deteriorated, damaged, or does not comply with federal law, is moved to a quarantine area and not sold or distributed; and
 - iii. Any quarantined narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired.
2. A nonprescription drug wholesale permittee shall:
- a. Ensure that any nonprescription drug, precursor chemical, or regulated chemical that meets the criteria specified in subsection (I)(2) is not sold, distributed, or delivered to any person for human or animal consumption;
 - b. Ensure that a nonprescription drug, precursor chemical, or regulated chemical is not manufactured, packaged, repackaged, labeled, or relabeled by any of its employees;
 - c. Ensure that any nonprescription drug, precursor chemical, or regulated chemical stocked, sold, offered for sale, or delivered is:
 - i. Kept clean,
 - ii. Protected from contamination and other deteriorating environmental factors, and
 - iii. Stored in a manner that complies with applicable federal and state law and official compendium storage requirements;
 - d. Maintain manual or automatic temperature and humidity recording devices or logs to document con-
- ditions in areas where any nonprescription drug, precursor chemical, or regulated chemical is stored; and
- e. Develop and implement a program to ensure that:
 - i. Any expiration-dated nonprescription drug, precursor chemical, or regulated chemical is reviewed regularly;
 - ii. Any nonprescription drug, precursor chemical, or regulated chemical that has less than 120 days remaining on the expiration date, or is deteriorated, damaged, or does not comply with federal law, is moved to a quarantine area and not sold or distributed; and
 - iii. Any quarantined nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired.
- L. Fingerprint clearance.
1. After receiving the state and federal criminal history record of a designated representative, the Board shall compare the record with the list of criminal offenses that preclude a designated representative from receiving a fingerprint clearance. If the designated representative's criminal history record does not contain any of the offenses listed in subsection (L)(2), the Board shall issue the designated representative a fingerprint clearance.
 2. The Board shall not issue a fingerprint clearance to a designated representative who is awaiting trial for or who has been convicted of committing or attempting or conspiring to commit one or more of the following offenses in this state or the same or similar offenses in another state or jurisdiction:
 - a. Unlawfully administering intoxicating liquors, controlled substances, dangerous drugs, or prescription-only drugs;
 - b. Sale of peyote;
 - c. Possession, use, or sale of marijuana, dangerous drugs, prescription-only drugs, or controlled substances;
 - d. Manufacture or distribution of an imitation controlled substance;
 - e. Manufacture or distribution of an imitation prescription-only drug;
 - f. Possession or possession with intent to use an imitation controlled substance;
 - g. Possession or possession with intent to use an imitation prescription-only drug; or
 - h. A felony offense involving sale, distribution, or transportation of, offer to sell, transport, or distribute marijuana, dangerous drugs, prescription-only drugs, or controlled substances.
 3. If after conducting a state and federal criminal history record check the Board determines that it is not authorized to issue a fingerprint clearance, the Board shall notify the full-service drug wholesale applicant or permittee that employs the designated representative that the Board is not authorized to issue a fingerprint clearance. This notice shall include the criminal history information on which the denial was based. This criminal history information is subject to dissemination restrictions under A.R.S. § 41-1750 and federal law.
 4. The issuance of a fingerprint clearance does not entitle a person to employment.

Historical Note

Former Rules 6.5110, 6.5120, 6.5130, 6.5140, 6.5210,

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6.5220, 6.5230, 6.5240, 6.5310, 6.5320, 6.5410, and 6.5420. Amended effective August 10, 1978 (Supp. 78-4). Amended effective April 20, 1982 (Supp. 82-2). Amended subsection (A) effective August 12, 1988 (Supp. 88-3). Amended effective February 8, 1991 (Supp. 91-1). Amended effective August 24, 1992 (Supp. 92-3). Amended by final rulemaking at 6 A.A.R. 4589, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 10 A.A.R. 232, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 1105, effective April 30, 2005 (Supp. 05-1). Amended by final rulemaking at 11 A.A.R. 4270, effective December 6, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 3477, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 702, effective June 1, 2013 (Supp. 13-2).

R4-23-606. Resident-Pharmacy Permit: Community, Hospital, and Limited Service

- A.** Permit. A person shall not operate a pharmacy in Arizona without a current Board-issued pharmacy permit.
- B.** Application.
 - 1. To obtain a permit to operate a pharmacy in Arizona, a person shall submit a completed application form and fee as specified in R4-23-602 that includes:
 - a. Documentation of compliance with local zoning laws, if required by the Board;
 - b. A detailed floor plan showing proposed pharmacy area including size and security;
 - c. A copy of the lease agreement, if applicable; and
 - d. A disclosure statement indicating whether a medical practitioner will receive compensation, either directly or indirectly, from the pharmacy.
 - 2. Before issuing a pharmacy permit, the Board shall:
 - a. Receive and approve a completed permit application; and
 - b. Receive a satisfactory compliance inspection report on the facility from a Board compliance officer.
 - 3. Before issuing a pharmacy permit, the Board may interview the applicant and the pharmacist-in-charge, if different from the applicant, at a Board meeting based on the need for additional information.
- C.** Notification. A pharmacy permittee shall notify the Board office within ten days of changes involving the type of pharmacy operated, telephone number, facsimile number, e-mail address, mailing address, name of business, or staff pharmacist. A pharmacy permittee shall provide the Board office immediate notice of a change of the pharmacist-in-charge.
- D.** If any nonprescription drugs are sold outside the pharmacy area when the pharmacy area is closed, the pharmacy permittee shall ensure that the business has a current, Board-issued nonprescription drug permit as required in Section R4-23-603.
- E.** Change of ownership. No less than 14 days before a change of ownership occurs that involves changes of stock ownership of 30% or more of the voting stock of a corporation or an existing and continuing corporation that is not actively traded on any securities market or over-the-counter market, the prospective owner shall submit a completed application form and fee as specified in subsection (B).
- F.** Relocation or remodel.
 - 1. No less than 30 days before the relocation or remodel of an existing pharmacy, the pharmacy permittee shall submit a completed application for remodel or relocation electronically or manually on a form furnished by the Board.
 - a. An application for relocation shall include the documents required by subsections (B)(1)(a) through (d).

- b. An application for remodel shall include the document required by subsection (B)(1)(b).
- 2. The new or remodeled facility shall pass a final inspection by a Board compliance officer before operations begin.

- G.** Permit renewal. Permit renewal shall be as specified in R4-23-602(D).

Historical Note

Former Rules 6.6010, 6.6020, 6.6030, 6.6040, 6.6050, 6.6060, 6.6071, 6.6072, 6.6073, 6.6074, 6.6075, and 6.6076. Amended effective August 10, 1978 (Supp. 78-4). Amended subsections (G) and (H) effective April 20, 1982 (Supp. 82-2). Amended subsection (L) effective July 2, 1982 (Supp. 82-4). Amended subsections (G) and (H) effective August 12, 1988 (Supp. 88-3). Amended effective November 1, 1993 (Supp. 93-4). Section heading amended effective April 5, 1996 (Supp. 96-2). Amended by final rulemaking at 7 A.A.R. 3825, effective August 9, 2001 (Supp. 01-3). Amended by final rulemaking at 20 A.A.R. 1364, effective August 2, 2014 (Supp. 14-2).

R4-23-607. Nonresident Permits

- A.** Permit. A person who is not a resident of Arizona shall not sell or distribute any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical into Arizona without:
 - 1. Processing a current Board-issued nonresident pharmacy permit, nonresident manufacturer permit, nonresident full-service or nonprescription drug wholesale permit, or nonresident nonprescription drug permit;
 - 2. Possessing a current equivalent license or permit issued by the licensing authority in the jurisdiction where the person or firm resides;
 - 3. For a nonresident pharmacy, employing a pharmacist who is designated as the pharmacist-in-charge and who possesses a current Arizona Board-issued pharmacist license; and
 - 4. For a nonresident pharmacy permit issued before April 7, 2007, complying with subsection (A)(3) and submitting to the Board the pharmacist-in-charge's name, current Arizona Board-issued pharmacist license number, and telephone number by November 1, 2007.
- B.** Application. To obtain a nonresident pharmacy, nonresident manufacturer, nonresident full-service or nonprescription drug wholesale, or nonprescription drug permit, a person shall submit a completed application, on a form furnished by the Board, that includes:
 - 1. Business name, address, mailing address, if different, telephone number, and facsimile number;
 - 2. Owner's name, if corporation or partnership, officers or partners, including address and title, and any other trade or business names used;
 - 3. Whether the owner, corporation, or partnership has conducted a similar business in any other jurisdiction and if so, indicate under what name and location;
 - 4. Whether the owner, any officer, or active partner has ever been convicted of an offense involving moral turpitude, a felony offense, or any drug-related offense or has any currently pending felony or drug-related charges, and if so, indicate charge, conviction date, jurisdiction, and location;
 - 5. A copy of the applicant's current equivalent license or permit, issued by the licensing authority in the jurisdiction where the person or firm resides and required by subsection (A)(2);

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6. For an application submitted because of ownership change, the former owner's name and business name, if different;
7. Date signed, and applicant's, corporate officer's, partner's, manager's, administrator's, pharmacist-in-charge's, or designated representative's verified signature and title; and
8. Fee specified in R4-23-205.
- C.** In addition to the requirements of subsection (B), the following information is required on the application:
1. Nonresident pharmacy.
 - a. The type of pharmacy;
 - b. Whether the owner, any officer, or active partner has ever been denied a pharmacy permit in this state or any other jurisdiction, and if so, indicate where and when;
 - c. If applying for a hospital pharmacy permit, the number of beds, manager's or administrator's name, and a copy of the hospital's current equivalent license or permit issued by the licensing authority in the jurisdiction where the person or firm resides;
 - d. Pharmacist-in-charge's name, current Arizona Board-issued pharmacist license number, and telephone number; and
 - e. For an application submitted because of ownership change, the former pharmacy's name, address, and permit number; and
 2. Nonresident manufacturer.
 - a. Whether the owner, any officer, or active partner has ever been denied a drug manufacturer permit in this state or any other jurisdiction, and if so, indicate where and when;
 - b. A copy of the drug list required by the FDA;
 - c. Manager's or responsible person's name, address, and emergency telephone number; and
 - d. The firm's current FDA drug manufacturer or repackager registration number and expiration date; and
 3. Nonresident full-service drug wholesaler.
 - a. The designated representative's name, address, and emergency telephone number;
 - b. Documentation that the designated representative meets the requirements of A.R.S. § 32-1982(B) and the following as specified in A.R.S. § 32-1982(C):
 - i. A full set of fingerprints from the designated representative; and
 - ii. The state and federal criminal history record check fee specified by and made payable to the Arizona State Department of Public Safety by money order, certified check, or bank draft; and
 - c. A \$100,000 bond as specified in A.R.S. § 32-1982(D) submitted on a form supplied by the Board; and
 4. Nonresident full-service or nonprescription drug wholesaler.
 - a. The type of drug wholesale permit;
 - b. Whether the owner, any officer, or active partner has ever been denied a drug wholesale permit in this state or any other jurisdiction, and if so, indicate where and when;
 - c. The types of drugs, nonprescription, prescription-only, controlled substances, human, or veterinary, the applicant will distribute;
 - d. Manager's or designated representative's name, address, emergency telephone number, and résumé indicating educational or experiential qualifications related to drug wholesale operation; and
- D.** Before issuing a nonresident full-service drug wholesale permit, the Board shall:
1. Receive and approve a completed permit application; and
 2. Issue a fingerprint clearance to a qualified designated representative, as specified in R4-23-605(L). If a nonresident full-service drug wholesale permit applicant's designated representative's fingerprint clearance is denied, the nonresident full-service drug wholesale permit applicant shall appoint another designated representative and submit the documentation, fingerprints, and fee required in subsection (C)(3)(b).
- E.** Notification. A permittee shall submit any notification of change required in this subsection as a written notice via mail, fax, or e-mail to the Executive Director within 10 days of the change, except any change of ownership requires that the nonresident permittee comply with subsection (F).
1. Nonresident pharmacy. A nonresident pharmacy permittee shall notify the Board of changes involving the type of pharmacy operated, ownership, address, telephone number, name of business, or pharmacist-in-charge.
 2. Nonresident manufacturer. A nonresident manufacturer permittee shall notify the Board of changes involving listed drugs, ownership, address, telephone number, name of business, or manager, including manager's telephone number.
 3. Nonresident drug wholesaler. A nonresident full-service or nonprescription drug wholesale permittee shall notify the Board of changes involving the types of drugs sold or distributed, ownership, address, telephone number, name of business, or manager or designated representative, including the manager's or designated representative's telephone number. For a change of designated representative, a nonresident full-service drug wholesale permittee shall submit the documentation, fingerprints, and fee required in subsection (C)(3)(b). If a nonresident full-service drug wholesale permit applicant's designated representative's fingerprint clearance is denied, the nonresident full-service drug wholesale permittee shall appoint another designated representative and submit the documentation, fingerprints, and fee required in subsection (C)(3)(b).
 4. Nonresident nonprescription drug retailer. A nonresident nonprescription drug permittee shall notify the Board of changes involving permit category, ownership, address, telephone number, name of business, or manager, including manager's telephone number.
- F.** Change of ownership. Before a change of ownership occurs that involves changes of stock ownership of more than 30% of the voting stock of a corporation or an existing and continuing corporation that is not actively traded on any securities market or over-the-counter market, the prospective owner shall submit the appropriate application packet described under subsections (B) and (C).
- G.** Drug sales.
1. Nonresident pharmacy. A nonresident pharmacy permittee shall:

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- a. Not sell, distribute, give away, or dispose of any narcotic or other controlled substance or prescription-only drug or device, to anyone in Arizona except:
- i. A pharmacy, drug manufacturer, or full-service drug wholesaler currently permitted by the Board;
 - ii. A medical practitioner currently licensed under A.R.S. Title 32; or
 - iii. An Arizona resident upon receipt of a valid prescription order for the resident;
- b. Not sell, distribute, give away, or dispose of any nonprescription drug, precursor chemical, or regulated chemical, to anyone in Arizona except:
- i. A pharmacy, drug manufacturer, full-service or nonprescription drug wholesaler, or nonprescription drug retailer currently permitted by the Board;
 - ii. A medical practitioner currently licensed under A.R.S. Title 32; or
 - iii. An Arizona resident either upon receipt of a valid prescription order for the resident or in the original container packaged and labeled by the manufacturer;
- c. Except for a drug sale that results from the receipt and dispensing of a valid prescription order for an Arizona resident, maintain a copy of the current permit or license of each person or firm in Arizona who buys, receives, or disposes of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical; and
- d. Provide permit and license records upon request, if immediately available, or in no less than two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).
2. Nonresident manufacturer. A nonresident manufacturer permittee shall:
- a. Not sell, distribute, give away, or dispose of any narcotic or other controlled substance or prescription-only drug or device, to anyone in Arizona except, a pharmacy, drug manufacturer, or full-service drug wholesaler currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
 - b. Not sell, distribute, give away, or dispose of any nonprescription drug, precursor chemical, or regulated chemical, to anyone in Arizona except, a pharmacy, drug manufacturer, full-service or nonprescription drug wholesaler, or nonprescription drug retailer currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
 - c. Maintain a copy of the current permit or license of each person or firm in Arizona who buys, receives, or disposes of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical; and
 - d. Provide permit and license records upon request, if immediately available, or in no less than two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).
3. Nonresident full-service drug wholesaler. In addition to complying with the distributions restrictions specified in A.R.S. § 32-1983, a nonresident full-service drug wholesale permittee shall:
- a. Not sell, distribute, give away, or dispose of, any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical to anyone in Arizona, except in the original container, packaged and labeled by the manufacturer or repackager;
 - b. Not package, repackage, label, or relabel any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical for shipment or delivery to anyone in Arizona;
 - c. Provide pedigree records upon request, if immediately available, or in no less than two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5);
 - d. Not sell, distribute, give away, or dispose of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical to anyone in Arizona except a pharmacy, drug manufacturer, or full-service drug wholesaler currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
 - e. Not sell, distribute, give away, or dispose of, any nonprescription drug, precursor chemical, or regulated chemical, to anyone in Arizona except, a pharmacy, drug manufacturer, full-service or nonprescription drug wholesaler, or nonprescription drug retailer currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
 - f. Maintain a copy of the current permit or license of each person or firm in Arizona who buys, receives, or disposes of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical; and
 - g. Provide permit and license records upon request, if immediately available, or in no less than two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).
4. Nonresident nonprescription drug wholesaler. A nonresident nonprescription drug wholesale permittee shall:
- a. Not sell, distribute, give away, or dispose of any nonprescription drug, precursor chemical, or regulated chemical to anyone in Arizona, except in the original container, packaged and labeled by the manufacturer or repackager;
 - b. Not package, repackage, label, or relabel any nonprescription drug, precursor chemical, or regulated chemical for shipment or delivery to anyone in Arizona;
 - c. Not sell, distribute, give away, or dispose of, any nonprescription drug, precursor chemical, or regulated chemical, to anyone in Arizona except, a pharmacy, drug manufacturer, full-service or nonprescription drug wholesaler, or nonprescription drug retailer currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
 - d. Maintain a copy of the current permit or license of each person or firm in Arizona who buys, receives,

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- or disposes of any nonprescription drug, precursor chemical, or regulated chemical; and
- e. Provide permit and license records upon request, if immediately available, or in no less than two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).
5. Nonresident nonprescription drug retailer. A nonresident nonprescription drug permittee shall not:
- a. Sell, distribute, give away, or dispose of a nonprescription drug, precursor chemical, or regulated chemical to anyone in Arizona except in the original container packaged and labeled by the manufacturer;
 - b. Package, repackage, label, or relabel any drug, precursor chemical, or regulated chemical for shipment or delivery to anyone in Arizona; or
 - c. Sell, distribute, give away, or dispose of any drug, precursor chemical, or regulated chemical to anyone in Arizona that exceeds its expiration date, is contaminated or deteriorated from excessive heat, cold, sunlight, moisture, or other factors, or does not comply with federal law.
- H. When selling or distributing any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical into Arizona, a nonresident pharmacy, nonresident manufacturer, nonresident full-service or nonprescription drug wholesale, or nonprescription drug permittee shall comply with federal law, the permittee's resident state drug law, and this Section.

Historical Note

Former Rules 6.6110, 6.6120, and 6.6130; Amended effective August 10, 1978 (Supp. 78-4). Repealed effective July 24, 1985 (Supp. 85-4). New Section adopted by final rulemaking at 6 A.A.R. 4589, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 7 A.A.R. 3825, effective August 9, 2001 (Supp. 01-3). Amended by final rulemaking at 10 A.A.R. 232, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 13 A.A.R. 520, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3477, effective December 1, 2007 (Supp. 07-4).

R4-23-608. Change of Personnel and Responsibility

- A. A community, hospital, or limited-service pharmacy permittee shall give the Board:
 - 1. Notice by mail, facsimile, or electronic mail within ten days of employing or terminating a pharmacist; and
 - 2. Immediate notice of designating or terminating a pharmacist-in-charge.
- B. Responsibility of ownership and management. The owner and management of a pharmacy shall:
 - 1. Ensure that pharmacists, interns, and other pharmacy employees comply with state and federal laws and administrative rules; and
 - 2. Not overrule a pharmacist in matters of pharmacy ethics and interpreting laws pertaining to the practice of pharmacy or the distribution of drugs and devices.
- C. The Board may suspend or revoke a pharmacy permit if the owner or management of a pharmacy violates subsection (B).

Historical Note

Former Rules 6.6140 and 6.6150; Amended subsection (A) effective August 9, 1983 (Supp. 83-4). Amended effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 4253, effective September

11, 2001 (Supp. 01-3).

R4-23-609. Pharmacy Area of Community Pharmacy

- A. Minimum area of community pharmacy. The minimum area of a community pharmacy, the actual area primarily devoted to stocking drugs restricted to pharmacists, and to the compounding and dispensing of prescription medication, exclusive of office area or other support function area, shall not be less than 300 square feet. A maximum of three pharmacy personnel may practice or work simultaneously in the minimum area. The pharmacy permittee shall provide an additional 60 square feet of floor area for each additional pharmacist, graduate intern, pharmacy intern, pharmacy technician, pharmacy technician trainee, or support personnel who may practice or work simultaneously. All of the allotted square footage area, including adequate shelving, shall lend itself to efficient pharmaceutical practice and permit free movement and visual surveillance of personnel by the pharmacist.
- B. Compounding and dispensing counter. On or after January 6, 2004, a pharmacy permit applicant or remodel or relocation applicant shall provide a compounding and dispensing counter that provides a minimum of three square feet of pharmacy counter working area of not less than 16 inches in depth and 24 inches in length for the practice of one pharmacist, graduate intern, pharmacy intern, pharmacy technician, or pharmacy technician trainee. For each additional pharmacist, graduate intern, pharmacy intern, pharmacy technician, or pharmacy technician trainee practicing simultaneously, there shall be an additional three square feet of pharmacy counter working area of not less than 16 inches in depth and 24 inches in length. The Board shall determine a pharmacy's total required compounding and dispensing counter area by multiplying the maximum number of personnel allowed in the pharmacy area using the requirements specified in subsection (A) by three square feet per person. A pharmacy permittee or pharmacist-in-charge may operate the pharmacy with a total pharmacy counter working area specified in subsection (A) that is equal to the actual maximum number of pharmacists, graduate interns, pharmacy interns, pharmacy technicians, and pharmacy technician trainees, working simultaneously in the pharmacy area times three square feet per person.
- C. Working area for compounding and dispensing counter. The aisle floor area used by the pharmacist, graduate intern, pharmacy intern, pharmacy technician, or pharmacy technician trainee at the compounding and dispensing counter shall extend the full length of the counter and be clear and continuous for a minimum of 36 inches from any counter, fixture, or structure.
- D. Area for patient counseling. On or after April 1, 1995, a pharmacy permit applicant or remodel or relocation applicant shall provide a separate and distinct patient counseling area that provides patient privacy. This subsection does not apply to a pharmacy exempt from the requirements of R4-23-402(B).
- E. Narcotic cabinet or safe. To prevent diversion, narcotics and other controlled substances may be:
 - 1. Kept in a separate locked cabinet or safe, or
 - 2. Dispersed throughout the pharmacy's prescription-only drug stock.
- F. Building security standard of community pharmacy area. The pharmacy area shall be enclosed by a permanent barrier or partition from floor or counter to structural ceiling or roof, with entry doors that can be securely locked. The barrier shall be designed so that only a pharmacist can access the area where prescription-only drugs, narcotics, and other controlled substances are stored, compounded and dispensed. The permanent barrier may be constructed of other than a solid material. If constructed of a material other than a solid, the openings or

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interstices of the material shall not be large enough to permit removal of items in the pharmacy area through the barrier. Any material used in the construction of the permanent barrier must be of sufficient strength and thickness that it cannot be readily or easily removed, penetrated, or bent. The pharmacy permittee shall submit plans and specifications of the permanent barrier to the Board for approval.

G. Drug storage and security.

1. The pharmacy permittee shall ensure that drugs and devices are stored in a dry, well-lit, ventilated, and clean and orderly area. The pharmacy permittee shall maintain the drug storage area at temperatures that ensure the integrity of the drugs before dispensing as stated in the official compendium defined in A.R.S. § 32-1901(55) or the manufacturer's or distributor's labeling.
 2. If the pharmacy permittee needs additional storage area for drugs that are restricted to sale by a pharmacist, the pharmacy permittee shall ensure that the area is contained by a permanent barrier from floor or counter to structural ceiling or roof. The pharmacy permittee shall lock all doors and gates to the drug storage area. Only a pharmacist with a key is permitted to enter the storage area, except in an extreme emergency.
- H.** A pharmacy permittee or pharmacist-in-charge shall ensure that the pharmacy working counter area is protected from unauthorized access while the pharmacy is open for business by a barrier not less than 66 inches in height or another method approved by the Board or its designee.

Historical Note

Former Rules 6.6210, 6.6220, 6.6230, 6.6240, 6.6250, 6.6310, 6.6320, and 6.6330; Amended effective August 10, 1978 (Supp. 78-4). Amended effective August 9, 1983 (Supp. 83-4). Amended effective November 1, 1993 (Supp. 93-4). Amended effective April 1, 1995; filed with the Secretary of State January 31, 1995 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 5030, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 19 A.A.R. 97, effective March 10, 2013 (Supp. 13-1).

R4-23-610. Community Pharmacy Personnel and Security Procedures

- A.** Every pharmacy shall have a pharmacist designated as the "pharmacist-in-charge."
1. The pharmacist-in-charge shall ensure the communication and compliance of Board directives to the management, other pharmacists, interns, and technicians of the pharmacy.
 2. The pharmacist-in-charge shall:
 - a. Ensure that all pharmacy policies and procedures required under 4 A.A.C. 23 are prepared, implemented, and complied with;
 - b. Review biennially and, if necessary, revise all pharmacy policies and procedures required under 4 A.A.C. 23;
 - c. Document the review required under subsection (A)(2)(b);
 - d. Ensure that all pharmacy policies and procedures required under 4 A.A.C. 23 are assembled as a written or electronic manual; and
 - e. Make all pharmacy policies and procedures required under 4 A.A.C. 23 available in the pharmacy for employee reference and inspection by the Board or its staff.
- B.** Personnel permitted in the pharmacy area of a community pharmacy include pharmacists, graduate interns, pharmacy

interns, compliance officers, drug inspectors, peace officers acting in their official capacity, other persons authorized by law, pharmacy technicians, pharmacy technician trainees, support personnel, and other designated personnel. Pharmacy interns, graduate interns, pharmacy technicians, pharmacy technician trainees, support personnel, and other designated personnel shall be permitted in the pharmacy area only when a pharmacist is on duty, except in an extreme emergency as defined in R4-23-110.

1. The pharmacist-in-charge shall comply with the minimum area requirements as described in R4-23-609 for a community pharmacy and for compounding and dispensing counter area.
 2. A pharmacist employed by a pharmacy shall ensure that the pharmacy is physically secure while the pharmacist is on duty.
- C.** In a community pharmacy, a pharmacist shall ensure that the pharmacy area, and any additional storage area for drugs that is restricted to access only by a pharmacist is locked when a pharmacist is not present, except in an extreme emergency.
- D.** A pharmacist is the only person permitted by the Board to unlock the pharmacy area or any additional storage area for drugs restricted to access only by a pharmacist, except in an extreme emergency.
- E.** A pharmacy permittee or pharmacist-in-charge shall ensure that any prescription-only drugs and controlled substances received in an area outside the pharmacy area are immediately transferred unopened to the pharmacy area. The pharmacist-in-charge shall ensure that any prescription-only drug and controlled substance shipments are opened and marked by pharmacy personnel in the pharmacy area under the supervision of a pharmacist, graduate intern, or pharmacy intern.
- F.** A pharmacy permittee or pharmacist-in-charge may provide a small opening or slot through which a written prescription order or prescription medication container to be refilled may be left in the prescription area when the pharmacist is not present.
- G.** A pharmacist shall ensure that prescription medication is not left outside the prescription area or picked up by the patient when the pharmacist is not present by either:
 1. Delivering the prescription medication to the patient, or
 2. Securing the prescription medication inside the locked pharmacy, except when using an automated storage and distribution system that complies with the requirements of R4-23-614.

Historical Note

Former Rules 6.6410, 6.6420, 6.6430, 6.6440, 6.6450, 6.6460, 6.6470, 6.6480, and 6.6490; Amended subsection (F), deleted subsection (I) effective August 9, 1983 (Supp. 83-4). Amended effective May 16, 1990 (Supp. 90-2). Amended effective November 1, 1993 (Supp. 93-4). Amended effective April 1, 1995; filed with the Secretary of State January 31, 1995 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 4441, effective November 2, 1999 (Supp. 99-4). Amended by final rulemaking at 10 A.A.R. 4453, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 13 A.A.R. 2631, effective September 8, 2007 (Supp. 07-3).

R4-23-611. Pharmacy Facilities

- A.** Facilities. A pharmacy permittee or pharmacist-in-charge shall ensure that:
1. A pharmacy's facilities are constructed according to state and local laws and ordinances;

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2. A pharmacy facility's:
 - a. Walls, ceilings, windows, floors, shelves, and equipment are clean and in good repair and order; and
 - b. Counters, shelves, aisles, and open spaces are not cluttered;
 3. Adequate trash receptacles are provided and emptied periodically during the day;
 4. A pharmacy facility of any pharmacy permit issued or pharmacy remodeled after February 1, 2014 provides access to toilet facilities either:
 - a. Within the pharmacy area, or
 - b. No further than a walking distance of 100 feet from the pharmacy area or an alternative distance approved by the Board or its designee;
 5. The toilet facilities are maintained in a sanitary condition and in good repair;
 6. All professional personnel and staff of the pharmacy keep themselves and their apparel clean while in the pharmacy area;
 7. No animals, except licensed assistant animals and guard animals, are allowed in the pharmacy;
 8. The pharmacy facility is kept free of insects and rodents; and
 9. There is a sink with hot and cold running water, other than a sink in a toilet facility, within the pharmacy area for use in preparing drug products.
- B.** Supply of drugs and chemicals. A pharmacy permittee or pharmacist-in-charge shall ensure that:
1. A pharmacy maintains a stock of drugs and chemicals that:
 - a. Are sufficient to meet the normal demands of the trading area or patient base the pharmacy serves; and
 - b. Meet all standards of strength and purity as established by the official compendiums;
 2. All stock, materials, drugs, and chemicals held for ultimate sale or supply to the consumer are not contaminated;
 3. Policies and procedures are developed, implemented, and complied with to prevent the sale or use of a drug or chemical:
 - a. That exceeds its expiration date;
 - b. That is deteriorated or damaged by reason of age, heat, light, cold, moisture, crystallization, chemical reaction, rupture of coating, disintegration, solidification, separation, discoloration, change of odor, precipitation, or other change as determined by organoleptic examination or by other means;
 - c. That is improperly labeled;
 - d. Whose container is defective; or
 - e. That does not comply with federal law; and
 4. The policies and procedures described in subsection (B)(3):
 - a. Are made available in the pharmacy for employee reference and inspection by the Board or its designee; and
 - b. Provide the following:
 - i. Any expiration-dated drug or chemical is reviewed regularly;
 - ii. Any drug or chemical that exceeds its expiration date, is deteriorated or damaged, improperly labeled, has a defective container, or does not comply with federal law, is moved to a quarantine area and not sold or distributed; and
 - iii. Any quarantined drug or chemical is properly destroyed or returned to its source of supply.

Historical Note

Former Rules 6.6510, 6.6520, 6.6530, 6.6540, 6.6550, 6.6560, 6.6570, 6.6580, 6.6600, 6.6610, 6.6620, 6.6630, 6.6640, 6.6650, and 6.6660; Amended subsection (B) effective August 9, 1983 (Supp. 83-4). Amended effective April 1, 1995; filed with the Secretary of State January 31, 1995 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4253, effective September 11, 2001 (Supp. 01-3). 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. 4165, effective February 1, 2014 (Supp. 13-4).

R4-23-612. Equipment

A pharmacy permittee or pharmacist-in-charge shall ensure that a pharmacy has the necessary equipment to allow a pharmacist to practice the profession of pharmacy, including the following:

1. Adequate refrigeration equipment dedicated to the storage of drugs and biologicals;
2. A C-V controlled substance register, if C-V controlled substances are sold without an order of a medical practitioner;
3. Graduates in assorted sizes;
4. One mortar and pestle, not required if the pharmacy permittee states in the application that compounding will not be performed in the pharmacy;
5. Spatulas of assorted sizes including one nonmetallic;
6. Prescription balance, Class A with weights or an electronic balance of equal or greater accuracy, not required if the pharmacy permittee states in the application that compounding will not be performed in the pharmacy;
7. One ointment tile or equivalent, not required if the pharmacy permittee states in the application that compounding will not be performed in the pharmacy
8. A current hard-copy or access to a current electronic-copy of the Arizona Pharmacy Act and administrative rules and Arizona Controlled Substance Act;
9. A professional reference library consisting of a minimum of one current reference or text, in hard-copy or electronic media, addressing the following subject areas:
 - a. Pharmacology or toxicology,
 - b. Therapeutics,
 - c. Drug compatibility, and
 - d. Drug product equivalency;
10. An assortment of labels, including prescription labels, transfer labels for controlled substances, and cautionary and warning labels;
11. A red C stamp as defined in R4-23-110, if C-III, C-IV, and C-V controlled substance invoices are not filed separately from other invoices;
12. Current antidote and drug interaction information; and
13. Regional poison control phone number prominently displayed in the pharmacy area.

Historical Note

Former Rule 6.6670; Former Section R4-23-612 repealed, new Section R4-23-612 adopted effective August 10, 1978 (Supp. 78-4). Amended effective August 9, 1983 (Supp. 83-4). Amended effective April 5, 1996 (Supp. 96-2). Amended by final rulemaking at 7 A.A.R. 4253, effective September 11, 2001 (Supp. 01-3). Amended by final rulemaking at 19 A.A.R. 4165, effective February 1, 2014 (Supp. 13-4).

R4-23-613. Procedure for Discontinuing a Pharmacy

- A. A pharmacy permittee or pharmacist-in-charge shall provide written notice to the Board and the Drug Enforcement Administration (D.E.A.) at least 14 days before discontinuing opera-

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- tion of the pharmacy. The notice shall contain the following information:
1. Name, address, pharmacy permit number, and D.E.A. registration number of the pharmacy discontinuing business;
 2. Name, address, pharmacy permit number (if applicable), and D.E.A. registration number (if applicable) of the licensee, permittee, or registrant to whom any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical will be sold or transferred;
 3. Name and address of the location where the discontinuing pharmacy's records of purchase and disbursement of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical will be kept and the person responsible for the records. These records shall be kept for a minimum of three years from the date the pharmacy is discontinued;
 4. Name and address of the location where the discontinuing pharmacy's prescription files and patient profiles will be kept and the person responsible for the files and profiles. These records shall be kept for a minimum of seven years from the date the last original or refill prescription was dispensed; and
 5. The proposed date of discontinuing business operations.
- B.** The pharmacy permittee shall ensure that all pharmacy signs and symbols are removed from both the inside and outside of the premises.
- C.** The pharmacy permittee or pharmacist-in-charge shall ensure that all state permits and certificates of registration are returned to the Board office and that D.E.A. registration certificates and unused D.E.A. Schedule II order forms are returned to the D.E.A. Regional Office in Phoenix.
- D.** The pharmacist-in-charge of the pharmacy discontinuing business shall ensure that:
1. Only a pharmacist has access to the prescription-only drugs and controlled substances until they are transferred to the licensee, permittee, or registrant listed in subsection (A)(2);
 2. All narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals are removed from the premises on or before the date the pharmacy is discontinued; and
 3. All controlled substances are transferred as follows:
 - a. Take an inventory of all controlled substances that are transferred using the procedures in R4-23-1003;
 - b. Include a copy of the inventory with the controlled substances that are transferred;
 - c. Keep the original of the inventory with the discontinued pharmacy's records of narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical purchase and disbursement for a minimum of three years from the date the pharmacy is discontinued;
 - d. Use a D.E.A. form 222 to transfer any Schedule II controlled substances; and
 - e. Transfer controlled substances that need destruction in the same manner as all other controlled substances.
- E.** Upon receipt of outdated or damaged controlled substances from a discontinued pharmacy, the licensee, permittee, or registrant described in subsection (A)(2) shall contact a D.E.A. registered reverse distributor for proper destruction of out-

dated or damaged controlled substances. If there are controlled substances a reverse distributor will not accept, the licensee, permittee, or registrant shall then contact the Board office and request an inspection for the purpose of drug destruction.

- F.** During the three-year record retention period specified in subsection (A)(3), the person described in subsection (A)(3) shall provide to the Board upon its request a discontinued pharmacy's records of the purchase and disbursement of narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals.
- G.** During the seven-year record retention period specified in subsection (A)(4), the person described in subsection (A)(4) shall provide to the Board upon its request a discontinued pharmacy's records of prescription files and patient profiles.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 3825, effective August 9, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 1105, effective April 30, 2005 (Supp. 05-1). 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).

R4-23-614. Automated Storage and Distribution System

- A.** Before using an automated storage and distribution system, a pharmacy permittee or pharmacist-in-charge shall:
 1. Ensure that the automated storage and distribution system and the policies and procedures comply with subsection (B); and
 2. Notify the Board in writing of the intent to use an automated storage and distribution system, including the type or name of the system.
- B.** A pharmacy permittee or pharmacist-in-charge shall establish policies and procedures for appropriate performance and use of the automated storage and distribution system that:
 1. Ensure that the automated storage and distribution system is in good working order while maintaining appropriate recordkeeping and security safeguards;
 2. Ensure that an automated storage and distribution system used by the pharmacy that allows access to drugs or devices by a patient:
 - a. Only contains prescriptions that:
 - i. Do not require oral consultation as specified in R4-23-402(B); and
 - ii. Are properly labeled and verified by a pharmacist before placement into the automated storage and distribution system and subsequent release to patients;
 - b. Allows a patient to choose whether or not to use the system;
 - c. Is located either in a wall of a properly permitted pharmacy or within 20 feet of a properly permitted pharmacy if the automated storage and distribution system is secured against the wall or floor in such a manner that prevents the automated storage and distribution system's unauthorized removal;
 - d. Provides a method to identify the patient and only release that patient's prescriptions;
 - e. Is secure from access and removal of drugs or devices by unauthorized individuals;
 - f. Provides a method for a patient to obtain a consultation with a pharmacist if requested by the patient; and
 - g. Does not allow the system to dispense refilled prescriptions if a pharmacist determines that the patient

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- requires oral counseling as specified in R4-23-402(B);
3. Ensure that an automated storage and distribution system used by the pharmacy that allows access to drugs or devices only by authorized licensed personnel for the purposes of administration based on a valid prescription order or medication order:
 - a. Provides for adequate security to prevent unauthorized individuals from accessing or obtaining drugs or devices; and
 - b. Provides for the filling, stocking, or restocking of all drugs or devices in the system only by a Board licensee or other authorized licensed personnel; and
 4. Implement an ongoing quality assurance program that monitors compliance with the established policies and procedures of the automated storage and distribution system and federal and state law.
- C.** A pharmacy permittee or pharmacist-in-charge shall:
1. Ensure that the policies and procedures required under subsection (B) are prepared, implemented, and complied with;
 2. Review biennially and, if necessary, revise the policies and procedures required under subsection (B);
 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 the pharmacy where the automated storage and distribution system is used.
- D.** The Board may prohibit a pharmacy permittee or pharmacist-in-charge from using an automated storage and distribution system if the pharmacy permittee or the pharmacy permittee's employees do not comply with the requirements of subsections (A), (B), or (C).

Historical Note

New Section made by final rulemaking at 13 A.A.R. 616, effective April 7, 2007 (Supp. 07-1).

R4-23-615. Mechanical Storage and Counting Device for a Drug in Solid, Oral Dosage Form

- A.** A pharmacy permittee or pharmacist-in-charge shall ensure that a mechanical storage and counting device for a drug in a solid, oral dosage form that is used by a pharmacist or a pharmacy intern, graduate intern, pharmacy technician, or pharmacy technician trainee under the supervision of a pharmacist complies with the following method to identify the contents of the device:
1. The drug name and strength are affixed to the front of each cell or cassette of the device;
 2. A paper or electronic log is kept for each cell or cassette that contains:
 - a. An identification of the cell or cassette by the drug name and strength or the number of the cell or cassette;
 - 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 cell or cassette. If multiple lot numbers of the same drug are added to a cell or cassette, each lot number and expiration date shall be documented, and the earliest expiration date shall become the expiration date of the mixed lot of drug in the cell or cassette;
 - d. The date the cell or cassette is filled;
- B.** Documentation of the identity of the licensee who placed the drug into the cell or cassette; and
- C.** If the licensee who filled the cell or cassette is not a pharmacist, documentation of the identity of the pharmacist who supervised the non-pharmacist licensee who filled the cell or cassette; and
- D.** The paper or electronic log is available in the pharmacy for inspection by the Board or its designee for not less than two years.
- E.** A pharmacy permittee or pharmacist-in-charge shall ensure that any drug previously counted by a mechanical storage and counting device for a drug in a solid, oral dosage form that has not left the pharmacy is not returned to the drug's cell, cassette, or stock bottle, unless the drug return method is approved by the Board or its designee as specified in subsection (G). This subsection does not prevent a pharmacy permittee or pharmacist-in-charge from using a manual or mechanical counting device to count and dispense a previously counted drug that has not left the pharmacy if the previously counted drug is dispensed before its beyond-use-date.
- F.** A pharmacy permittee or pharmacist-in-charge shall ensure the accuracy of any mechanical storage and counting device for a drug in a solid, oral dosage form that is used by a pharmacist or a pharmacy intern, graduate intern, pharmacy technician, or pharmacy technician trainee under the supervision of a pharmacist by documenting completion of the following:
1. Training in the maintenance, calibration, and use of the mechanical storage and counting device for each employee who uses the mechanical storage and counting device;
 2. Maintenance and calibration of the mechanical storage and counting device as recommended by the device's manufacturer; and
 3. Routine quality assurance and accuracy validation testing for each mechanical storage and counting device.
- G.** A pharmacy permittee or pharmacist-in-charge shall ensure that the documentation required in subsection (C) is available for inspection by the Board or its designee.
- H.** A pharmacy permittee or pharmacist-in-charge shall:
1. Ensure that policies and procedures for the performance and use of a mechanical storage and counting device for a drug in a solid, oral dosage form are prepared, implemented, and complied with;
 2. Review biennially and, if necessary, revise the policies and procedures required under subsection (E)(1);
 3. Document the review required under subsection (E)(2);
 4. Assemble the policies and procedures as a written or electronic manual; and
 5. Make the policies and procedures available within the pharmacy for employee reference and inspection by the Board or its staff.
- I.** The Board may prohibit a pharmacy permittee or pharmacist-in-charge from using a mechanical storage and counting device for a drug in a solid, oral dosage form if the pharmacy permittee or the pharmacy permittee's employees do not comply with the requirements of subsections (A), (B), (C), (D), or (E).
- J.** Returning a drug previously counted by a mechanical storage and counting device for a drug in a solid, oral dosage form that has not left the pharmacy to the drug's cell or cassette.
1. Before returning a drug previously counted by a mechanical storage and counting device that has not left the pharmacy to the drug's cell or cassette, a pharmacy permittee or pharmacist-in-charge shall:

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- a. Apply for approval from the Board or its designee for the drug return method to be used in returning the drug;
 - b. Develop a drug return method that uses technology, such as bar coding, to prevent drug return errors;
 - c. Provide documentation depicting the drug return method;
 - d. Demonstrate the drug return method for a Board Compliance Officer; and
 - e. Receive approval from the Board or its designee for the drug return method to be used in returning the drug.
2. Before approving a request to waive the drug return prohibition in subsection (B), the Board or its designee shall:
 - a. Receive a request in writing from the pharmacy permittee or pharmacist-in-charge;
 - b. Review the documentation of the drug return method; and
 - c. Receive a satisfactory inspection report from a Board Compliance Officer that the drug return method uses technology to prevent drug return errors.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 616, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 3677, effective November 8, 2008 (Supp. 08-3).

R4-23-616. Mechanical Counting Device for a Drug in Solid, Oral Dosage Form

- A. A pharmacy permittee or pharmacist-in-charge shall ensure the accuracy of any mechanical counting device for a drug in a solid, oral dosage form that is used by a pharmacist or a pharmacy intern, graduate intern, pharmacy technician, or pharmacy technician trainee under the supervision of a pharmacist by documenting completion of the following:
 1. Training in the maintenance, calibration, and use of the mechanical counting device for each employee who uses the mechanical counting device;
 2. Maintenance and calibration of the mechanical counting device as recommended by the device's manufacturer; and
 3. Routine quality assurance and accuracy validation testing for each mechanical counting device.
- B. A pharmacy permittee or pharmacist-in-charge shall ensure that the documentation required in subsection (A) is available for inspection by the Board or its designee.
- C. A pharmacy permittee or pharmacist-in-charge shall:
 1. Ensure that policies and procedures for the performance and use of a mechanical counting device for a drug in a solid, oral dosage form are prepared, implemented, and complied with;
 2. Review biennially and, if necessary, revise the policies and procedures required under subsection (C)(1);
 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 within the pharmacy for employee reference and inspection by the Board or its staff.
- D. The Board may prohibit a pharmacy permittee or pharmacist-in-charge from using a mechanical counting device for a drug in a solid, oral dosage form if the pharmacy permittee or the pharmacy permittee's employees do not comply with the requirements of subsections (A), (B), or (C).

Historical Note

New Section made by final rulemaking at 13 A.A.R. 616, effective April 7, 2007 (Supp. 07-1).

R4-23-617. Temporary Pharmacy Facilities or Mobile Pharmacies

- A. Pharmacies located in declared disaster areas, nonresident pharmacies, and pharmacies licensed or permitted in another state but not licensed or permitted in this state, if necessary to provide pharmacy services during a declared state of emergency, may arrange to temporarily locate to a temporary pharmacy facility or mobile pharmacy or relocate to a temporary pharmacy facility or mobile pharmacy if the pharmacist-in-charge of the temporary pharmacy facility or mobile pharmacy ensures that:
 1. The pharmacy is under the control and management of the pharmacist-in-charge or a supervising pharmacist designated by the pharmacist-in-charge;
 2. The pharmacy is located within or adjacent to the declared disaster area;
 3. The Board is notified of the pharmacy's location;
 4. The pharmacy is properly secured to prevent theft and diversion of drugs;
 5. The pharmacy's records are maintained in accordance with Arizona statutes and rules; and
 6. The pharmacy stops providing pharmacy services when the declared state of emergency ends, unless it possesses a current resident pharmacy permit issued by the Board under A.R.S. §§ 32-1929, 32-1930, and 32-1931.
- B. The Board shall have the authority to approve or deny temporary pharmacy facilities, mobile pharmacies, and shall make arrangements for appropriate monitoring and inspection of the temporary pharmacy facilities and mobile pharmacies on a case-by-case basis.
- C. A temporary pharmacy facility wishing to permanently operate at its temporary site shall apply for and have received a permit issued under A.R.S. §§ 32-1929, 32-1930, and 32-1931 by following the application process under R4-23-606.
- D. A mobile pharmacy, placed in operation during a declared state of emergency, shall not operate permanently.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 4400, effective January 3, 2009 (Supp. 08-4).

R4-23-618. Reserved**R4-23-619. Reserved****R4-23-620. Continuous Quality Assurance Program**

- A. Each pharmacy permittee shall implement or participate in a continuous quality assurance (CQA) program. A pharmacy permittee meets the requirements of this Section if it holds a current general, special or rural general hospital license from the Arizona 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 Healthcare Organizations; or
 3. Accredited by the American Osteopathic Association.
- B. A pharmacy permittee or the pharmacist-in-charge shall ensure that:
 1. The pharmacy develops, implements, and utilizes a CQ program consistent with the requirements of this Section and A.R.S. § 32-1973;

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- 2. The medication error data generated by the CQA program is utilized and reviewed on a regular basis, as required by subsection (D); and
- 3. Training records, policies and procedures, and other program records or documents, other than medication error data, are maintained for a minimum of two years in the pharmacy or in a readily retrievable manner.
- C. A pharmacy permittee or pharmacist-in-charge shall:
 - 1. Ensure that policies and procedures for the operation and management of the pharmacy's CQA program are prepared, implemented, and complied with;
 - 2. Review biennially and, if necessary, revise the policies and procedures required under subsection (C)(1);
 - 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 within the pharmacy for employee reference and inspection by the Board or its staff.
- D. The policies and procedures shall address a planned process to:
 - 1. Train all pharmacy personnel in relevant phases of the CQA program;
 - 2. Identify and document medication errors;
 - 3. Record, measure, and analyze data collected to:
 - a. Assess the causes and any contributing factors relating to medication errors, and
 - b. Improve the quality of patient care;
 - 4. Utilize the findings from subsections (D)(2) and (3) to develop pharmacy systems and workflow processes designed to prevent or reduce medication errors; and
 - 5. Communicate periodically, and at least annually, with pharmacy personnel to review CQA program findings and inform pharmacy personnel of any changes made to pharmacy policies, procedures, systems, or processes as a result of CQA program findings.
- E. The Board's regulatory oversight activities regarding a pharmacy's CQA program are limited to inspection of the pharmacy's CQA policies and procedures and enforcing the pharmacy's compliance with those policies and procedures.
- F. A pharmacy's compliance with this Section shall be considered by the Board as a mitigating factor in the investigation and evaluation of a medication error.

Historical Note

New Section made by final rulemaking at 18 A.A.R.
2603, effective December 2, 2012 (Supp. 12-4).

R4-23-621. Shared Services

- A. Before participating in shared services, a pharmacy shall have either a current resident or non-resident pharmacy permit issued by the Board.
- B. A pharmacy may provide or utilize shared services functions only if the pharmacies involved:
 - 1. Have the same owner, or
 - 2. Have a written contract or agreement that outlines the services provided and the shared responsibilities of each party in complying with federal and state pharmacy statutes and rules, and
 - 3. Share a common electronic file or technology that allows access to information necessary or required to perform shared services in conformance with the pharmacy act and the Board's rules.
- C. Notifications to patients.
 - 1. Before using shared services provided by another pharmacy, a pharmacy permittee shall:
 - a. Notify patients that their orders may be processed or filled by another pharmacy; and
 - b. Provide the name of that pharmacy or, if the pharmacy is part of a network of pharmacies under common ownership and any of the network pharmacies may process or fill the order, notify the patient of this fact. The notification may be provided through a one-time written notice to the patient or through use of a sign in the pharmacy.
 - 2. If an order is delivered directly to the patient by a filling pharmacy and not returned to the requesting pharmacy, the filling pharmacy permittee shall ensure that the following is placed on the prescription container or on a separate sheet delivered with the prescription container:
 - a. The local, and if applicable, the toll-free telephone number of the pharmacy utilizing shared services that has access to the patient's records; and
 - b. A statement that conveys to the patient or patient's care-giver the following information: "Written information about this prescription has been provided for you. Please read this information before you take the medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions at (insert the local and toll-free telephone numbers of the pharmacy utilizing shared services that has access to the patient's records)."
 - 3. The provisions of subsection (C) do not apply to orders delivered to patients in facilities where a licensed health care professional is responsible for administering the prescription medication to the patient.
- D. A pharmacy permittee engaged in shared services shall:
 - 1. Maintain manual or electronic records that identify, individually for each order processed, the name, initials, or identification code of each pharmacist, graduate intern, pharmacy intern, pharmacy technician, and pharmacy technician trainee who took part in the order interpretation, order entry verification, drug utilization review, drug compatibility and drug allergy review, final order verification, therapeutic intervention, or refill authorization functions performed at that pharmacy;
 - 2. Maintain manual or electronic records that identify, individually for each order filled or dispensed, the name, initials, or identification code of each pharmacist, graduate intern, pharmacy intern, pharmacy technician, and pharmacy technician trainee who took part in the filling, dispensing, and counseling functions performed at that pharmacy;
 - 3. Report to the Board as soon as practical the results of any disciplinary action taken by another state's pharmacy regulatory agency involving shared services;
 - 4. Maintain a mechanism for tracking the order during each step of the processing and filling procedures performed at the pharmacy;
 - 5. Provide for adequate security to protect the confidentiality and integrity of patient information; and
 - 6. Provide for inspection of any required record or information within 72 hours of any request by the Board or its designee.
- E. Each pharmacy permittee that provides or utilizes shared services shall develop, implement, review, revise, and comply with joint policies and procedures for shared services in the manner described in R4-23-610(A)(2). Each pharmacy permittee is required to maintain only those portions of the joint policies and procedures that relate to that pharmacy's operations. The policies and procedures shall:

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1. Outline the responsibilities of each of the pharmacies;
 2. Include a list of the name, address, telephone numbers, and all license and permit numbers of the pharmacies involved in shared services; and
 3. Include policies and procedures for:
 - a. Notifying patients that their orders may be processed or filled by another pharmacy and providing the name of that pharmacy;
 - b. Protecting the confidentiality and integrity of patient information;
 - c. Dispensing orders when the filled order is not received or the patient comes in before the order is received;
 - d. Maintaining required manual or electronic records to identify the name, initials, or identification code and specific activity or activities of each pharmacist, graduate intern, pharmacy intern, pharmacy technician, or pharmacy technician trainee who performed any shared services;
 - e. Complying with federal and state laws; and
 - f. Operating a continuous quality improvement program for shared services, designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems.
- F.** Nothing in this Section shall prohibit an individual pharmacist licensed in Arizona, who is an employee of or under contract with a pharmacy, or an Arizona-licensed graduate intern, pharmacy intern, pharmacy technician, or pharmacy technician trainee, working under the supervision of the pharmacist, from accessing that pharmacy's electronic database from inside or outside the pharmacy and performing the order processing functions permitted by the pharmacy act, if both of the following conditions are met:
1. The pharmacy establishes controls to protect the confidentiality and integrity of patient information; and
 2. None of the database is duplicated, downloaded, or removed from the pharmacy's electronic database.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 520, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 97, effective March 10, 2013 (Supp. 13-1).

R4-23-622. Reserved

through

R4-23-650. Reserved**R4-23-651. Definitions**

The following definitions apply to R4-23-651 through R4-23-659:

“Administration” means the giving of a dose of medication to a patient as a result of an order of a medical practitioner.

“Direct copy” means an electronic, facsimile or carbonized copy.

“Dispensing for hospital inpatients” means the interpreting, evaluating, and implementing a medication order including preparing for delivery a drug or device to an inpatient or inpatient’s agent in a suitable container appropriately labeled for subsequent administration to, or use by, an inpatient (hereafter referred to as “dispensing”).

“Drug distribution” means the delivery of drugs other than “administering” or “dispensing.”

“Emergency medical situation” means a condition of emergency in which immediate drug therapy is required for the preservation of health, life, or limb of a person or persons.

“Floor stock” means a supply of essential drugs not labeled for a specific patient and maintained and controlled by the pharmacy at a patient care area for the purpose of timely administration to a patient of the hospital.

“Formulary” means a continually revised compilation of pharmaceuticals (including ancillary information) that reflects the current clinical judgment of the medical staff.

“Hospital pharmacy” means a pharmacy, as defined in A.R.S. § 32-1901, that holds a current permit issued by the Board pursuant to A.R.S. § 32-1931, and is located in a hospital as defined in A.R.S. § 32-1901.

“Inpatient” means any patient who receives non-self-administered drugs from a hospital pharmacy for use while within a facility owned by the hospital.

“Intravenous admixture” means a sterile parenteral solution to which one or more additional drug products have been added.

“Medication order” means a written, electronic, or verbal order from a medical practitioner or a medical practitioner’s authorized agent for administration of a drug or device.

“On-call” means a pharmacist is available to:

Consult or provide drug information regarding drug therapy or related issues; or

Dispense a medication order and review a patient’s medication order for pharmaceutical and therapeutic feasibility under R4-23-653(E)(2) before any drug is administered to a patient, except as specified in R4-23-653(E)(1).

“Patient care area” means any area for the primary purpose of providing a physical environment that is owned by or operated in conjunction with a hospital, for a patient to obtain health care services, except those areas where a physician, dentist, veterinarian, osteopath, or other medical practitioner engages primarily in private practice.

“Repackaged drug” means a drug product that is transferred by pharmacy personnel from an original manufacturer’s container to another container properly labeled for subsequent dispensing.

“Satellite pharmacy” means a work area in a hospital setting under the direction of a pharmacist that is a remote extension of a centrally licensed hospital pharmacy and owned by and dependent upon the centrally licensed hospital pharmacy for administrative control, staffing, and drug procurement.

“Single unit” means a package of medication that contains one discrete pharmaceutical dosage form.

“Supervision” means the process by which a pharmacist directs the activities of hospital pharmacy personnel to a sufficient degree to ensure that all activities are performed accurately, safely, and without risk of harm to patients.

Historical Note

Former Rules 6.7110, 6.7120, and 6.7130; Amended effective August 10, 1978 (Supp. 78-4). Amended subsection (B) effective April 20, 1982 (Supp. 82-2). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Amended effective November 1, 1993 (Supp. 93-4). Amended effective April 5, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 4902,

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effective January 5, 2003 (Supp. 02-4).

R4-23-652. Hospital Pharmacy Permit

- A. The following rules are applicable to all hospitals as defined by A.R.S. § 32-1901 and hospital pharmacies as defined by R4-23-651.
- B. Before opening a hospital pharmacy, a person shall obtain a pharmacy permit as specified in R4-23-602 and R4-23-606.
- C. Discontinued hospitals. If a hospital license is discontinued by the state Department of Health Services, the pharmacy permittee or pharmacist-in-charge shall follow the procedures described in R4-23-613 for discontinuing a pharmacy.

Historical Note

Former Rules 6.7210, 6.7220, 6.7230, 6.7231, 6.7232, and 6.7233. Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Amended by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4).

R4-23-653. Personnel: Professional or Technician

- A. Each hospital pharmacy shall be directed by a pharmacist who is licensed to engage in the practice of pharmacy in Arizona and is referred to as the Director of Pharmacy. The Director of Pharmacy shall be the pharmacist-in-charge, as defined in A.R.S. § 32-1901 or shall appoint a pharmacist-in-charge. The Director of Pharmacy and the pharmacist-in-charge, if a different individual, shall:
 - 1. Be responsible for all the activities of the hospital pharmacy and for meeting the requirements of the Arizona Pharmacy Act and these rules;
 - 2. Ensure that the policies and procedures required by these rules are prepared, implemented, and complied with;
 - 3. Review biennially and, if necessary, revise the policies and procedures required under these rules;
 - 4. Document the review required under subsection (A)(3);
 - 5. Assemble the policies and procedures as a written manual or by another method approved by the Board or its designee; and
 - 6. Make the policies and procedures available within the pharmacy for employee reference and inspection by the Board or its designee.
- B. In all hospitals, a pharmacist shall be in the hospital during the time the pharmacy is open for pharmacy services, except for an extreme emergency as defined in R4-23-110. Pharmacy services shall be provided for a minimum of 40 hours per week, unless an exception for less than the minimum hours is made upon written request by the hospital and with express permission of the Board or its designee.
- C. In a hospital where the pharmacy is not open 24 hours per day for pharmacy services, a pharmacist shall be "on-call" as defined in R4-23-651 when the pharmacy is closed.
- D. The Director of Pharmacy may be assisted by other personnel approved by the Director of Pharmacy in order to operate the pharmacy competently, safely, and adequately to meet the needs of the hospital's patients.
- E. Pharmacists. A pharmacist or a pharmacy intern or graduate intern under the supervision of a pharmacist shall perform the following professional practices:
 - 1. Verify a patient's medication order before administration of a drug to the patient, except:
 - a. In an emergency medical situation; or
 - b. In a hospital where the pharmacy is open less than 24 hours a day for pharmacy services, a pharmacist shall verify a patient's medication order within four hours of the time the pharmacy opens for pharmacy services;
 - 2. Verify a medication order's pharmaceutical and therapeutic feasibility based upon:
 - a. The patient's medical condition,
 - b. The patient's allergies,
 - c. The pharmaceutical and therapeutic incompatibilities, and
 - d. The recommended dosage limits;
 - 3. Measure, count, pour, or otherwise prepare and package a drug needed for dispensing, except a pharmacy technician or pharmacy technician trainee may measure, count, pour, or otherwise prepare and package a drug needed for dispensing under the supervision of a pharmacist according to written policies and procedures approved by the Board or its designee;
 - 4. Compound, admix, combine, or otherwise prepare and package a drug needed for dispensing, except a pharmacy technician may compound, admix, combine, or otherwise prepare and package a drug needed for dispensing under the supervision of a pharmacist according to written policies and procedures approved by the Board or its designee;
 - 5. Verify the accuracy, correct procedure, compounding, admixing, combining, measuring, counting, pouring, preparing, packaging, and safety of a drug prepared and packaged by a pharmacy technician or pharmacy technician trainee according to subsections (E)(3) and (4) and according to the policies and procedures in subsection (G);
 - 6. Supervise drug repackaging and check the completed repackaged product as specified in R4-23-402(A);
 - 7. Supervise training and education in aseptic technique and drug incompatibilities for all personnel involved in the admixture of parenteral products within the hospital pharmacy;
 - 8. Consult with the medical practitioner regarding the patient's drug therapy or medical condition;
 - 9. When requested by a medical practitioner, patient, patient's agent, or when the pharmacist deems it necessary, provide consultation with a patient regarding the medication order, patient's profile, or overall drug therapy;
 - 10. Monitor a patient's drug therapy for safety and effectiveness;
 - 11. Provide drug information to patients and health care professionals;
 - 12. Manage the activities of pharmacy technicians, pharmacy technician trainees, other personnel, and systems to ensure that all activities are performed accurately, safely, and without risk of harm to patients;
 - 13. Verify the accuracy of all aspects of the original, completed medication order; and
 - 14. Ensure compliance by pharmacy personnel with a quality assurance program developed by the hospital.
- F. Pharmacy technicians and pharmacy technician trainees. Before working as a pharmacy technician or pharmacy technician trainee, an individual shall meet the eligibility and licensure requirements prescribed in 4 A.A.C. 23, Article 11.
- G. Pharmacy technician policies and procedures. Before employing a pharmacy technician or pharmacy technician trainee, a Director of Pharmacy or pharmacist-in-charge shall develop the policies and procedures required under R4-23-1104.
- H. Pharmacy technician training program.
 - 1. A Director of Pharmacy or pharmacist-in-charge shall comply with the training program requirements of R4-23-1105 based on the needs of the hospital pharmacy;

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2. A pharmacy technician or pharmacy technician trainee shall:
 - a. Perform only those tasks for which training and competency have been demonstrated; and
 - b. Not perform professional practices reserved for a pharmacist, graduate intern, or pharmacy intern in subsection (E), except as specified in subsections (E)(3) and (4).
- I. Supervision. A hospital pharmacy's Director of Pharmacy and the pharmacist-in-charge, if a different individual, shall supervise all of the activities and operations of a hospital pharmacy. A pharmacist shall supervise all functions and activities of pharmacy technicians, pharmacy technician trainees, and other hospital pharmacy personnel to ensure that all functions and activities are performed competently, safely, and without risk of harm to patients.

Historical Note

Former Rules 6.7310 and 6.7320; Amended effective August 10, 1978 (Supp. 78-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Amended effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3).

R4-23-654. Absence of Pharmacist

- A. If a pharmacist will not be on duty in the hospital, the Director of Pharmacy or pharmacist-in-charge shall arrange, before the pharmacist's absence, for the medical staff and other authorized personnel of the hospital to have access to drugs in the remote drug storage area defined in R4-23-110 or in the hospital pharmacy if a drug is not available in a remote drug storage area and is required to treat the immediate needs of a patient. A pharmacist shall be on-call during all absences.
- B. If a pharmacist will not be on duty in the hospital pharmacy, the Director of Pharmacy or pharmacist-in-charge shall arrange, before the pharmacist's absence, for the medical staff and other authorized personnel of the hospital to have telephone access to an on-call pharmacist.
- C. The hospital pharmacy permittee shall ensure that the hospital pharmacy is not without a pharmacist on duty in the hospital for more than 72 consecutive hours.
- D. Remote drug storage area. The Director of Pharmacy or pharmacist-in-charge shall, in consultation with the appropriate committee of the hospital:
 1. Develop and maintain an inventory listing of the drugs to be included in a remote drug storage area; and
 2. Develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with policies and procedures that ensure proper storage, access, and accountability for drugs in a remote drug storage area.
- E. Access to hospital pharmacy. If a drug is not available from a remote drug storage area and the drug is required to treat the immediate needs of a patient whose health may be compromised, the drug may be obtained from the hospital pharmacy according to the requirements of this subsection.
 1. The Director of Pharmacy or pharmacist-in-charge shall, in consultation with the appropriate committee of the hospital, develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with policies and procedures to ensure that access to the hospital pharmacy during the pharmacist's absence conforms to the following requirements:

- a. Access is delegated to only one supervisory nurse in each shift;
- b. The policy and name of supervisory nurse is communicated in writing to the medical staff of the hospital;
- c. Access is delegated only to a nurse who has received training from the Director of Pharmacy, pharmacist-in-charge, or Director's designee in the procedures required for proper access, drug removal, and recordkeeping; and
- d. Access is delegated by the supervisory nurse to another nurse only in an emergency.
2. If a nurse to whom authority is delegated to access the hospital pharmacy removes a drug from the hospital pharmacy, the nurse shall:
 - a. Record the following information on a form or by another method approved by the Board or its designee:
 - i. Patient's name;
 - ii. Drug name, strength, and dosage form;
 - iii. Quantity of drug removed; and
 - iv. Date and time of removal;
 - b. Sign or initial, if a corresponding signature is on file in the hospital pharmacy, the form recording the drug removal;
 - c. Attach the original or a direct copy of the medication order for the drug to the form recording the drug removal; and
 - d. Place the form recording the drug removal conspicuously in the hospital pharmacy.
3. Within four hours after a pharmacist returns from an absence, the pharmacist shall verify all records of drug removal that occurred during the pharmacist's absence according to R4-23-653(E).

Historical Note

Former Rules 6.7410, 6.7420, 6.7430, 6.7440, 6.7450, and 6.7460; Amended subsection (A) effective Aug. 9, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Amended by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3).

R4-23-655. Physical Facility

- A. General. A hospital pharmacy permittee shall ensure that the hospital pharmacy has sufficient equipment and physical facilities for proper compounding, dispensing, and storage of drugs, including parenteral preparations.
- B. Minimum area of hospital pharmacy. The minimum area of a hospital pharmacy depends on the type of hospital, the number of beds, and the pharmaceutical services provided. Any hospital pharmacy permit issued or hospital pharmacy remodeled after January 31, 2003 shall provide a minimum hospital pharmacy area, the actual area primarily devoted to drug dispensing and preparation functions, exclusive of bulk drug storage, satellite pharmacy, and office areas that is not less than 500 square feet. The minimum area requirement, not including unusable area, may be varied upon approval by the Board for out-of-the-ordinary conditions or for systems that require less space.
- C. The Board may also require that a hospital pharmacy permittee or applicant provide:

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1. More than the minimum area if equipment, inventory, personnel, or other factors cause crowding to a degree that interferes with safe pharmacy practice;
 2. Additional dispensing, preparation, or storage areas because of the increased number of specific drugs prescribed per day, the increased use of intravenous and irrigating solutions, and the increased use of disposable and prepackaged products;
 3. Additional dispensing, preparation, or storage areas to handle investigational drugs, emergency drug kits, chemotherapeutics, alcohol and other flammables, poisons, external preparations, and radioisotopes, and to accommodate quality control procedures; and
 4. Additional office space to provide for an increased number of personnel, a drug information library, a poison information library, research support, teaching and conferences, and a waiting area.
- D.** Hospital pharmacy area. A hospital pharmacy permittee shall ensure that the hospital pharmacy area is enclosed by a permanent barrier or partition from floor to ceiling with entry doors that can be securely locked, constructed according to R4-23-609(F).
- E.** Hospital pharmacy storage areas. The hospital pharmacy permittee, Director of Pharmacy, or pharmacist-in-charge shall ensure that all undispensed or undistributed drugs are stored in designated areas within the hospital pharmacy or other locked areas under the control of a pharmacist that ensure proper sanitation, temperature, light, ventilation, moisture control, segregation, and security.

Historical Note

Former Rules 6.7471, 6.7472, 6.7473, 6.7474, and 6.7490; Amended effective Aug. 9, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Correction to Table 1 ("spare feet" changed to "square feet") (Supp. 91-1). Amended by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4). Amended by final rulemaking at 11 A.A.R. 462, effective March 5, 2005 (Supp. 05-1).

R4-23-656. Sanitation and Equipment

A hospital pharmacy permittee or Director of Pharmacy shall ensure that a hospital pharmacy:

1. Has a professional reference library consisting of hard-copy or electronic media appropriate for the scope of pharmacy services provided by the hospital;
2. Has a sink, other than a sink in a toilet facility, that:
 - a. Has hot and cold running water;
 - b. Is within the hospital pharmacy area for use in preparing drug products; and
 - c. Is maintained in a sanitary condition and in good repair;
3. Maintains a room temperature within a range compatible with the proper storage of drugs;
4. Has a refrigerator and freezer with a temperature maintained within a range compatible with the proper storage of drugs requiring refrigeration or freezing; and
5. Has a designated area for a laminar air flow hood and other supplies required for the preparation of sterile products as specified in R4-23-670.

Historical Note

Former Rule 6.7480. Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Amended by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4).

R4-23-657. Security

- A.** Personnel security standards. A Director of Pharmacy shall ensure that:
 1. No one is permitted in the pharmacy unless a pharmacist is present except as provided in this Section and R4-23-654. If only one pharmacist is on duty in the pharmacy and that pharmacist must leave the pharmacy for an emergency or patient care duties, nonpharmacist personnel may remain in the pharmacy to perform duties as outlined in R4-23-653, provided that all C-II controlled substances are secured to prohibit access by other than a pharmacist, and that the pharmacist remains available in the hospital;
 2. All hospital pharmacy areas are kept locked by key or programmable lock to prevent access by unauthorized personnel; and
 3. Pharmacists, pharmacy or graduate interns, pharmacy technicians, pharmacy technician trainees, and other personnel working in the pharmacy wear identification badges, including name and position, whenever on duty.
- B.** Prescription blank security. The Director of Pharmacy shall develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with policies and procedures for the safe distribution and control of prescription blanks bearing identification of the hospital.

Historical Note

Former Rule 6.7500; Amended effective Aug. 9, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Amended by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3).

R4-23-658. Drug Distribution and Control

- A.** General. The Director of Pharmacy or pharmacist-in-charge shall in consultation with the medical staff, develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with written policies and procedures for the effective operation of a drug distribution system that optimizes patient safety.
- B.** Responsibility. The Director of Pharmacy is responsible for the safe and efficient procurement, dispensing, distribution, administration, and control of drugs, including the following:
 1. In consultation with the appropriate department personnel and medical staff committee, develop a medication formulary for the hospital;
 2. Proper handling, distribution, and recordkeeping of investigational drugs; and
 3. Regular inspections of drug storage and preparation areas within the hospital.
- C.** Physician orders. A Director of Pharmacy or pharmacist-in-charge shall ensure that:
 1. Drugs are dispensed from the hospital pharmacy only upon a written order, direct copy or facsimile of a written order, or verbal order of an authorized medical practitioner; and
 2. A pharmacist reviews the original, direct or facsimile copy, or verbal order before an initial dose of medication is administered, except as specified in R4-23-653(E)(1).
- D.** Labeling. A Director of Pharmacy or pharmacist-in-charge shall ensure that all drugs distributed or dispensed by a hospital pharmacy are packaged in appropriate containers and labeled as follows:
 1. For use inside the hospital.
 - a. Labels for all single unit packages contain at a minimum, the following information:

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- i. Drug name, strength, and dosage form;
- ii. Lot number and beyond-use-date; and
- iii. Appropriate auxiliary labels;
- b. Labels for repackaged preparations contain at a minimum the following information:
- i. Drug name, strength, and dosage form;
- ii. Lot number and beyond-use-date;
- iii. Appropriate auxiliary labels; and
- iv. Mechanism to identify pharmacist accountable for repackaging;
- c. Labels for all intravenous admixture preparations contain at a minimum the following information:
- i. Patient's name and location;
- ii. Name and quantity of the basic parenteral solution;
- iii. Name and amount of drug added;
- iv. Date of preparation;
- v. Beyond-use-date and time;
- vi. Guidelines for administration;
- vii. Appropriate auxiliary label or precautionary statement; and
- viii. Initials of pharmacist responsible for admixture preparation; and
2. For use outside the hospital. Any drug dispensed to a patient by a hospital pharmacy that is intended for self-administration outside of the hospital is labeled as specified in A.R.S. §§ 32-1963.01(C) and 32-1968(D) and A.A.C. R4-23-402.
- E. Controlled substance accountability.** A Director of Pharmacy or pharmacist-in-charge shall ensure that effective policies and procedures are developed, implemented, reviewed, and revised in the same manner described in R4-23-653(A) and complied with regarding the use, accountability, and record-keeping of controlled substances in the hospital, including the use of locked storage areas when controlled substances are stored in patient care areas.
- F. Emergency services dispensing.** If a hospital permits dispensing of drugs from the emergency services department when the pharmacy is unable to provide this service, the Director of Pharmacy, in consultation with the appropriate department personnel and medical staff committee shall develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with written policies and procedures for dispensing drugs for outpatient use from the hospital's emergency services department. The policies and procedures shall include the following requirements:
1. Drugs are dispensed only to patients who have been admitted to the emergency services department;
 2. Drugs are dispensed only by an authorized medical practitioner, not a designee or agent;
 3. The nature and type of drugs available for dispensing are designed to meet the immediate needs of the patients treated within the hospital;
 4. Drugs are dispensed only in quantities sufficient to meet patient needs until outpatient pharmacy services are available;
 5. Drugs are prepackaged by a pharmacist or a pharmacy intern, graduate intern, pharmacy technician, or pharmacy technician trainee under the supervision of a pharmacist in suitable containers and appropriately prelabeled with the drug name, strength, dosage form, quantity, manufacturer, lot number, beyond-use-date, and any appropriate auxiliary labels;
 6. Upon dispensing, the authorized medical practitioner completes the label on the prescription container that complies with the requirements of R4-23-658(D); and
7. The hospital pharmacy maintains a dispensing log, hard-copy prescription, or electronic record, approved by the Board or its designee and includes the patient name and address, drug name, strength, dosage form, quantity, directions for use, medical practitioner's signature or identification code, and DEA registration number, if applicable.

Historical Note

Former Rules 6.7610, 6.7620, and 6.7710; Amended effective Aug. 9, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Correction to subsection (I)(5) ("unnecessary" changed to "necessary") (Supp. 91-1). Amended effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3).

R4-23-659. Administration of Drugs

- A. Self-administration.** A hospital shall not allow self-administration of medications by a patient unless the Director of Pharmacy or pharmacist-in-charge, in consultation with the appropriate department personnel and medical staff committee, develops, implements, reviews, and revises in the same manner described in R4-23-653(A) and complies with policies and procedures for self-administration of medications by a patient. The policies and procedures shall specify that self-administration of medications, if allowed, occurs only when:
1. Specifically ordered by a medical practitioner, and
 2. The patient is educated and trained in the proper manner of self-administration.
- B. Drugs brought in by a patient.** If a hospital allows a patient to bring a drug into the hospital and before a patient brings a drug into the hospital, the Director of Pharmacy or pharmacist-in-charge shall, in consultation with the appropriate department personnel and medical staff committee, develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with policies and procedures for a patient-owned drug brought into the hospital. The policies and procedures shall specify the following criteria for a patient-owned drug brought into the hospital:
1. When policy allows the administration of a patient-owned drug, the drug is not administered to the patient unless:
 - a. A pharmacist or medical practitioner identifies the drug, and
 - b. A medical practitioner writes a medication order specifying administration of the identified patient-owned drug; and
 2. If a patient-owned drug will not be used during the patient's hospitalization, the hospital pharmacy's personnel shall:
 - a. Package, seal, and give the drug to the patient's agent for removal from the hospital; or
 - b. Package, seal, and store the drug for return to the patient at the time of discharge from the hospital.
- C. Drug samples.** The Director of Pharmacy or pharmacist-in-charge is responsible for the receipt, storage, distribution, and accountability of drug samples within the hospital, including developing, implementing, reviewing, and revising in the same manner described in R4-23-653(A) and complying with specific policies and procedures regarding drug samples.

Historical Note

Former Rules 6.7720, 6.7730, 6.7740, 6.7760, 6.7770,

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6.7780, 6.7800, 6.7810, 6.7820, 6.7830, 6.7840, 6.7850, 6.7871, 6.7872, and 6.7873; Amended effective Aug. 9, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Correction to Section heading ("rules" changed to "roles") (Supp. 91-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3).

R4-23-660. Investigational Drugs

The Director of Pharmacy or pharmacist-in-charge shall ensure that:

1. The following information concerning an investigational drug is available for use by hospital personnel:
 - a. Composition,
 - b. Pharmacology,
 - c. Adverse reactions,
 - d. Administration guidelines, and
 - e. All other available information concerning the drug, and
2. An investigational drug is:
 - a. Properly stored in, labeled, and dispensed from the pharmacy, and
 - b. Not dispensed before the drug is approved by the appropriate medical staff committee of the hospital.

Historical Note

Former Rules 6.7881, 6.7882, and 6.7883; Amended subsection (A) effective Aug. 9, 1983 (Supp. 83-4).

Repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4).

R4-23-661. Repealed**Historical Note**

Former Rules 6.7910, 6.7920, 6.7930, 6.7940, and 6.7950. Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Section repealed by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4).

R4-23-662. Repealed**Historical Note**

Adopted effective February 7, 1990 (Supp. 90-1). Section repealed by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4).

R4-23-663. Repealed**Historical Note**

Adopted effective February 7, 1990 (Supp. 90-1). Amended effective November 1, 1993 (Supp. 93-4). Section repealed by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4).

R4-23-664. Repealed**Historical Note**

Adopted effective February 7, 1990 (Supp. 90-1). Sub-section label removed (Supp. 91-1). Section repealed by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4).

R4-23-665. Reserved

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R4-23-669. Reserved**R4-23-670. Sterile Pharmaceutical Products**

- A. In addition to the minimum area requirement of R4-23-609(A) and R4-23-655(B) and before compounding a sterile pharmaceutical product, a pharmacy permittee, limited-service pharmacy permittee, or applicant shall provide a minimum sterile pharmaceutical product compounding area that is not less than 100 square feet of contiguous floor area, except any pharmacy permit issued or pharmacy remodeled before November 1, 2006 may continue to use a sterile pharmaceutical product compounding area that is not less than 60 square feet of contiguous floor area, until a pharmacy ownership change occurs that requires issuance of a new permit or the pharmacy is remodeled. The pharmacy permittee or the pharmacist-in-charge shall ensure that the sterile pharmaceutical product compounding area:
 1. Is dedicated to the purpose of preparing and compounding sterile pharmaceutical products;
 2. Is isolated from other pharmacy functions;
 3. Restricts entry or access;
 4. Is free from unnecessary disturbances in air flow;
 5. Is made of non-porous and cleanable floor, wall, and ceiling material; and
 6. Meets the minimum air cleanliness standards of an ISO Class 7 environment as defined in R4-23-110, except an ISO class 7 environment is not required if all sterile pharmaceutical product compounding occurs within an ISO class 5 environment isolator, such as a glove box, pharmaceutical isolator, barrier isolator, pharmacy isolator, or hospital pharmacy isolator.
- B. In addition to the equipment requirements in R4-23-611 and R4-23-612 or R4-23-656 and before compounding a sterile pharmaceutical product, a pharmacy permittee, limited-service pharmacy permittee, or applicant shall ensure that a pharmacist who compounds a sterile pharmaceutical product has the following equipment:
 1. Environmental control devices capable of maintaining a compounding area environment equivalent to an "ISO class 5 environment" as defined in R4-23-110. Devices capable of meeting these standards include: laminar airflow hoods, hepa filtered zonal airflow devices, glove boxes, pharmaceutical isolators, barrier isolators, pharmacy isolators, hospital pharmacy isolators, and biological safety cabinets;
 2. Disposal containers designed for needles, syringes, and other material used in compounding sterile pharmaceutical products and if applicable, separate containers to dispose of cytotoxic, chemotherapeutic, and infectious waste products;
 3. Freezer storage units with thermostatic control and thermometer, if applicable;
 4. Packaging or delivery containers capable of maintaining official compendial drug storage conditions;
 5. Infusion devices and accessories, if applicable; and
 6. In addition to the reference library requirements of R4-23-612, a current reference pertinent to the preparation of sterile pharmaceutical products.
- C. Before compounding a sterile pharmaceutical product, the pharmacy permittee, limited-service pharmacy permittee, or pharmacist-in-charge shall:
 1. Prepare, implement, and comply with policies and procedures for compounding and dispensing sterile pharmaceutical products,
 2. Review biennially and if necessary revise the policies and procedures required under subsection (C)(1),
 3. Document the review required under subsection (C)(2),

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4. Assemble the policies and procedures as a written manual or by another method approved by the Board or its designee, and
5. Make the policies and procedures available in the pharmacy for employee reference and inspection by the Board or its designee.
- D.** The assembled policies and procedures shall include, where applicable, the following subjects:
1. Supervisory controls and verification procedures to ensure the quality and safety of sterile pharmaceutical products;
 2. Clinical services and drug monitoring procedures for:
 - a. Patient drug utilization reviews;
 - b. Inventory audits;
 - c. Patient outcome monitoring;
 - d. Drug information; and
 - e. Education of pharmacy and other health professionals;
 3. Controlled substances;
 4. Supervisory controls and verification procedures for:
 - a. Cytotoxics handling, storage, and disposal;
 - b. Disposal of unused supplies and pharmaceutical products; and
 - c. Handling and disposal of infectious wastes;
 5. Pharmaceutical product administration, including guidelines for the first dosing of a pharmaceutical product;
 6. Drug and component procurement;
 7. Pharmaceutical product compounding, dispensing, and storage;
 8. Duties and qualifications of professional and support staff;
 9. Equipment maintenance;
 10. Infusion devices and pharmaceutical product delivery systems;
 11. Investigational drugs and their protocols;
 12. Patient profiles;
 13. Patient education and safety;
 14. Quality management procedures for:
 - a. Adverse drug reactions;
 - b. Drug recalls;
 - c. Expired pharmaceutical products;
 - d. Beyond-use-dating for both standard-risk and substantial-risk sterile pharmaceutical products consistent with the requirements of R4-23-410(B)(3)(d);
 - e. Temperature and other environmental controls;
 - f. Documented process and product validation testing; and
 - g. Semi-annual certification of the laminar air flow hood or other ISO class 5 environment, other equipment, and the ISO class 7 environment, including documentation of routine cleaning and maintenance for each laminar air flow hood or other ISO class 5 environment, other equipment, and the ISO class 7 environment; and
 15. Sterile pharmaceutical product delivery requirements for:
 - a. Shipment to the patient;
 - b. Security; and
 - c. Maintaining official compendial storage conditions.
- E.** Standard-risk sterile pharmaceutical product compounding. Before compounding a standard-risk sterile pharmaceutical product, a pharmacy permittee or pharmacist-in-charge shall ensure compliance with the following minimum standards:
1. Compounding occurs only in an ISO class 5 environment within an ISO class 7 environment, and the ISO class 7 environment may have a specified prep area inside the environment;
 2. Compounding sterile pharmaceutical products from sterile commercial drugs or sterile pharmaceutical otic or ophthalmic products from non-sterile ingredients occurs using procedures that involve only a few closed-system, basic, simple aseptic transfers and manipulations;
 3. Each person who compounds wears adequate personnel protective clothing for sterile preparation that includes gown, gloves, head cover, and booties. Each person who compounds is not required to wear personnel protective clothing when all sterile pharmaceutical compounding occurs within an ISO class 5 environment isolator, and the ISO Class 5 environment isolator is not inside an ISO Class 7 environment; and
 4. Each person who compounds completes an annual media-fill test to validate proper aseptic technique.
- F.** Substantial-risk sterile pharmaceutical product compounding. Before compounding a substantial-risk sterile pharmaceutical product, a pharmacy permittee or pharmacist-in-charge shall ensure compliance with the following minimum standards:
1. Compounding parenteral or injectable sterile pharmaceutical products from non-sterile ingredients occurs only in an ISO class 5 environment within an ISO class 7 environment and the ISO class 7 environment shall not have a prep area inside the environment;
 2. Each person who compounds wears adequate personnel protective clothing for sterile preparation that includes gown, gloves, head cover, and booties. Each person who compounds is not required to wear personnel protective clothing when all sterile pharmaceutical compounding occurs within an ISO class 5 environment isolator, and the ISO Class 5 environment isolator is not inside an ISO Class 7 environment; and
 3. Each person who compounds completes a semi-annual media-fill test that simulates the most challenging or stressful conditions for compounding using dry non-sterile media to validate proper aseptic technique.

Historical Note

Adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 10 A.A.R. 3391, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 12 A.A.R. 3981, effective December 4, 2006 (Supp. 06-4).

R4-23-671. General Requirements for Limited-service Pharmacy

- A.** Before opening a limited-service pharmacy, a person shall obtain a permit in compliance with A.R.S. §§ 32-1929, 32-1930, 32-1931, and R4-23-606.
- B.** The limited-service pharmacy permittee shall secure the limited-service pharmacy by conforming with the following standards:
1. Permit no one to be in the limited-service pharmacy unless the pharmacist-in-charge or a pharmacist authorized by the pharmacist-in-charge is present;
 2. Require the pharmacist-in-charge to designate in writing, by name, title, and specific area, those persons who will have access to particular areas of the limited-service pharmacy;
 3. Implement procedures to guard against theft or diversion of drugs, including controlled substances; and
 4. Require all persons working in the limited-service pharmacy to wear badges, with their names and titles, while on duty.
- C.** To obtain permission to deviate from the minimum area requirement set forth in R4-23-609, R4-23-673, or R4-23-682, a limited-service pharmacy permittee shall submit a written

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- request to the Board and include documentation that the deviation will facilitate experimentation or technological advances in the practice of pharmacy as defined in A.R.S. § 32-1901. If the Board determines the requested deviation from the minimum area requirement will enhance the practice of pharmacy and benefit the public, the Board shall grant the requested deviation.
- D.** The Board shall require more than the minimum area in a limited-service pharmacy when the Board determines that equipment, personnel, or other factors in the limited-service pharmacy cause crowding that interferes with safe pharmacy practice.
- E.** Before dispensing from a limited-service pharmacy, the limited-service pharmacy permittee or pharmacist-in-charge shall:
1. Prepare, implement, and comply with written policies and procedures for pharmacy operations and drug dispensing and distribution;
 2. Review biennially and if necessary revise the policies and procedures required under subsection (E)(1);
 3. Document the review required under subsection (E)(2);
 4. Assemble the policies and procedures as a written manual or by another method approved by the Board or its designee, and
 5. Make the policies and procedures available in the pharmacy for employee reference and inspection by the Board or its designee.

Historical Note

Adopted effective April 5, 1996 (Supp. 96-2). Amended by final rulemaking at 9 A.A.R. 1064, effective May 4, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 3391, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3).

R4-23-672. Limited-service Correctional Pharmacy

- A.** The limited-service pharmacy permittee shall ensure that the limited-service correctional pharmacy complies with the standards for area, personnel, security, sanitation, equipment, drug distribution and control, administration of drugs, drug source, quality assurance, investigational drugs, and inspections as set forth in R4-23-608, R4-23-609(A) through (D) and (F) through (H), R4-23-610(A), R4-23-611, R4-23-612, R4-23-653(E), R4-23-658(B) through (E), R4-23-659, and R4-23-660.
- B.** The pharmacist-in-charge of a limited-service correctional pharmacy shall authorize only pharmacists, interns, pharmacy technicians, pharmacy technician trainees, compliance officers, drug inspectors, peace officers, and correctional officers acting in their official capacities, other persons authorized by law, support personnel, and other designated personnel to be in the limited-service correctional pharmacy.
- C.** When no pharmacist will be on duty in the correctional facility, the pharmacist-in-charge shall arrange, before there is no pharmacist on duty, for the medical staff and other authorized personnel of the correctional facility to have access to drugs in remote drug storage areas or, if a drug is not available in a remote drug storage area and is required to treat the immediate needs of a patient, in the limited-service correctional pharmacy.
1. The pharmacist-in-charge shall, in consultation with the appropriate committee of the correctional facility, develop and implement procedures to ensure that remote drug storage areas:
- a. Contain only properly labeled drugs that might reasonably be needed and can be administered safely during the pharmacist's absence,
- b. Contain drugs packaged only in amounts sufficient for immediate therapeutic requirements;
 - c. Are accessible only with a physician's written order;
 - d. Provide a written record of each drug withdrawn;
 - e. Are inventoried at least once each week, and
 - f. Are audited for compliance with the requirements of this rule at least once each month.
- 2.** The pharmacist-in-charge shall, in consultation with the appropriate committee of the correctional facility, develop and implement procedures to ensure that access to the limited-service correctional pharmacy when no pharmacist is on duty conforms to the following requirements:
- a. Is delegated to only one nurse, who is in a supervisory position;
 - b. Is communicated in writing to medical staff of the correctional facility;
 - c. Is delegated only to a nurse who has received training from the pharmacist-in-charge in proper methods of access, removal of drugs, and recordkeeping procedures; and
 - d. Is delegated by the supervisory nurse to another nurse only in an emergency.
- 3.** When a nurse to whom authority to access the limited-service correctional pharmacy is delegated removes a drug from the limited-service correctional pharmacy, the nurse shall:
- a. Record the following information on a form:
 - i. Patient's name,
 - ii. Name of the drug and its strength and dosage form,
 - iii. Dose prescribed,
 - iv. Amount of drug removed, and
 - v. Date and time of removal;
 - b. Sign the form recording the drug removal;
 - c. Attach the original or a direct copy of a physician's written order for the drug to the form recording the drug removal; and
 - d. Place the form recording the drug removal conspicuously in the limited-service correctional pharmacy.
- 4.** Within four hours after a pharmacist in the limited-service correctional pharmacy returns to duty following an absence in which the limited-service correctional pharmacy was accessed by a nurse to whom authority had been delegated, the pharmacist shall verify all records of drug removal according to R4-23-402.
- D.** When no pharmacist will be on duty in the correctional facility, the pharmacist-in-charge shall arrange, before there is no pharmacist on duty, for the medical staff and other authorized personnel of the correctional facility to have telephone access to a pharmacist.
- E.** The limited-service pharmacy permittee shall ensure that the limited-service correctional pharmacy is not without a pharmacist on duty for more than 96 consecutive hours.
- F.** In addition to the requirements of R4-23-671, the limited-service pharmacy permittee shall secure the limited-service correctional pharmacy as follows:
1. Permit no one to be in the limited-service correctional pharmacy unless a pharmacist is on duty except:
 - a. As provided in subsection (C)(3) when a pharmacist is not on duty; or
 - b. A pharmacy technician or pharmacy technician trainee may remain to perform duties in R4-23-1104(A), when a pharmacist is on duty and available in the correctional facility but temporarily absent from the pharmacy, provided:

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- i. All controlled substances are secured in a manner that prohibits access by persons other than a pharmacist;
 - ii. Activities performed by a pharmacy technician or pharmacy technician trainee while the pharmacist is temporarily absent are verified by the pharmacist immediately upon returning to the pharmacy;
 - iii. Any drug measured, counted, poured, or otherwise prepared and packaged by a pharmacy technician or pharmacy technician trainee while the pharmacist is temporarily absent is verified by the pharmacist immediately upon returning to the pharmacy; and
 - iv. Any drug that has not been verified by a pharmacist for accuracy is not dispensed, supplied, or distributed while the pharmacist is temporarily absent from the pharmacy; and
2. Provide keyed or programmable locks to all areas of the limited-service correctional pharmacy.
- G.** The pharmacist-in-charge of a limited-service correctional pharmacy shall ensure that the written policies and procedures for pharmacy operations and drug distribution within the correctional facility include the following:
1. Physicians' orders, prescription orders, or both;
 2. Authorized abbreviations;
 3. Formulary system;
 4. Clinical services and drug utilization management including:
 - a. Participation in drug selection,
 - b. Drug utilization reviews,
 - c. Inventory audits,
 - d. Patient outcome monitoring,
 - e. Committee participation,
 - f. Drug information, and
 - g. Education of pharmacy and other health professionals;
 5. Duties and qualifications of professional and support staff;
 6. Products of abuse and contraband medications;
 7. Controlled substances;
 8. Drug administration;
 9. Drug product procurement;
 10. Drug compounding, dispensing, and storage;
 11. Stop orders;
 12. Pass or discharge medications;
 13. Investigational drugs and their protocols;
 14. Patient profiles;
 15. Quality management procedures for:
 - a. Adverse drug reactions;
 - b. Drug recalls;
 - c. Expired and beyond-use-date drugs;
 - d. Medication or dispensing errors;
 - e. Drug storage; and
 - f. Education of professional staff, support staff, and patients;
 16. Recordkeeping;
 17. Sanitation;
 18. Security;
 19. Access to remote drug storage areas by non-pharmacists; and
 20. Access to limited-service correctional pharmacy by non-pharmacists.

Historical Note

Adopted effective April 5, 1996 (Supp. 96-2). Amended by final rulemaking at 10 A.A.R. 4453, effective Decem-

ber 4, 2004 (Supp. 04-4).

R4-23-673. Limited-service Mail-order Pharmacy

- A. The limited-service pharmacy permittee shall design and construct the limited-service mail-order pharmacy to conform with the following requirements:
 1. A dispensing area devoted to stocking, compounding, and dispensing prescription medications, which is physically separate from a non-dispensing area devoted to non-dispensing pharmacy services;
 2. A dispensing area of at least 300 square feet if three or fewer persons work in the dispensing area simultaneously;
 3. A dispensing area that provides 300 square feet plus 60 square feet for each person in excess of three persons if more than three persons work in the dispensing area simultaneously;
 4. Space in the dispensing area permits efficient pharmaceutical practice, free movement of personnel, and visual surveillance by the pharmacist;
 5. A non-dispensing area of at least 30 square feet for each person working simultaneously in the non-dispensing area; and
 6. Space in the non-dispensing area permits free movement of personnel and visual surveillance by the pharmacist;
- B. The limited-service pharmacy permittee shall design and construct the limited-service mail-order pharmacy to conform with the following requirements:
 1. A contiguous area in which both dispensing and non-dispensing pharmacy services are provided;
 2. A contiguous area of at least 300 square feet if three or fewer persons work in the area simultaneously;
 3. A contiguous area that provides 300 square feet plus 60 square feet for each person in excess of three persons if more than three persons work in the area simultaneously; and
 4. Space in the contiguous area permits efficient pharmaceutical practice, free movement of personnel, and visual surveillance by the pharmacist.
- C. The limited-service pharmacy permittee shall ensure that the limited-service mail-order pharmacy complies with the standards for area, personnel, security, sanitation, and equipment set forth in R4-23-608, R4-23-609(B) through (H), R4-23-610 (A) and (C) through (F), R4-23-611, and R4-23-612.
- D. The pharmacist-in-charge of a limited-service mail-order pharmacy shall authorize only pharmacists, interns, pharmacy technicians, pharmacy technician trainees, compliance officers, drug inspectors, peace officers acting in their official capacities, support personnel, other persons authorized by law, and other designated personnel to be in the limited-service mail-order pharmacy.
- E. The pharmacist-in-charge of a limited-service mail-order pharmacy shall ensure that prescription medication is delivered to the patient or locked in the dispensing area when a pharmacist is not present in the pharmacy.
- F. In addition to the delivery requirements of R4-23-402, the limited-service pharmacy permittee shall, during regular hours of operation but not less than five days and a minimum 40 hours per week, provide toll-free telephone service to facilitate communication between patients and a pharmacist who has access to patient records at the limited-service mail-order pharmacy. The limited-service pharmacy permittee shall disclose this toll-free number on a label affixed to each container of drugs dispensed from the limited-service mail-order pharmacy.
- G. The pharmacist-in-charge of a limited-service mail-order pharmacy shall ensure that the written policies and procedures for

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- pharmacy operations and drug distribution include the following:
1. Prescription orders;
 2. Clinical services and drug utilization management for:
 - a. Drug utilization reviews,
 - b. Inventory audits,
 - c. Patient outcome monitoring,
 - d. Drug information, and
 - e. Education of pharmacy and other health professionals;
 3. Duties and qualifications of professional and support staff;
 4. Controlled substances;
 5. Drug product procurement;
 6. Drug compounding, dispensing, and storage;
 7. Patient profiles;
 8. Quality management procedures for:
 - a. Adverse drug reactions,
 - b. Drug recalls,
 - c. Expired and beyond-use-date drugs,
 - d. Medication or dispensing errors, and
 - e. Education of professional and support staff;
 9. Recordkeeping;
 10. Sanitation;
 11. Security;
 12. Drug delivery requirements for:
 - a. Transportation,
 - b. Security,
 - c. Temperature and other environmental controls,
 - d. Emergency provisions, and
 13. Patient education.

Historical Note

Adopted effective April 5, 1996 (Supp. 96-2). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 4453, effective December 4, 2004 (Supp. 04-4).

R4-23-674. Limited-service Long-term Care Pharmacy

- A. A limited-service pharmacy permittee shall ensure that the limited-service long-term care pharmacy complies with:
 1. The general requirements of R4-23-671;
 2. The professional practice standards of Article 4 and Article 11; and
 3. The permits and drug distribution standards of R4-23-606 through R4-23-612, R4-23-670, and this Section.
- B. If a limited-service long-term care pharmacy permittee contracts with a long-term care facility as a Provider Pharmacy, as defined in R4-23-110, the limited-service long-term care pharmacy permittee shall ensure that the long-term care consultant pharmacist and the pharmacist-in-charge of the limited-service long-term care pharmacy comply with R4-23-701, R4-23-701.01, R4-23-701.02, R4-23-701.03, R4-23-701.04, and this Section.
- C. The limited-service long-term care pharmacy permittee or pharmacist-in-charge shall ensure that prescription medication is delivered to the patient's long-term care facility or locked in the dispensing area of the pharmacy when a pharmacist is not present in the pharmacy.
- D. The pharmacist-in-charge of a limited-service long-term care pharmacy shall authorize only those individuals listed in R4-23-610(B) to be in the limited-service long-term care pharmacy.
- E. In consultation with the long-term care facility's medical director and director of nursing, the long-term care consultant pharmacist and pharmacist-in-charge of the long-term care facility's provider pharmacy may develop, if necessary, a med-

ication formulary for the long-term care facility that ensures the safe and efficient procurement, dispensing, distribution, administration, and control of drugs in the long-term care facility.

- F. The limited-service long-term care pharmacy permittee or pharmacist-in-charge shall ensure that the written policies and procedures required in R4-23-671(E) include the following:
 1. Clinical services and drug utilization management for:
 - a. Drug utilization reviews,
 - b. Inventory audits,
 - c. Patient outcome monitoring,
 - d. Drug information, and
 - e. Education of pharmacy and other health professionals;
 2. Controlled substances;
 3. Drug compounding, dispensing, and storage;
 4. Drug delivery requirements for:
 - a. Transportation,
 - b. Security,
 - c. Temperature and other environmental controls, and
 - d. Emergency provisions;
 5. Drug product procurement;
 6. Duties and qualifications of professional and support staff;
 7. Emergency drug supply unit procedures;
 8. Formulary, including development, review, modification, use, and documentation, if applicable;
 9. Patient profiles;
 10. Patient education;
 11. Prescription orders, including:
 - a. Approved abbreviations,
 - b. Stop-order procedures, and
 - c. Leave-of-absence and discharge prescription order procedures;
 12. Quality management procedures for:
 - a. Adverse drug reactions,
 - b. Drug recalls,
 - c. Expired and beyond-use-date drugs,
 - d. Medication or dispensing errors, and
 - e. Education of professional and support staff;
 13. Recordkeeping;
 14. Sanitation; and
 15. Security.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1064, effective May 4, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 2894, effective November 10, 2013 (Supp. 13-3).

R4-23-675. Limited-service Sterile Pharmaceutical Products Pharmacy

- A. The limited-service pharmacy permittee or the pharmacist-in-charge shall ensure that the limited-service sterile pharmaceutical products pharmacy complies with the standards for area, personnel, sanitation, equipment, sterile pharmaceutical products, and limited-service pharmacies established in R4-23-608, R4-23-609, R4-23-610, R4-23-611, R4-23-612, R4-23-670, and R4-23-671.
- B. The pharmacist-in-charge of a limited-service sterile pharmaceutical products pharmacy shall authorize only pharmacists, interns, compliance officers, peace officers acting in their official capacities, pharmacy technicians, pharmacy technician trainees, support personnel, and other designated personnel to be in the limited-service sterile pharmaceutical products pharmacy.

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- C. The pharmacist-in-charge of a limited-service sterile pharmaceutical products pharmacy shall ensure that prescription medication is delivered to the patient or locked in the dispensing area when a pharmacist is not present in the pharmacy.
- D. In addition to the delivery requirements of R4-23-402, the limited-service pharmacy permittee shall, during regular hours of operation, but not less than a minimum 40 hours per week, provide toll-free telephone service to facilitate communication between patients and a pharmacist who has access to patient records at the limited-service sterile pharmaceutical products pharmacy. The limited-service pharmacy permittee shall disclose this toll-free number on a label affixed to each container dispensed from the limited-service sterile pharmaceutical products pharmacy.
- E. The limited-service pharmacy permittee or the pharmacist-in-charge shall ensure development, implementation, review and revision in the same manner described in R4-23-671(E) and compliance with policies and procedures for pharmacy operations, including pharmaceutical product compounding, dispensing, and distribution, that comply with the requirements of R4-23-402, R4-23-410, R4-23-670, and R4-23-671.
- F. The non-dispensing roles of the pharmacist may include chart reviews, audits, drug therapy monitoring, committee participation, drug information, and in-service training of pharmacy and other health professionals.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 3391, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3). This Section was not amended as originally stated in the historical note published in Supp. 13-3; therefore the reference to the amendment has been removed (Supp. 18-2).

R4-23-676. Reserved

through

R4-23-680. Reserved**R4-23-681. General Requirements for Limited-service Nuclear Pharmacy**

- A. To be an authorized nuclear pharmacist, a pharmacist shall:
 - 1. Hold a current pharmacist license issued by the Board; and
 - 2. Be certified as a nuclear pharmacist by:
 - a. The Board of Pharmaceutical Specialties, or
 - b. A similar group recognized by the Arizona State Board of Pharmacy; or
 - 3. Satisfy each of the following requirements:
 - a. Meet minimal standards of training for status as an authorized user of radioactive material, as specified by the Arizona Radiation Regulatory Agency and the United States Nuclear Regulatory Commission;
 - b. Submit certification of completion of a Board-approved nuclear pharmacy training program or other training program recognized by the Arizona Radiation Regulatory Agency, with 200 hours of didactic training in the following areas:
 - i. Radiation physics and instrumentation,
 - ii. Radiation protection,
 - iii. Mathematics pertaining to the use and measurement of radioactivity,
 - iv. Radiation biology, and
 - v. Radiopharmaceutical chemistry;
 - c. Submit evidence of a minimum of 500 hours of clinical/practical nuclear pharmacy training under the

supervision of an authorized nuclear pharmacist in the following areas:

- i. Procuring radioactive materials;
 - ii. Compounding radiopharmaceuticals;
 - iii. Performing routine quality control procedures;
 - iv. Dispensing radiopharmaceuticals;
 - v. Distributing radiopharmaceuticals;
 - vi. Implementing basic radiation protection procedures; and
 - vii. Consulting and educating the nuclear medicine community, patients, pharmacists, other health professionals, and the general public; and
- d. Submit written certification, signed by a preceptor who is an authorized nuclear pharmacist, that the above training was satisfactorily completed.

B. Radiopharmaceuticals are prescription-only drugs that require specialized techniques in their handling and testing, to obtain optimum results and minimize hazards.

- 1. A person shall not sell, barter, or otherwise dispose of, or be in possession of any radiopharmaceutical except under the conditions detailed in A.R.S. § 32-1929.
- 2. A person shall not manufacture, compound, sell, or dispense any radiopharmaceutical unless the person is a pharmacist or a pharmacy intern acting under the direct supervision of a pharmacist in accordance with A.R.S. § 32-1961 and these rules, with the exception of the following, if the following are licensed by the Arizona Radiation Regulatory Agency to use radiopharmaceuticals in compliance with A.R.S. § 30-673;
 - a. A medical practitioner who administers a radiopharmaceutical to the medical practitioner's patient as provided in A.R.S. § 32-1921(A),
 - b. A hospital nuclear medicine department, and
 - c. A medical practitioner's office.
- 3. The Board shall cooperate with the Arizona Radiation Regulatory Agency and other interested state and federal agencies, in the enforcement of these rules for the protection of the public. This cooperation may include exchange of licensing and other information, joint inspections, and other activities where indicated.
- C. In addition to compliance with all the applicable federal and state laws and rules governing drugs, whether radioactive or not, a limited-service nuclear pharmacy permittee shall comply with all laws and rules of the Arizona Radiation Regulatory Agency and the U.S. Nuclear Regulatory Commission, including emergency and safety provisions.
- D. A limited-service nuclear pharmacy permittee shall comply with the education, experience, and licensing requirements of the Arizona Radiation Regulatory Agency.
- E. A limited-service nuclear pharmacy permittee shall ensure that radiopharmaceuticals are transferred only to a person or firm that holds a current Radioactive Materials License issued by the Arizona Radiation Regulatory Agency.

Historical Note

Adopted effective December 3, 1974 (Supp. 75-1). Amended subsections (A), (C) and (D) effective Aug. 12, 1988 (Supp. 88-3). Amended effective July 8, 1997 (Supp. 97-3).

R4-23-682. Limited-service Nuclear Pharmacy

- A. Before operating a limited-service nuclear pharmacy, a person shall obtain a permit in compliance with A.R.S. §§ 32-1929, 32-1930, and 32-1931, and R4-23-606.
- B. A permit to operate a limited-service nuclear pharmacy shall be issued only to a person who is or employs an authorized nuclear pharmacist and holds a current Arizona Radiation

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Regulatory Agency Radioactive Materials License. A limited-service nuclear pharmacy permittee that fails to maintain a current Arizona Radiation Regulatory Agency Radioactive Materials License shall be immediately suspended pending revocation by the Board. A limited-service nuclear pharmacy permittee shall have copies of Arizona Radiation Regulatory Agency inspection reports available upon request for Board inspection.

1. A limited-service nuclear pharmacy permittee shall designate an authorized nuclear pharmacist as the pharmacist-in-charge. The pharmacist-in-charge shall be responsible to the Board:
 - a. For the operations of the pharmacy related to the practice of pharmacy and distribution of drugs and devices;
 - b. For communicating Board directives to the management, pharmacists, interns, and other personnel of the pharmacy; and
 - c. For the pharmacy's compliance with all federal and state pharmacy laws and rules.
 2. An authorized nuclear pharmacist shall directly supervise all personnel performing tasks in the preparation and distribution of radiopharmaceuticals and ancillary drugs.
 3. An authorized nuclear pharmacist shall be present whenever the limited-service nuclear pharmacy is open for business.
- C. A limited-service nuclear pharmacy permittee shall ensure that the limited-service nuclear pharmacy complies with the standards for personnel, area, security, sanitation, and general requirements in R4-23-608, R4-23-609, R4-23-610, R4-23-611, and R4-23-671.
1. A limited-service nuclear pharmacy shall contain separate areas for:
 - a. Preparing and dispensing radiopharmaceuticals,
 - b. Receiving and shipping radiopharmaceuticals,
 - c. Storing radiopharmaceuticals, and
 - d. Decaying radioactive waste.
 2. The Board may require more than the minimum area in instances where equipment, inventory, personnel, or other factors cause crowding to a degree that interferes with safe pharmacy practice.
- D. The pharmacist-in-charge shall designate in writing, by title and specific area, the persons who may have access to particular pharmacy areas.
- E. A limited-service nuclear pharmacy permittee shall maintain records of acquisition, inventory, and disposition of radiopharmaceuticals, other radioactive substances, and other drugs in accordance with federal and state statutes and rules.
1. A prescription order, in addition to the requirements in A.R.S. § 32-1968(C) and R4-23-407(A), shall contain:
 - a. The date and time of calibration of the radiopharmaceutical,
 - b. The name of the procedure for which the radiopharmaceutical is prescribed, and
 - c. The words "Physician's Use Only" instead of the name of the patient if the radiopharmaceutical is nontherapeutic or for a nonblood product.
 2. The lead container used to store and transport a radiopharmaceutical shall have a label that, in addition to the requirements in A.R.S. § 32-1968(D), includes:
 - a. The date and time of calibration of the radiopharmaceutical,
 - b. The name of the radiopharmaceutical,
 - c. The molybdenum 99 content to USP limits,
 - d. The name of the procedure for which the radiopharmaceutical is prescribed,

- e. The words "Physician's Use Only" instead of the name of the patient if the radiopharmaceutical is nontherapeutic or for a nonblood product;
 - f. The words "Caution: Radioactive Material," and
 - g. The standard radiation symbol.
3. The radiopharmaceutical container shall have a label that includes:
- a. The date and time of calibration of the radiopharmaceutical;
 - b. The name of the patient, recorded before dispensing, if the radiopharmaceutical is therapeutic or for a blood product;
 - c. The words "Physician's Use Only" instead of the name of the patient if the radiopharmaceutical is nontherapeutic or for a nonblood product;
 - d. The name of the radiopharmaceutical;
 - e. The dose of radiopharmaceutical;
 - f. The serial number;
 - g. The words "Caution: Radioactive Material"; and
 - h. The standard radiation symbol.

F. The following minimum requirements are in addition to the requirements of the Arizona Radiation Regulatory Agency, the applicable U.S. Nuclear Regulatory Commission regulations, and the applicable regulations of the federal Food and Drug Administration. A limited-service nuclear pharmacy permittee shall provide:

1. In addition to the minimum pharmacy area requirements in R4-23-609:
 - a. An area for the storing, compounding, and dispensing of radiopharmaceuticals completely separate from pharmacy areas for nonradioactive drugs;
 - b. A minimum of 80 sq. ft. for a hot lab and storage area; and
 - c. A minimum of 300 sq. ft. of compounding and dispensing area;
2. The following equipment:
 - a. Fume hood, approved by the Arizona Radiation Regulatory Agency;
 - b. Laminar flow hood;
 - c. Dose calibrator;
 - d. Refrigerator;
 - e. Prescription balance, Class A, and weights or an electronic balance of equal or greater accuracy;
 - f. Well scintillation counter;
 - g. Incubator oven;
 - h. Microscope;
 - i. An assortment of labels, including prescription labels and cautionary and warning labels;
 - j. Glassware necessary for compounding and dispensing radiopharmaceuticals as required by the Arizona Radiation Regulatory Agency;
 - k. Other equipment necessary for radiopharmaceutical quality control for products compounded or dispensed as required by the Arizona Radiation Regulatory Agency;
 - l. Current antidote and drug interaction information; and
 - m. Regional poison control phone number prominently displayed in the pharmacy area;
3. Supplies necessary for compounding and dispensing radiopharmaceuticals as required by the Arizona Radiation Regulatory Agency;
4. A professional reference library consisting of a minimum of one current reference or text addressing each of the following subject areas:
 - a. Therapeutics,

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- b. Nuclear pharmacy practice, and
- c. Imaging;
- 5. Current editions and supplements of:
 - a. A.R.S. §§ 30-651 through 30-696 pertaining to the Arizona Radiation Regulatory Agency,
 - b. Rules of the Arizona Radiation Regulatory Agency,
 - c. Regulations of the federal Food and Drug Administration pertaining to radioactive drugs,
 - d. Arizona Pharmacy Act and rules,
 - e. Arizona Uniform Controlled Substances Act, and
 - f. Radiological Health Handbook.
- G. The pharmacist-in-charge of a limited-service nuclear pharmacy shall prepare, implement, review, and revise in the same manner described in R4-23-671(E) and comply with written policies and procedures for pharmacy operations and drug distribution.
- H. The written policies and procedures of a limited-service nuclear pharmacy shall include the following:
 1. Prescription orders;
 2. Clinical services and drug utilization management including:
 - a. Drug utilization reviews,
 - b. Inventory audits,
 - c. Patient outcome monitoring,
 - d. Drug information, and
 - e. Education of pharmacy and other health professionals;
 3. Duties and qualifications of professional and support staff;
 4. Radioactive material handling, storage, and disposal;
 5. Drug product procurement;
 6. Drug compounding, dispensing, and storage;
 7. Investigational drugs and their protocols;
 8. Patient profiles;
 9. Quality management procedures for:
 - a. Adverse drug reaction reports;
 - b. Drug recall;
 - c. Expired and beyond-use-date drugs;
 - d. Medication or dispensing errors;
 - e. Radiopharmaceutical quality assurance;
 - f. Radiological health and safety;
 - g. Drug storage and disposition; and
 - h. Education of professional staff, support staff, and patients;
 10. Recordkeeping;
 11. Sanitation;
 12. Security;
 13. Drug delivery requirements for:
 - a. Transportation,
 - b. Security,
 - c. Radiological health and safety procedures,
 - d. Temperature and other environmental controls, and
 - e. Emergency provisions; and
 14. Patient education.

Historical note

Adopted effective July 8, 1997 (Supp. 97-3). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3).

R4-23-683. Reserved

through

R4-23-690. Reserved**R4-23-691. Repealed****Historical Note**

Adopted effective Dec. 3, 1974 (Supp. 75-1). Amended effective Aug. 12, 1988 (Supp. 88-3). Amended effective November 1, 1993 (Supp. 93-4). Repealed effective July 8, 1997 (Supp. 97-3).

R4-23-692. Compressed Medical Gas (CMG) Distributor-Resident or Nonresident

- A. Permit.
 1. A person shall not manufacture, process, transfill, package, or label a compressed medical gas in Arizona, or manufacture, process, transfill, package, or label a compressed medical gas outside Arizona and ship into Arizona without a current Board-issued resident or nonresident compressed medical gas distributor permit.
 2. Before operating as a compressed medical gas distributor, a person shall register with the FDA as a medical gas manufacturer and comply with the drug listing requirements of the federal act.
- B. Application. To obtain a resident or nonresident CMG distributor permit, a person shall submit a completed application form and fee as specified in R4-23-602.
 1. A resident CMG distributor permit applicant shall include documentation of compliance with local zoning laws, if required by the Board.
 2. A nonresident CMG distributor permit applicant that resides in a jurisdiction that issues an equivalent license or permit shall include a copy of the equivalent license or permit.
- C. Notification. A resident or nonresident CMG distributor permittee shall provide written notice by mail, facsimile, or e-mail to the Board office within ten days of changes involving the telephone number, facsimile number, e-mail address, mailing address, or name of business.
- D. Change of ownership. No less than 14 days before a change of ownership occurs that involves changes of stock ownership of 30% or more of the voting stock of a corporation or an existing and continuing corporation that is not actively traded on any securities market or over-the-counter market, the prospective owner shall submit a completed application form and fee as specified in subsection (B).
- E. Relocation.
 1. No less than 30 days before an existing resident CMG distributor permittee relocates, the permittee shall submit a completed application for relocation electronically or manually on a form furnished by the Board, and the documentation required in subsection (B).
 2. A nonresident CMG distributor permittee shall provide written notice by mail, facsimile, or e-mail to the Board office no less than ten days before relocating.
- F. A resident or nonresident CMG distributor permittee shall sell or distribute a compressed medical gas pursuant to a compressed medical gas order only to durable medical equipment and compressed medical gas suppliers and other entities that are registered, licensed, or permitted to use, administer, or distribute compressed medical gases.
- G. Facility. A resident or nonresident CMG distributor permittee shall ensure the facility is clean, uncluttered, sanitary, temperature controlled, and secure from unauthorized access.
- H. Current Good Manufacturing Practice: A resident or nonresident CMG distributor permittee shall comply with the current good manufacturing practice requirements of 21 CFR parts 210 and 211, (Revised April 1, 2013, incorporated by reference and on file with the Board and available at www.gpo.gov. This incorporated material includes no future editions or amendments).

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- I.** Records: A resident or nonresident CMG distributor permittee shall establish and implement written procedures for maintaining records pertaining to production, transfilling, process control, labeling, packaging, quality control, distribution, returns, recalls, training of personnel, complaints, and any information required by federal or state law.
 - 1. A permittee shall retain the records required by Section R4-23-601, this Section, and 21 CFR parts 210 and 211 for not less than three years or one year after the expiration date of the compressed medical gas, whichever is longer.
 - 2. A permittee shall make the records required by Section R4-23-601, this Section, and 21 CFR parts 210 and 211 available on inspection by the Board or its compliance officer, or if stored in a centralized recordkeeping system apart from the inspection location and not electronically retrievable, shall provide the records within four working days of a request by the Board or its compliance officer.
- J.** Inspection.
 - 1. A resident CMG distributor permittee shall make the CMG distributor's facility available for inspection by the Board or its compliance officers under A.R.S. § 32-1904.
 - 2. Within ten days from the date of a request by the Board or its staff, a nonresident CMG distributor permittee shall provide a copy of the most recent inspection report completed by the permittee's resident licensing authority or the FDA, or a copy of the most recent inspection report completed by a third-party auditor approved by the permittee's resident licensing authority or the Board or its designee. The Board may inspect, or may employ a third-party auditor to inspect, a nonresident permittee as specified in A.R.S. § 32-1904.
- K.** Permit renewal. Permit renewal shall be as specified in R4-23-602(D).
- L.** Nothing in this Section shall be construed to prohibit the emergency administration of oxygen by licensed health care personnel, emergency medical technicians, first responders, fire fighters, law enforcement officers, and other emergency personnel trained in the proper use of emergency oxygen.

Historical Note

Adopted effective January 12, 1998 (Supp. 98-1).

Amended by final rulemaking at 19 A.A.R. 97, effective March 10, 2013 (Supp. 13-1). Amended by final rulemaking at 20 A.A.R. 1364, effective August 2, 2014 (Supp. 14-2).

R4-23-693. Durable Medical Equipment (DME) and Compressed Medical Gas (CMG) Supplier-Resident or Nonresident

- A.** Permit. A person shall not sell, lease, or supply durable medical equipment or a compressed medical gas to a patient or consumer in Arizona for use in a home or residence without a current Board-issued resident or nonresident durable medical equipment and compressed medical gas supplier permit.
 - 1. The permit requirements of this Section shall not apply to the following unless there is a separate business entity engaged in the business of providing durable medical equipment or a compressed medical gas to a patient or consumer for use in a home or residence:
 - a. A medical practitioner licensed under A.R.S. Title 32;
 - b. A hospital, long-term care facility, hospice, or other health care facility using durable medical equipment or a compressed medical gas in the normal course of treating a patient; and
 - c. A pharmacy.
- B.** Application. To obtain a resident or nonresident DME and CMG supplier permit, a person shall submit a completed application form and fee as specified in R4-23-602.
 - 1. A resident DME and CMG supplier permit applicant shall include documentation of compliance with local zoning laws, if required by the Board.
 - 2. A nonresident DME and CMG supplier permit applicant that resides in a jurisdiction that issues an equivalent license or permit shall include a copy of the equivalent license or permit.
- C.** Notification. A resident or nonresident DME and CMG supplier permittee shall provide written notice by mail, facsimile, or e-mail to the Board office within ten days of changes involving the telephone number, facsimile number, email address, mailing address, or name of business.
- D.** Change of ownership. No less than 14 days before a change of ownership occurs that involves changes of stock ownership of 30% or more of the voting stock of a corporation or an existing and continuing corporation that is not actively traded on any securities market or over-the-counter market, the prospective owner shall submit a completed application form and fee as specified in subsection (B).
- E.** Relocation.
 - 1. No less than 30 days before an existing resident DME and CMG supplier permittee relocates, the permittee shall submit a completed application for relocation electronically or manually on a form furnished by the Board, and the documentation required in subsection (B).
 - 2. A nonresident DME and CMG supplier permittee shall provide written notice by mail, facsimile, or e-mail to the Board office no less than ten days before relocating.
- F.** Orders. A resident or nonresident DME and CMG supplier shall sell, lease, or provide:
 - 1. Durable medical equipment that is a prescription-only device as defined in A.R.S. § 32-1901(75) only pursuant to a prescription order or medication order from a medical practitioner; and
 - 2. A compressed medical gas only pursuant to a compressed medical gas order from a medical practitioner.
- G.** Restriction. A DME and CMG supplier permit shall authorize the permittee to procure, possess, and provide a prescription-only device or compressed medical gas to a patient or consumer as specified in subsection (F). A DME and CMG supplier permit does not authorize the permittee to procure, possess, or provide narcotics or other controlled substances, prescription-only drugs other than compressed medical gases, precursor chemicals, or regulated chemicals.
- H.** Facility. A resident or nonresident DME and CMG supplier permittee shall ensure the facility is clean, uncluttered, sanitary, temperature controlled, and secure from unauthorized access. A permittee shall maintain separate and identified storage areas in the facility and in the delivery vehicles for clean, dirty, contaminated, or damaged durable medical equipment or compressed medical gases.
- I.** A resident or nonresident DME and CMG supplier permittee shall not manufacture, process, transfill, package, or label a compressed medical gas, except as set forth in subsection (J).
- J.** Records. A resident or nonresident DME and CMG supplier permittee shall establish and implement written procedures for maintaining records pertaining to acquisition, distribution, returns, recalls, training of personnel, maintenance, cleaning, and complaints. A permittee shall:

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1. Ensure that a prescription order, medication order, or compressed medical gas order is obtained as specified in subsection (F);
 2. Ensure that each compressed medical gas container supplied by the permittee contains a label bearing the name and address of the permittee;
 3. Ensure that all appropriate warning labels are present on the durable medical equipment or compressed medical gas;
 4. Retain the records required by Section R4-23-601 and this Section for not less than three years, or if supplying a compressed medical gas, one year after the expiration date of the compressed medical gas, whichever is longer; and
 5. Make the records required by Section R4-23-601 and this Section available on inspection by the Board or its compliance officer, or if stored in a centralized recordkeeping system apart from the inspection location and not electronically retrievable for inspection, shall provide the records within four working days of a request by the Board or its staff.
- K. Inspection.**
1. A resident DME and CMG supplier permittee shall make the DME and CMG supplier's facility available for inspection by the Board or its compliance officers under A.R.S. § 32-1904.
 2. Within ten days from the date of a request by the Board or its staff, a nonresident DME and CMG supplier permittee shall provide a copy of the most recent inspection report completed by the permittee's resident licensing authority, or a copy of the most recent inspection report completed by a third-party auditor approved by the permittee's resident licensing authority or the Board or its designee. The Board may inspect, or may employ a third-party auditor to inspect, a nonresident permittee as specified in A.R.S. § 32-1904.
- L. Permit renewal.** Permit renewal shall be as specified in R4-23-602(D).
- M.** Nothing in this Section shall be construed to prohibit the emergency administration of oxygen by licensed health care personnel, emergency medical technicians, first responders, fire fighters, law enforcement officers, and other emergency personnel trained in the proper use of emergency oxygen.

Historical Note

Adopted effective January 12, 1998 (Supp. 98-1).

Amended by final rulemaking at 20 A.A.R. 1364, effective August 2, 2014 (Supp. 14-2).

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

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(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:

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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 auto-

mated 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 repackaging of the container as set out in subsection (D)(3)(b);

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- 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.

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- 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 non-prescription 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).

R4-23-705. Repealed**Historical Note**

Former Rules 6.8420, 6.8421, 6.8422, 6.8423, 6.8424, 6.8425, 6.8426, 6.8427, 6.8428, and 6.8429. Amended effective August 10, 1978 (Supp. 78-4). Amended effective August 24, 1992 (Supp. 92-3). Repealed effective December 18, 1992 (Supp. 92-4).

R4-23-706. Repealed**Historical Note**

Former Rules 6.8431, 6.8432, 6.8433, 6.8434, 6.8435, 6.8436, and 6.8437; Amended effective August 10, 1978 (Supp. 78-4). Amended subsections (C), (E), (F), and (G) effective April 20, 1982 (Supp. 82-2). Section R4-23-706 repealed by final rulemaking at 5 A.A.R. 862, effective March 3, 1999 (Supp. 99-1).

R4-23-707. Repealed

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Historical Note

Former Rules 6.8441, 6.8442, 6.8450, 6.8451, 6.8452, 6.8453, 6.8454, 6.8455, 6.8456, and 6.8457. Section R4-23-707 repealed by final rulemaking at 5 A.A.R. 862, effective March 3, 1999 (Supp. 99-1).

R4-23-708. Repealed**Historical Note**

Former Rules 6.8461, 6.8462, 6.8463, and 6.8464. Section R4-23-708 repealed by final rulemaking at 5 A.A.R. 862, effective March 3, 1999 (Supp. 99-1).

R4-23-709. Repealed**Historical Note**

Former Rules 6.8471, 6.8472, and 6.8473. Section R4-23-709 repealed by final rulemaking at 5 A.A.R. 862, effective March 3, 1999 (Supp. 99-1).

ARTICLE 8. DRUG CLASSIFICATION

Article 8, consisting of Sections R4-23-801 and R4-23-802, recodified from Article 5 at 9 A.A.R. 4011, effective August 18, 2003 (Supp. 03-3).

R4-23-801. Dietary Supplements

A person who sells, distributes, or provides a product that is labeled as a dietary supplement and is labeled or marketed as a treatment for any deficiency disease, for the correction of any symptom of disease, or for the prevention, mitigation, or cure of any disease, either by direct statement or by inference, is selling, distributing, or providing a drug and is subject to the requirements of A.R.S. Title 32, Chapter 18 and 4 A.A.C. 23.

Historical Note

Former Rules 7.1110, 7.1120, and 7.1130. Repealed effective November 4, 1998 (Supp. 98-4). Recodified from R4-23-501 at 9 A.A.R. 4011, effective August 18, 2003 (Supp. 03-3).

R4-23-802. Veterinary

Veterinary preparation: A veterinary drug manufacturer or supplier may distribute:

1. A prescription-only veterinary drug to:
 - a. A veterinary medical practitioner licensed under A.R.S. Title 32, Chapter 21,
 - b. A full-service drug wholesaler permitted under A.R.S. Title 32, Chapter 18, or
 - c. A pharmacy permitted under A.R.S. Title 32, Chapter 18, and
2. A nonprescription veterinary drug to:
 - a. A veterinary medical practitioner licensed under A.R.S. Title 32, Chapter 21,
 - b. A nonprescription drug retailer permitted under A.R.S. Title 32, Chapter 18,
 - c. A full-service or nonprescription drug wholesaler permitted under A.R.S. Title 32, Chapter 18, or
 - d. A pharmacy permitted under A.R.S. Title 32, Chapter 18.

Historical Note

Former Rules 7.1210, 7.1220, and 7.1230. Repealed effective November 4, 1998 (Supp. 98-4). Recodified from R4-23-502 at 9 A.A.R. 4011, effective August 18, 2003 (Supp. 03-3).

R4-23-803. Repealed**Historical Note**

Former Rules 7.1300, 7.1400, 7.1500, and 7.1000.

Repealed effective November 4, 1998 (Supp. 98-4).

R4-23-804. Repealed**Historical Note**

Former Rules 7.2100, 7.2200, 7.2300, 7.2410, 7.2420, and 7.2430. Repealed effective November 4, 1998 (Supp. 98-4).

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**R4-23-1001. Repealed****Historical Note**

Adopted effective August 2, 1982 (Supp. 82-4). Section repealed by final rulemaking at 6 A.A.R. 3177, effective August 3, 2000 (Supp. 00-3).

R4-23-1002. Repealed**Historical Note**

Adopted effective August 2, 1982 (Supp. 82-4). Repealed effective November 4, 1998 (Supp. 98-4).

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

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- 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).

R4-23-1004. Repealed**Historical Note**

Adopted effective August 2, 1982 (Supp. 82-4). Repealed effective November 4, 1998 (Supp. 98-4).

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).

ARTICLE 11. PHARMACY TECHNICIANS

Article 11, consisting of R4-23-1101 through R4-23-1105, made by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1).

R4-23-1101. Licensure and Eligibility

- A.** License required. A person shall not work as a pharmacy technician or pharmacy technician trainee in Arizona, unless the person possesses a pharmacy technician or pharmacy technician trainee license issued by the Board.
- B.** Eligibility.
1. To be eligible for licensure as a pharmacy technician trainee, a person shall:
 - a. Be of good moral character,
 - b. Be at least 18 years of age, and
 - c. Have a high school diploma or the equivalent of a high school diploma.
 2. To be eligible for licensure as a pharmacy technician, a person shall:
 - a. Meet the requirements of subsection (B)(1),
 - b. Complete a pharmacy technician training program that meets the standards prescribed in R4-23-1105, and
 - c. Pass the Pharmacy Technician Certification Board (PTCB) examination or another Board-approved pharmacy technician examination.
- C.** A pharmacy technician delinquent license. Before an Arizona pharmacy technician license will be reinstated, a pharmacy technician whose Arizona pharmacy technician license is delinquent for five or more consecutive years shall furnish to the Board satisfactory proof of fitness to be licensed as a phar-

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macy technician and pay all past due biennial renewal fees and penalty fees. Satisfactory proof includes:

1. For a person with a delinquent license who is practicing as a pharmacy technician out-of-state with a pharmacy technician license issued by another jurisdiction:
 - a. Proof of current, unrestricted pharmacy technician licensure in another jurisdiction; and
 - b. Proof of employment as a pharmacy technician during the last 12 months; or
2. For a person with a delinquent license who did not practice as a pharmacy technician within the last 12 months:
 - a. Take and pass a Board-approved pharmacy technician examination, and
 - b. Complete 20 contact hours or two CEUs of continuing education activity sponsored by an approved provider, including at least two contact hours or 0.2 CEUs of continuing education activity in pharmacy law.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 102, effective March 10, 2013 (Supp. 13-1).

R4-23-1102. Pharmacy Technician Licensure

- A. Eligibility. An applicant for licensure as a pharmacy technician shall provide the Board proof that the applicant is eligible under R4-23-1101(B)(2), including documentation that the applicant:
 1. Completed a pharmacy technician training program that meets the standards prescribed in R4-23-1105(B)(2); and
 2. Passed the Pharmacy Technician Certification Board (PTCB) examination or another Board-approved pharmacy technician examination; or
 3. Meets the requirements of R4-23-1105(D)(1) or (2).
- B. Application.
 1. An applicant for licensure as a pharmacy technician shall:
 - a. Submit a completed application electronically or manually on a form furnished by the Board, and
 - b. Submit with the application form:
 - i. The documents specified in the application form,
 - ii. The initial licensure fee specified in R4-23-205(A)(3)(a), and
 - iii. The wall license fee specified in R4-23-205(E)(1)(c).
 2. The Board office shall deem an application form received on the date the Board office electronically or manually date-stamps the form.
- C. Licensure.
 1. If an applicant is found to be ineligible for pharmacy technician licensure under statute and rule, the Board office shall issue a written notice of denial to the applicant.
 2. If an applicant is found to be eligible for pharmacy technician licensure under statute and rule, the Board office shall issue a certificate of licensure and a wall license. An applicant who is assigned a license number and who has been granted "open" status on the Board's license verification site may begin practice as a pharmacy technician prior to receiving the certificate of licensure.
 3. An applicant who is assigned a license number and who has a "pending" status on the Board's license verification site shall not practice as a pharmacy technician until the Board office issues a certificate of licensure as specified in subsection (2).

4. A licensee shall maintain the certificate of licensure in the practice site for inspection by the Board or its designee or review by the public.

D. License renewal.

1. To renew a license, a pharmacy technician shall submit a completed license renewal application electronically or manually on a form furnished by the Board with the biennial renewal fee specified in R4-23-205(A)(3)(b).
 2. If the biennial renewal fee is not paid by November 1 of the renewal year specified in A.R.S. § 32-1925, the pharmacy technician license is suspended and the licensee shall not practice as a pharmacy technician. The licensee shall pay a penalty as provided in A.R.S. § 32-1925 and R4-23-205(G)(1) to vacate the suspension.
 3. A licensee shall maintain the renewal certificate of licensure in the practice site for inspection by the Board or its designee or review by the public.
- E. Time-frames for pharmacy technician licensure and license renewal. The Board office shall follow the time-frames established in R4-23-202(F).
- F. Verification of license. A pharmacy permittee or pharmacist-in-charge shall not permit a person to practice as a pharmacy technician until the pharmacy permittee or pharmacist-in-charge verifies that the person is currently licensed by the Board as a pharmacy technician.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 102, effective March 10, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 2911, effective November 10, 2013 (Supp. 13-3).

R4-23-1103. Pharmacy Technician Trainee Licensure

- A. Eligibility. An applicant for licensure as a pharmacy technician trainee shall provide the Board proof that the applicant is eligible under R4-23-1101(B)(1).
- B. Application.
 1. An applicant for licensure as a pharmacy technician trainee shall:
 - a. Submit a completed application electronically or manually on a form furnished by the Board, and
 - b. Submit with the application form:
 - i. The documents specified in the application form,
 - ii. The licensure fee specified in R4-23-205(A)(4), and
 - iii. The wall license fee specified in R4-23-205(E)(1)(d).
 2. The Board office shall deem an application form received on the date the Board office electronically or manually date-stamps the form.
- C. Licensure.
 1. If an applicant is found to be ineligible for pharmacy technician trainee licensure under statute and rule, the Board office shall issue a written notice of denial to the applicant.
 2. If an applicant is found to be eligible for pharmacy technician trainee licensure under statute and rule, the Board office shall issue a certificate of licensure and a wall license. An applicant who is assigned a license number and who has been granted "open" status on the Board's license verification site may begin practice as a pharmacy technician trainee prior to receiving the certificate of licensure.
 3. An applicant who is assigned a license number and who has a "pending" status on the Board's license verification

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- site shall not practice as a pharmacy technician trainee until the Board office issues a certificate of licensure as specified in subsection (2).
4. A licensee shall maintain the certificate of licensure in the practice site for inspection by the Board or its designee or review by the public.
5. A pharmacy technician trainee license is valid for 24 months from the date issued. A pharmacy technician trainee who does not complete the prescribed training program and pass the Pharmacy Technician Certification Board (PTCB) examination or another Board-approved pharmacy technician examination before the pharmacy technician trainee's license expires is not eligible for licensure as a pharmacy technician and shall not practice as a pharmacy technician or pharmacy technician trainee.
- D. Re-application for licensure.**
1. The Board may allow a pharmacy technician trainee whose license expires before the pharmacy technician trainee completes the prescribed training program and passes the Pharmacy Technician Certification Board (PTCB) examination or another Board-approved pharmacy technician examination to reapply for licensure not more than one time. A pharmacy technician trainee whose license has expired may make a special request to the Board under R4-23-401 for approval to reapply for licensure.
 2. The Board shall base its decision to grant or deny a special request to reapply for licensure on an assessment of:
 - a. The reasons the pharmacy technician trainee did not complete a pharmacy technician training program and the likelihood that the pharmacy technician trainee will complete a pharmacy technician training program within the next 24 months,
 - b. The reasons the pharmacy technician trainee failed the pharmacy technician examination and the likelihood that the pharmacy technician trainee will pass the pharmacy technician examination within the next 24 months, and
 - c. Other extenuating circumstances.
 3. A pharmacy technician trainee that receives Board approval to reapply for licensure shall submit a completed application manually on a form furnished by the Board and pay the licensure fee specified in R4-23-205(A)(4).
- E. Time-frames for pharmacy technician trainee licensure.** The Board office shall follow the time-frames established in R4-23-202(F).
- F. Verification of license.** A pharmacy permittee or pharmacist-in-charge shall not permit a person to practice as a pharmacy technician trainee until the pharmacy permittee or pharmacist-in-charge verifies that the person is currently licensed by the Board as a pharmacy technician trainee.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 2911, effective November 10, 2013 (Supp. 13-3).

R4-23-1104. Pharmacy Technicians and Pharmacy Technician Trainees

- A. Permissible tasks of a pharmacy technician trainee.** Acting in compliance with all applicable statutes and rules and under the supervision of a pharmacist, a pharmacy technician trainee licensed under R4-23-1103 may assist a graduate intern, pharmacy intern, or pharmacist with the following when applicable to the pharmacy practice site:
1. Record on the original prescription order the serial number of the prescription medication and date dispensed;
 2. Initiate or accept verbal or electronic refill authorization from a medical practitioner or medical practitioner's agent and record, on the original prescription order or by an alternative method approved by the Board or its designee, the medical practitioner's name, patient name, name and quantity of prescription medication, specific refill information, and name of medical practitioner's agent, if any;
 3. Record information in the refill record or patient profile;
 4. Enter information for a new or refill prescription medication as required under A.R.S. § 32-1964;
 5. Type and affix a label for the prescription medication. A pharmacist or graduate or pharmacy intern working under the supervision of a pharmacist shall verify the accuracy of the label as described under R4-23-402(A)(11);
 6. Reconstitute a prescription medication, if a pharmacist checks the ingredients and procedure before reconstitution and verifies the final product after reconstitution;
 7. Retrieve, count, or pour a prescription medication, if a pharmacist verifies the contents of the prescription medication against the original prescription medication container or by an alternative drug identification method approved by the Board or its designee;
 8. Prepackage drugs in accordance with R4-23-402(A); and
 9. Measure, count, pour, or otherwise prepare and package a drug needed for hospital inpatient dispensing, if a pharmacist verifies the accuracy, measuring, counting, pouring, preparing, packaging, and safety of the drug before the drug is delivered to a patient care area.
- B. Permissible tasks of a pharmacy technician.** Acting in compliance with all applicable statutes and rules and under the supervision of a pharmacist, a pharmacy technician licensed under R4-23-1102 may:
1. Perform the tasks listed in subsection (A);
 2. After completing a pharmacy technician drug compounding training program developed by the pharmacy permittee or pharmacist-in-charge under R4-23-1105(C), assist a pharmacist, graduate intern, or pharmacy intern in compounding prescription medications and sterile or non-sterile pharmaceuticals in accordance with written policies and procedures, if the preparation, accuracy, and safety of the final product is verified by a pharmacist before dispensing;
 3. Perform a final technology-assisted verification of product if the pharmacy technician is qualified under R4-23-1104.01(D); and
 4. If technology-assisted verification is performed, type and affix a label for the prescription medication. A pharmacist or graduate or pharmacy intern shall verify the accuracy of the label as described under R4-23-402(A)(12).
- C. A trained and licensed pharmacy technician or pharmacy technician trainee who performs a task as authorized under subsections (A) and (B) shall ensure the task is performed accurately.**
- D. Prohibited activities.** A pharmacy technician or pharmacy technician trainee shall not perform a professional practice reserved for a pharmacist, graduate intern, or pharmacy intern in accordance with R4-23-402 or R4-23-653.
- E. A pharmacy technician or pharmacy technician trainee shall wear a badge indicating name and title while on duty.**
- F. Before employing a pharmacy technician or pharmacy technician trainee, a pharmacy permittee or pharmacist-in-charge shall develop, implement, review, and revise in the manner described in R4-23-653(A) and comply with policies and pro-**

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- cedures outlined in subsection (G) for pharmacy technician and pharmacy technician trainee tasks.
- G.** A pharmacy permittee or pharmacist-in-charge shall ensure policies and procedures required under subsection (F) include the following:
1. For all practice sites:
 - a. Supervisory controls and verification procedures to ensure the quality and safety of pharmaceutical service;
 - b. Employment performance expectations for a pharmacy technician and pharmacy technician trainee;
 - c. The tasks a pharmacy technician or pharmacy technician trainee may perform as specified under subsections (A) and (B);
 - d. Pharmacist and patient communication;
 - e. Reporting, correcting, and avoiding medication and dispensing errors;
 - f. Security procedures for:
 - i. Confidentiality of patient prescription records, and
 - ii. The pharmacy area;
 - g. Automated medication distribution system;
 - h. Compounding procedures for pharmacy technicians; and
 - i. Brief overview of state and federal pharmacy statutes and rules;
 2. For community and limited-service pharmacy practice sites:
 - a. Prescription dispensing procedures for:
 - i. Accepting a new written prescription order,
 - ii. Accepting a refill request,
 - iii. Selecting a drug product,
 - iv. Counting and pouring,
 - v. Labeling, and
 - vi. Obtaining refill authorization; and
 - b. Computer data-entry procedures for:
 - i. New and refill prescriptions,
 - ii. Patient's drug allergies,
 - iii. Drug-drug interactions,
 - iv. Drug-food interactions,
 - v. Drug-disease state contraindications,
 - vi. Refill frequency,
 - vii. Patient's disease and medical condition,
 - viii. Patient's age or date of birth and gender, and
 - ix. Patient profile maintenance; and
 3. For hospital pharmacy practice sites:
 - a. Medication order procurement and data entry,
 - b. Drug preparation and packaging,
 - c. Outpatient and inpatient drug delivery, and
 - d. Inspection of drug storage and preparation areas and patient care areas.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). 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. 102, effective March 10, 2013 (Supp. 13-1). Amended by final rulemaking at 23 A.A.R. 3257, effective January 8, 2018 (Supp. 17-4).

R4-23-1104.01 Technology-assisted Verification of Product

- A.** By complying with this Section, the permittee of a retail, institutional, or limited-service pharmacy may implement a technology-assisted verification of product program that allows a pharmacy technician licensed under R4-23-1102 and qualified under subsection (D) to perform final product verification.
- B.** Written program description required. Before implementing a technology-assisted verification of product program the permittee of a retail, institutional, or limited-service pharmacy shall prepare a written program description that includes the following:
1. Responsibility of both the pharmacist in charge and permittee to ensure compliance with this Section;
 2. Responsibility of the permittee to design, implement, and monitor a process that ensures the accuracy and safety of the product dispensed;
 3. Duties of a verification technician;
 4. The training necessary to qualify and remain qualified as a verification technician;
 5. The monitoring and evaluation procedures to be used to ensure competency of the verification technician; and
 6. Prohibition of a verification technician performing a final accuracy check of a completed prescription label.
- C.** The permittee of a retail, institutional, or limited-service pharmacy implementing a technology-assisted verification of product program shall:
1. Post the written program description required under subsection (B) in the pharmacy area;
 2. Provide a copy of the written program description to the pharmacist in charge and verification technician;
 3. Obtain the signature of the pharmacist in charge and verification technician on a copy of the written program description and place the signed copy in the personnel file of the pharmacist in charge and verification technician;
 4. Ensure scanning technology used in the technology-assisted verification program captures both product and patient information; and
 5. Update the written program description as needed and repeat subsections (C)(1) through (4) after each update.
- D.** Verification technician training: The permittee of a retail, institutional, or limited-service pharmacy implementing a technology-assisted verification of product program shall ensure a pharmacy technician does not perform the duties of a verification technician unless the pharmacy technician has the following qualifications:
1. Is licensed under R4-23-1102;
 2. Has at least 1,000 hours of pharmacy technician work experience in the same kind of pharmacy practice site in which the technology-assisted verification of product will be performed;
 3. Completes a training program that includes at least the following:
 - a. Role of a verification technician in the dispensing process,
 - b. Legal requirements of a verification technician,
 - c. How to use the technology-assisted verification system,
 - d. Primary causes of medication errors, and
 - e. Identifying and resolving dispensing errors; and
 4. Completes at least four hours of the continuing education required under R4-23-1106 on patient safety.
- E.** The permittee of a retail, institutional, or limited-service pharmacy implementing a technology-assisted verification of product program shall ensure the pharmacy practice site has a computer data storage and retrieval system that meets the standards in R4-23-408(B).
- F.** The permittee of a retail, institutional, or limited-service pharmacy implementing a technology-assisted verification of product program shall ensure a verification technician verifies only the following:
1. A product with scanning technology that identifies product, or

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2. A robotically prepared unit-dose product.
- G.** The permittee of a retail, institutional, or limited-service pharmacy implementing a technology-assisted verification of product program shall ensure a verification technician does not verify the following:
1. A product that involves a combination of drugs resulting from compounding or mixing two or more ingredients or products,
 2. A product that involves or results from an alteration of a drug, or
 3. A DEA schedule II controlled substance.
- H.** The permittee of a retail, institutional, or limited-service pharmacy implementing a technology-assisted verification of product program shall perform an unannounced evaluation of the competency of a verification technician at least twice a year and take steps to remediate any deficiencies identified including removing verification duties from the technician.
- I.** The permittee of a retail, institutional, or limited-service pharmacy implementing a technology-assisted verification of product program shall maintain the following records:
1. Date the pharmacy technician was designated as a verification technician,
 2. Date the pharmacy technician completed the training required under subsection (D)(3),
 3. Dates and results of the evaluations conducted under subsection (H), and
 4. Date and reason for any disciplinary action against the verification technician arising from performing the duties of a verification technician.
- J.** A verification technician shall wear identification that includes the title "Verification Technician" while on duty.
- K.** As used in this Section, the term "verification technician" means an individual who:
1. Is qualified under subsection (D),
 2. Uses a combination of scanning technology and visual confirmation to verify a product prepared to be dispensed is the product prescribed and indicated on the prescription label, and
 3. Performs verification of work performed by other pharmacy technicians before a pharmacist or graduate or pharmacy intern working under the supervision of a pharmacist performs the final accuracy check required under R4-23-402(A).

Historical Note

New Section made by final rulemaking at 23 A.A.R.
3257, effective January 8, 2018 (Supp. 17-4).

R4-23-1105. Pharmacy Technician Trainee Training Program, Pharmacy Technician Drug Compounding Training Program, and Alternative Pharmacy Technician Training

- A.** Nothing in this Section prevents additional offsite training of a pharmacy technician.
- B.** Pharmacy technician trainee training program.
1. A pharmacy permittee or pharmacist-in-charge shall develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with a pharmacy technician trainee training program based on the needs of the individual pharmacy.
 2. A pharmacy permittee or pharmacist-in-charge shall ensure that the pharmacy technician trainee training program includes training guidelines that:
 - a. Define the specific tasks a pharmacy technician trainee is expected to perform,
 - b. Specify how and when the pharmacist-in-charge will assess the pharmacy technician trainee's competency, and
- c. Address the policies and procedures specified in R4-23-1104(G) and the permissible activities specified in R4-23-1104(A).
3. A pharmacist-in-charge shall:
 - a. Document the date that a pharmacy technician trainee has successfully completed the training program, and
 - b. Maintain the documentation required in this subsection for inspection by the Board or its designee.
4. A pharmacy technician trainee shall perform only those tasks, listed in R4-23-1104(A), for which training and competency has been demonstrated.
- C.** Pharmacy technician drug compounding training program.
1. A pharmacy permittee or pharmacist-in-charge shall develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with a pharmacy technician drug compounding training program based on the needs of the individual pharmacy;
 2. A pharmacy permittee or pharmacist-in-charge shall ensure that the pharmacy technician drug compounding training program includes training guidelines that:
 - a. Define the specific tasks a pharmacy technician is expected to perform,
 - b. Specify how and when the pharmacist-in-charge will assess the pharmacy technician's competency, and
 - c. Address the following procedures and tasks:
 - i. Area preparation,
 - ii. Component preparation,
 - iii. Aseptic technique and product preparation,
 - iv. Packaging and labeling, and
 - v. Area clean up;
 3. A pharmacist-in-charge shall:
 - a. Document the date that a pharmacy technician has successfully completed the pharmacy technician drug compounding training program, and
 - b. Maintain the documentation required in this subsection for inspection by the Board or its designee.
- D.** Alternative pharmacy technician training.
1. An individual who has passed the required Board-approved pharmacy technician examination, but has not followed the normal path to pharmacy technician licensure by obtaining a pharmacy technician trainee license and working while completing a pharmacy technician trainee training program as specified in subsection (B), may obtain a pharmacy technician license, if the individual has employment in pharmacy and completes an on-the-job training program as part of the individual's employment orientation that includes: reading and discussing with the pharmacist-in-charge of the pharmacy where employed, the Board rules concerning pharmacy technicians and pharmacy technician trainees, the pharmacy technician and pharmacy technician trainee job description, and the policies and procedures manual of that pharmacy.
 2. An individual who has completed a pharmacy technician certificate program and has passed the required Board-approved pharmacy technician examination, but has not followed the normal path to pharmacy technician licensure by obtaining a pharmacy technician trainee license and working while completing a pharmacy technician trainee training program as specified in subsection (B), may obtain a pharmacy technician license, if the individual has employment in pharmacy and completes an on-the-job training program as part of the individual's employment orientation that includes: reading and discussing with the pharmacist-in-charge of the pharmacy

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- where employed, the Board rules concerning pharmacy technicians and pharmacy technician trainees, the pharmacy technician and pharmacy technician trainee job description, and the policies and procedures manual of that pharmacy.
3. A pharmacist-in-charge shall:
 - a. Document the date that an individual licensed under subsection (D)(1) or (2) has successfully completed the on-the-job training program as part of the individual's employment orientation as required under subsection (D)(1) or (2), and
 - b. Maintain the documentation required in this subsection for inspection by the Board or its designee.
 - E. A pharmacy technician shall perform only those tasks, listed in R4-23-1104(B), for which training and competency has been demonstrated.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). 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. 102, effective March 10, 2013 (Supp. 13-1).

R4-23-1106. Continuing Education Requirements

- A. General. According to A.R.S. § 32-1925(I), the Board shall not renew a pharmacy technician license unless the applicant has during the two years preceding the application for renewal:
 1. Participated in 20 contact hours or two CEUs of continuing education activity sponsored by an Approved Provider defined in R4-23-110, and
 2. At least two of the contact hours or 0.2 of the CEUs are approved courses in pharmacy law. For a pharmacy technician licensed less than 24 months the continuing education contact hours are calculated by multiplying 0.83 hours times the number of months between the date of initial licensure and the licensee's next license renewal date.
- B. Valid CEUs. The Board shall:
 1. Only accept CEUs for continuing education activities sponsored by an Approved Provider;
 2. Only accept CEUs accrued during the two-year period immediately before licensure renewal;
 3. Not allow CEUs accrued in a biennial renewal period in excess of the required two CEUs to be carried forward to the succeeding biennial renewal period;
 4. Allow a pharmacy technician who leads, instructs, or lectures to a group of health professionals on pharmacy-related topics in continuing education activities sponsored by an Approved Provider to receive CEUs for a presentation by following the same attendance procedures as any other attendee of the continuing education activity; and
 5. Not accept as a CEU a pharmacy technician's normal teaching duties within a learning institution if the pharmacy technician's primary responsibility is the education of health professionals.
- C. Continuing education records and reporting CEUs. A pharmacy technician shall:
 1. Maintain continuing education records that:
 - a. Verify the continuing education activities the pharmacy technician participated in during the preceding five years; and
 - b. Consist of a statement of credit or a certificate issued by an Approved Provider at the conclusion of a continuing education activity;

2. At the time of licensure renewal, attest to the number of CEUs the pharmacy technician participated in during the renewal period on the biennial renewal form; and
3. When requested by the Board office, submit proof of continuing education participation within 20 days of the request.
- D. The Board shall deem a pharmacy technician's failure to comply with the continuing education participation, recording, or reporting requirements of this Section as unprofessional conduct and grounds for disciplinary action by the Board under A.R.S. § 32-1927.01.
- E. A pharmacy technician who is aggrieved by any decision of the Board concerning continuing education units may request a hearing before the Board.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1105, effective April 30, 2005 (Supp. 05-1).

ARTICLE 12. PRESCRIPTION MEDICATION DONATION PROGRAM**R4-23-1201. Eligibility Requirements for Participation in the Program**

A physician's office, a pharmacy, or a health care institution may participate in the prescription medication donation program, under A.R.S. § 32-1909, if all of the following requirements, as applicable, are met:

1. The physician-in-charge of the participating physician's office has a current license issued under A.R.S. Title 32, Chapter 13 or 17;
2. The pharmacy has a current permit issued under A.R.S. Title 32, Chapter 18;
3. The health care institution has a current license issued under A.R.S. Title 36, Chapter 4 and has a physician-in-charge or pharmacist-in-charge of dispensing; and
4. The physician's office, the pharmacy, or the health care institution complies with all federal and state drug laws, rules, and regulations.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 4320, effective January 3, 2009 (Supp. 08-4).

R4-23-1202. Donating Medications

- A. The following may donate an eligible prescription medication, as specified in R4-23-1203, to a physician's office, a pharmacy, or a health care institution that participates in the prescription medication donation program:
 1. An individual for whom the prescription medication was prescribed on a patient-specific prescription order or that individual's health care decision maker;
 2. A manufacturer that has a current permit issued under A.R.S. Title 32, Chapter 18; or
 3. A health care institution that has a current license issued under A.R.S. Title 36, Chapter 4.
- B. An individual or health care decision maker electing to donate an eligible prescription medication shall not have taken possession of the prescription medication before the donation and shall make the donation through a medical practitioner, pharmacy, or health care institution.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 4320, effective January 3, 2009 (Supp. 08-4).

R4-23-1203. Eligible Prescription Medications

A prescription medication may be donated to a physician's office, a pharmacy, or a health care institution that participates in the pre-

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scription medication donation program if the prescription medication:

1. Is not a:
 - a. Controlled substance;
 - b. Drug sample; or
 - c. Drug that can only be dispensed to a patient registered with the drug's manufacturer, because donation could prevent the manufacturer from maintaining required patient registration data;
2. Is in its original sealed and tamper-evident unit dose packaging that is unopened or has only its outside packaging opened and its single unit dose packaging undisturbed;
3. Has been in the possession of a licensed health care professional, manufacturer, pharmacy, or health care institution and not in the possession of the individual specified in R4-23-1202(A)(1);
4. Has been stored according to federal and state drug law and the requirements of the manufacturer's package insert;
5. Has an expiration date or beyond-use-date later than six months after the date of donation;
6. Is in packaging that shows the lot number and expiration date or beyond-use-date of the prescription medication;
7. Does not have any physical signs of tampering or adulteration; and
8. Is in packaging that does not have any physical signs of tampering, except for the outside packaging as specified in subsection (2).

Historical Note

New Section made by final rulemaking at 14 A.A.R.
4320, effective January 3, 2009 (Supp. 08-4).

R4-23-1204. Eligibility Requirements to Receive Donated Prescription Medications

An individual is eligible to receive donated prescription medications from the prescription medication donation program if the individual:

1. Is a resident of Arizona;
2. Has an annual family income that is less than or equal to 300% of the poverty level;
3. Satisfies one of the following:
 - a. Has no health insurance coverage;
 - b. Has health insurance coverage that does not pay for the prescription medication prescribed;
 - c. Is an American or Alaska Native who:
 - i. Is eligible for, but chooses not to use, the Indian Health Service to receive prescription medications; and
 - ii. Either has no other health insurance coverage or has health insurance coverage that does not pay for the prescription medication prescribed; or
 - d. Is a veteran who:
 - i. Is eligible for, but chooses not to use, Veterans Health Administration benefits to receive prescription medications; and
 - ii. Either has no other health insurance coverage or has health insurance coverage that does not pay for the prescription medication prescribed;
4. Is ineligible for enrollment in AHCCCS; and
5. If eligible for Medicare, is ineligible for a full low-income subsidy.

Historical Note

New Section made by final rulemaking at 14 A.A.R.

4320, effective January 3, 2009 (Supp. 08-4).

R4-23-1205. Donor Form

- A. Before donating a prescription medication, a donor shall sign a form that includes:
 1. A statement attesting that the donor is one of the entities identified in R4-23-1202(A) and intends to voluntarily donate the prescription medication to the prescription medication donation program;
 2. If the donor is the individual named on the prescription or the individual's health care decision maker:
 - a. The individual's name and address;
 - b. The name of the individual's health care decision maker, if applicable;
 - c. The name of the medical practitioner, pharmacy, or health care institution through which the donation is being made;
 - d. The following information about the donated prescription medication:
 - i. The brand name or generic name of the prescription medication donated;
 - ii. If a generic medication, the name of the manufacturer or the national drug code number of the prescription medication donated;
 - iii. The strength of the prescription medication donated;
 - iv. The quantity of the prescription medication donated;
 - v. The lot number of the prescription medication donated; and
 - vi. The expiration date or beyond-use-date of the prescription medication donated;
 - e. A statement attesting that the individual or the individual's health care decision maker has not had possession of the donated prescription medication;
 - f. The dated signature of the individual or the individual's health care decision maker;
 - g. If the donation is an ongoing donation as authorized under subsection (B), a statement that conforms to subsection (B);
 - h. A statement by the medical practitioner, pharmacy, or health care institution attesting that the medical practitioner, pharmacy, or health care institution through which the donation is being made has stored the donated prescription medication as required in R4-23-1203(4);
 - i. A statement by the medical practitioner, pharmacy, or health care institution attesting that the drugs being donated meet the specific requirements of R4-23-1203(1); and
 - j. The dated signature of the medical practitioner or of an authorized agent for the pharmacy or health care institution through which the donation is being made;
 3. If the donor is a manufacturer:
 - a. The name and address of the manufacturer;
 - b. The information about the donated prescription medication specified in subsection (A)(2)(d);
 - c. A statement by the manufacturer that the manufacturer has stored the donated prescription medication as required in R4-23-1203(4); and
 - d. The dated signature of the manufacturer's authorized agent; and
 4. If the donor is a health care institution:
 - a. The name and address of the health care institution;
 - b. The information about the donated prescription medication specified in subsection (A)(2)(d);

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- c. A statement attesting that the health care institution has stored the donated prescription medication as required in R4-23-1203(4);
 - d. A statement by the health care institution attesting that the drugs being donated meet the specific requirements of R4-23-1203(1); and
 - e. The dated signature of the health care institution's authorized agent.
- B.** An individual who resides in a health care institution, or the individual's health care decision maker, may elect to make an ongoing donation of future unused eligible prescription medication:
1. When future unused eligible prescription medication is a result of the individual's prescription medication being changed or discontinued by the individual's primary care provider; and
 2. By indicating the following on a donor form that complies with subsection (A): "From this day forward, I wish to donate all my remaining unused prescription medications that are eligible, under R4-23-1203, to the prescription medication donation program."
- C.** To stop an ongoing donation, an individual who resides in a health care institution, or the individual's health care decision maker, shall submit written notice to the receiving physician's office, pharmacy, or health care institution indicating the individual's, or the health care decision maker's, desire to stop the ongoing donation.

Historical Note

New Section made by final rulemaking at 14 A.A.R.
4320, effective January 3, 2009 (Supp. 08-4).

R4-23-1206. Recipient Form

Before receiving a donated prescription medication from the prescription medication donation program, a recipient of a donated prescription medication shall sign a form:

1. Identifying the physician's office, pharmacy, or health care institution that is dispensing the donated prescription medication;
2. Stating that the recipient has been advised of and understands the immunity provisions of the program under A.R.S. § 32-1909(E) and (F);
3. Attesting that the recipient meets the eligibility requirements specified in R4-23-1204; and
4. Including the following:
 - a. The brand name or generic name of the prescription medication received;
 - b. If a generic medication, the name of the manufacturer or the national drug code number of the prescription medication received;
 - c. The strength of the prescription medication received;
 - d. The quantity of the prescription medication received;
 - e. The recipient's name and address; and
 - f. The dated signature of the recipient.

Historical Note

New Section made by final rulemaking at 14 A.A.R.
4320, effective January 3, 2009 (Supp. 08-4).

R4-23-1207. Recordkeeping

- A.** Before transferring possession of a prescription medication donated by an individual or an individual's health care decision maker, a medical practitioner, pharmacy, or health care institution that has possession of the donated prescription medication and through which the donation is being made shall create an invoice that includes the following:

1. The name and address of the medical practitioner, pharmacy, or health care institution that has possession of the donated prescription medication;
 2. The name of the individual who made the donation;
 3. The brand name or generic name of the prescription medication transferred;
 4. If a generic medication, the name of the manufacturer or the national drug code number of the prescription medication transferred;
 5. The strength of the prescription medication transferred;
 6. The quantity of the prescription medication transferred;
 7. The lot number of the prescription medication transferred;
 8. The expiration date or beyond-use-date of the prescription medication transferred;
 9. The date the prescription medication is transferred to a participating physician's office, pharmacy, or health care institution; and
 10. The name and address of the participating physician's office, pharmacy, or health care institution to which the donated prescription medication is transferred.
- B.** Before transferring possession of a prescription medication donated by a manufacturer, the manufacturer shall create an invoice that includes the manufacturer's name and address and the information described in subsections (A)(3) through (10).
- C.** Before transferring possession of a prescription medication donated by a health care institution, the health care institution shall create an invoice that includes the health care institution's name and address and the information described in subsections (A)(3) through (10).
- D.** A medical practitioner, pharmacy, health care institution, or manufacturer required to create an invoice under subsection (A), (B), or (C) shall:
1. Transmit a copy of the invoice and the donor form required under R4-23-1205 to the participating physician's office, pharmacy, or health care institution to which a donated prescription medication is transferred;
 2. Maintain a copy of the invoice for a minimum of three years from the date of the invoice;
 3. Maintain a copy of the donor form for a minimum of three years from the date signed; and
 4. Make a copy of the invoice or donor form available upon request for inspection by the Board, its designee, or other authorized officers of the law.
- E.** A physician's office, a pharmacy, or a health care institution that participates in the prescription medication donation program shall:
1. Maintain:
 - a. The documents required under R4-23-1206 for a minimum of three years from the date signed; and
 - b. Each invoice and donor form received under subsection (D)(1) for a minimum of three years from the date received; and
 2. Make the documents required under R4-23-1206 and subsection (D)(1) available upon request for inspection by the Board, its designee, or other authorized officers of the law.

Historical Note

New Section made by final rulemaking at 14 A.A.R.
4320, effective January 3, 2009 (Supp. 08-4).

R4-23-1208. Handling Fee

A physician's office, a pharmacy, or a health care institution that dispenses a donated prescription medication may charge a recipient of a donated prescription medication a handling fee of no more than

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\$4.50 per prescription to cover inspection, stocking, and dispensing costs.

Historical Note

New Section made by final rulemaking at 14 A.A.R.
4320, effective January 3, 2009 (Supp. 08-4).

R4-23-1209. Policies and Procedures

A physician's office, a pharmacy, or a health care institution that participates in the prescription medication donation program shall:

1. Develop, implement, and comply with policies and procedures for the receipt, storage, and distribution of prescription medications donated to the physician's office, the pharmacy, or the health care institution;
2. Review biennially and, if necessary, revise the policies and procedures required under this Section;
3. Document the review required under subsection (2);
4. Assemble the policies and procedures as a written manual or in a readily accessible electronic format;
5. Make the policies and procedures available for reference by a physician's office, pharmacy, or health care institution personnel and, upon request, for inspection by the Board or its designee; and
6. Ensure that the written or electronic policies and procedures required under subsection (1) include provisions to ensure:
 - a. That each transferred prescription medication meets the eligibility requirements of Sections R4-23-1202 and R4-23-1203;
 - b. That each individual who receives a donated prescription medication under the prescription medication donation program signs the recipient form specified in R4-23-1206;
 - c. Compliance with the applicable requirements for recordkeeping in Section R4-23-1207;
 - d. Compliance with the requirements of Section R4-23-1210; and
 - e. Compliance with the requirements of Section R4-23-1211.

Historical Note

New Section made by final rulemaking at 14 A.A.R.
4320, effective January 3, 2009 (Supp. 08-4).

R4-23-1210. Dispensing Donated Prescription Medications

- A.** Before dispensing a donated prescription medication under the program, a participating physician's office, pharmacy, or health care institution shall:
1. Obtain and maintain a current drug identification reference or text in hard-copy or electronic media format;
 2. Inspect the donated prescription medication to ensure that the prescription medication has not been adulterated;
 3. Certify that the donated prescription medication has been stored in compliance with the requirements of the manufacturer's package insert;
 4. Comply with all federal and state laws regarding storage and distribution of a donated prescription medication;
 5. Obtain a prescription order of a licensed medical practitioner for the recipient to receive the donated prescription medication; and
 6. Properly label the donated prescription medication to be dispensed.
- B.** As specified in subsection (C) a participating physician's office, pharmacy, or health care institution may transfer a prescription medication donated under this Article to another participating physician's office, pharmacy, or health care institution, but the donated prescription medication shall not be resold.

C. A participating physician's office, pharmacy, or health care institution may transfer a donated prescription medication to another participating physician's office, pharmacy, or health care institution, if:

1. The transferring physician's office, pharmacy, or health care institution has available a prescription medication that the receiving physician's office, pharmacy, or health care institution needs;
2. The transferring physician's office, pharmacy, or health care institution prepares an invoice that includes its name and address and the information described in R4-23-1207(B)(3) through (10);
3. A copy of the invoice required in subsection (C)(2) is sent to the receiving physician's office, pharmacy, or health care institution with the transferred prescription medication; and
4. The transferring physician's office, pharmacy, or health care institution and the receiving physician's office, pharmacy, or health care institution each:
 - a. Keep a copy of the invoice required in subsection (C)(2) on file for three years from the date of transfer; and
 - b. Make the invoice records available, upon request, for inspection by the Board or its designee.

Historical Note

New Section made by final rulemaking at 14 A.A.R.
4320, effective January 3, 2009 (Supp. 08-4).

R4-23-1211. Responsibilities of the Physician-in-charge or Pharmacist-in-charge of a Participating Physician's Office, Pharmacy, or Health Care Institution

The physician-in-charge of a participating physician's office; the pharmacist-in-charge of a participating pharmacy; or the physician-in-charge or pharmacist-in-charge of dispensing for a participating health care institution shall, either personally or through a designee:

1. Coordinate the receipt of prescription medications donated by manufacturers or health care institutions or through medical practitioners, pharmacies, or health care institutions from eligible donors;
2. Check each donated prescription medication against the invoice and any additional alternate record and resolve any discrepancies;
3. Store and secure donated prescription medications as required by federal and state law;
4. Inspect each donated prescription medication for adulteration;
5. Certify that each donated prescription medication has been stored in compliance with the manufacturer's package insert;
6. Ensure that expired, adulterated, or unidentifiable donated prescription medication is not dispensed;
7. Ensure that prescription medications identified under subsection (6) are destroyed within 30 days of identification as specified in subsection (9);
8. Ensure safety in drug recalls by destroying any donated prescription medication that may be subject to recall if its lot number cannot exclude it from recall;
9. Ensure destruction of expired, adulterated, unidentifiable, and recalled donated prescription medication by:
 - a. Following federal, state, and local guidelines for drug destruction;
 - b. Creating a list of expired, adulterated, unidentifiable, or recalled donated prescription medications to be destroyed;

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- c. Following the destruction, signing the list described in subsection (9)(b) and having the list signed by a witness verifying the destruction; and
- d. Keeping the list described in subsection (9)(b) on file for three years from the date of destruction;
10. Redact or remove all previous patient or pharmacy labeling on a donated prescription medication before dispensing the donated prescription medication;
11. Ensure that all dispensed donated prescription medications comply with the labeling requirements of A.R.S. § 32-1968(D);
12. Place on the label of each dispensed donated prescription medication a beyond-use-date that does not exceed the beyond-use-date or expiration date from the original label of the donated prescription medication or, if the dispensed donated prescription medication comes from multiple packages, the earliest beyond-use-date or expiration date from the donated prescription medication packages; and
13. Maintain the records required in this Article.

Historical Note

New Section made by final rulemaking at 14 A.A.R.
4320, effective January 3, 2009 (Supp. 08-4).

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, repackaging 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 prepackager 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, repackage, 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.

DEPARTMENT OF ENVIRONMENTAL QUALITY (R19-1204)

Title 18, Chapter 2, Articles 1, 3, and 4, Air Pollution Control

Amend: R18-2-101, R18-2-301, R18-2-302.01, R18-2-304, R18-2-334, R18-2-406



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: December 3, 2019

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

FROM: Council Staff

DATE: November 4, 2019

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY (R19-1204)**

Title 18, Chapter 2, Air Pollution Control, Article 1, 3, and 4

Amend: R18-2-101, R18-2-301, R18-2-302.01, R18-2-304, R18-2-334,
R18-2-406

Summary:

This regular rulemaking from the Department of Environmental Quality seeks to amend rules in Title 18, Chapter 2, Articles 1, 3, and 4. The Department seeks to amend its rules to remedy a deficiency identified by the United States Environmental Protection Agency (EPA) in Arizona's Nonattainment New Source Review (NNSR). The Department indicates the rules need to be amended in order to comply with federal requirements, to secure full approval of Arizona's NSR rules, and to avoid sanctions under the federal Clean Air Act (CAA). More specifically, the Department is seeking to amend the definition of "significant" in R18-2-101 to include an emission rate for ammonia in nonattainment areas within Arizona. In addition, the Department is making other clarifying amendments to the rules in Articles 3 and 4.

The Department received an exemption from the rulemaking moratorium to conduct this rulemaking on July 1, 2015.

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

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

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

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

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?

Not applicable.

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

The rulemaking adopts amendments designed to bring the Department's new source review (NSR) rules into compliance with federal requirements. The rulemaking remedies any remaining deficiencies the EPA identified in its 2016 limited disapproval and 2018 conditional approval to bring Arizona's NSR program into compliance with federal regulations. The Department states that the changes are procedural in nature and should have at most a trivial economic impact on stakeholders. Stakeholders include the Department and the regulated community.

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

The Department was not able to identify any less intrusive or less costly alternative methods for achieving the purpose of the rulemaking—compliance with federal NSR requirements for ammonia as PM2.5 precursor.

6. What are the economic impacts on stakeholders?

According to the Department, there are currently no existing or proposed sources of ammonia within the Department's jurisdiction and therefore no small business would be subject to this rulemaking. The Department does not believe that any additional costs will be imposed on businesses as a result of the amended NSR requirements. In addition, there should be no impact on private employment or on the employment of any political subdivision subject to NSR. Any cost(s) should be minimal.

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

The Department made some changes to the rules in the Notice of Final Rulemaking from the Notice of Proposed Rulemaking, as described in item 10 of the Notice of Final

Rulemaking. The Department also made some substantial changes to some of the rules affected in this rulemaking in response to comments it received from the EPA. It published a Notice of Supplemental Rulemaking (25 A.A.R. 2352, September 13, 2019). The final rules are not a substantial change, considered a whole, from the proposed rules and any supplemental proposals.

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

The Department received 10 comments on this rulemaking and adequately responded to each comment. The comments and the Department's response to each comment are summarized in the Notice of Final Rulemaking.

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

Not applicable. The rules do not require a 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?

No, the Department indicates that the rules are not more stringent than corresponding federal law.

11. Conclusion

This regular rulemaking from the Department of Environmental Quality seeks to amend its rules in order to comply with federal requirements, to secure full approval of Arizona's NSR rules, and to avoid sanctions under the federal Clean Air Act (CAA). Council staff finds that these amendments would result in rules that are more clear, concise, understandable, and effective. The Department accepts the usual 60-day delayed effective date for these rules. Council staff recommends approval of this rulemaking.



ARIZONA DEPARTMENT
OF
ENVIRONMENTAL QUALITY



Douglas A. Ducey
Governor

Misael Cabrera
Director

October 21, 2019

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, #305
Phoenix, AZ 85007

Re: Rulemaking for Title 18 – Environmental Quality, Chapter 2. Department of Environmental Quality-Air pollution Control, Article 1, 3, and 4.

Dear Chair Sornsin:

The Arizona Department of Environmental Quality (ADEQ) hereby submits changes to Arizona Administrative Code (A.A.C) R18-2-101, R18-2-302.01, R18-2-304, R18-2-334, and R18-2-406 to the Governor's Regulatory Review Council (GRRC) for its consideration and approval at the Council meeting scheduled for December 3, 2019.

The following information is provided for your use in reviewing the enclosed rules for approval pursuant to A.R.S. § 41-1052 and A.A.C. R1-6-201:

I. Information Required by A.A.C. R1-6-201(A)(1)

- The public record closed for all rules on October 15, 2019, at 5:00 p.m.
- The rulemaking activity relates to the five-year review report approved by GRRC on August 6, 2019.
- The rules do not contain a new fee.
- The rules do not contain a fee increase.
- ADEQ is not seeking an immediate effective date for these rules.
- ADEQ certifies that the preamble discloses reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.
- A full-time employee will not be required to implement and enforce the rules.
- A list of all documents enclosed is provided in Sections II and III.

II. List of Documents Enclosed under A.A.C. R1-6-201(A)(1)(h), (A)(2-5)

- One electronic copy of the following is enclosed:

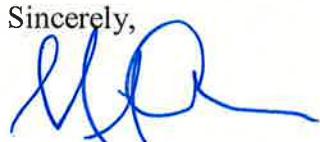
1. This cover letter.
2. The Notice of Final Rulemaking (NFRM), including the preamble, table of contents, and text of the rule.
3. A complete economic, small business and consumer impact statement, which is included in the preamble of the NFRM.
4. Written Comments on the Notice of Proposed Rulemaking (NPRM) and Notice of Supplement Proposed Rulemaking (NSPRM) received by ADEQ.
 - No public comments were received at the May 28, 2019, public hearing on the NPRM; therefore, no record or transcript of such testimony is included in this submittal.
 - No public comments were received at the October 15, 2019, public hearing on the NSPRM; therefore, no record or transcript of such testimony is included in this submittal.
 - ADEQ received no analysis regarding the rules' impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states; therefore, no such analysis is included in this submittal.

III. List of Documents Enclosed under A.A.C. R1-6-201(A)(6-7)

- There are three incorporations by reference of 40 CFR 51, Appendix W as of June 30, 2017 (and no future amendments or additions) in A.A.C. R18-2-301(21), R18-2-334(H), and R18-2-406(A)(6)(a). A courtesy copy of the document is provided; however, the document is not part of this rulemaking.
- One electronic copy of each of the following is enclosed: the general and specific statutes authorizing the rule, including relevant statutory definitions; the statutes are: A.R.S. §§ 49-104(A)(10), 49-404(A), and 49-425(A).
- No term is defined in the rule by referring to another.

Thank you for your timely review and approval. If you have any questions, please contact Daniel Czecholinski, Air Quality Division Director at 602-771-4655 or czecholinski.daniel@azdeq.gov.

Sincerely,



Misael Cabrera, P.E.
Director

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR POLLUTION CONTROL

PREAMBLE

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

R18-2-101	Amend
R18-2-301	Amend
R18-2-302.01	Amend
R18-2-304	Amend
R18-2-334	Amend
R18-2-406	Amend

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. §§ 49-104(A)(1) and (A)(10), 49-404(A).

Implementing statute: A.R.S. §§ 49-425(A) and 49-426.

3. The effective date of the rule:

February 1, 2020.

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

Not applicable.

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

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: 25 A.A.R. 1113, April 26, 2019

Notice of Proposed Rulemaking: 25 A.A.R. 993, April 26, 2019.

Notice of Supplement Proposed Rulemaking: 25 A.A.R. 2352, September 13, 2019.

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

Name: Zachary Dorn

Address: Arizona 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

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

Summary.

The purpose of this rulemaking is to remedy a deficiency identified by the United States Environmental Protection Agency (EPA) in Arizona's Nonattainment New Source Review (NNSR) rules. The Arizona Department of Environmental Quality (ADEQ) must adopt rules defining a significant emission rate (SER) for ammonia, as a precursor to fine particulate matter ("PM_{2.5}"), under the NNSR program to comply with federal requirements. This rulemaking action is required to secure full approval of Arizona's NSR rules into the state implementation plan (SIP) and avoid sanctions under the federal Clean Air Act (CAA). Therefore, ADEQ amends the definition of "significant" in R18-2-101(131) to include an emission rate for ammonia in PM_{2.5} nonattainment areas within the State of Arizona.

On April 26, 2019, a Notice of Proposed Rulemaking (25 A.A.R. 993) was published in the Arizona Administrative Register proposing a significant emission rate for ammonia, as a precursor to PM_{2.5}, in PM_{2.5} nonattainment areas.

In response to its NPRM (25 A.A.R. 993), ADEQ received public comments. One of the public comments received was submitted by EPA regarding other New Source Review (NSR) rules in Title 18, Chapter 2, Articles 3 and 4.

On September 13, 2019, a Notice of Supplemental Proposed Rulemaking (NSPRM) (25 A.A.R. 2352) was published to address EPA's public comment to the NPRM. ADEQ did not receive any public comments in response to the NSPRM.

The section-by-section explanation of the amended rules in Section 6 and Section 10 of this preamble discuss these changes in greater detail.

Legal Background.

Under section 110(a)(1) of the CAA, each state is obligated to submit a “plan which provides for implementation, maintenance and enforcement of” the national ambient air quality standards (NAAQS). The CAA goes on to require that SIPs:

Include a program to provide for the . . . regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of [Title I of the CAA].

42 U.S.C. § 7410(a)(2)(C). State and federal regulations adopted under this section are commonly referred to as “new source review” programs because they apply to newly constructed and modified, as opposed to existing, sources. The CAA divides NSR requirements into those that apply to attainment areas (Part C requirements) and those that apply to nonattainment areas (Part D requirements). This rulemaking focuses on Part D of Title I of the CAA.

Part D of Title I of the CAA establishes a NSR program for major sources and modifications in nonattainment areas. This program is known as “Nonattainment New Source Review” (NNSR). Under Subpart 1 of Part D, a major source is defined as any source that emits, or has the potential to emit, 100 tons per year or more of a pollutant for which the area has been designated nonattainment. Subpart 4 of Part D establishes specific requirements for NNSR in PM₁₀ and PM_{2.5} nonattainment areas.

Permit applicants subject to NNSR requirements under Part D must demonstrate that a major source or modification will comply with the lowest achievable emission rate (LAER) and that reductions in emissions from the same source or other sources will offset any emissions increases from the new or modified source.

CAA Sanctions.

Under the CAA and federal regulations, if EPA disapproves any element of a plan submitted under Title I, Part D of the CAA relating to nonattainment areas, and the plan deficiencies are not corrected within 18 months after the effective date of the disapproval, major sources subject to NNSR will have to offset emissions increases at a ratio of 2 to 1. 42 U.S.C. § 7509(a), (b)(2); 40 CFR § 52.31(d)(1). If the deficiencies remain uncorrected for an additional six months, the state loses most federal highway funds in the affected area. 42 USC § 7509(a), (b)(1); 40 CFR § 52.31(d)(1). If imposed, the sanctions will apply to nonattainment areas under ADEQ's jurisdiction and the pollutants covered by the plan and will remain in effect until EPA finds that a revised plan corrects the deficiencies. 40 CFR § 52.31(b)(3),(d)(2), (5).

Additionally, EPA is required to adopt a federal implementation plan (FIP) within twenty-four months following the disapproval of *any* SIP if the deficiencies are not corrected and approved. 42 U.S.C. § 7410(c). ADEQ therefore must correct *all* deficiencies identified in the 2016 limited disapproval and the 2018 conditional approval, described below, in order to avoid sanctions and a FIP.

Arizona's Previous NSR Rulemaking, SIP Revision, and EPA's Decisions.

Below is a timeline of events relevant to this rulemaking:

On June 6, 2012, ADEQ adopted comprehensive amendments to the state's air permit program designed, among other things, to bring the program into compliance with federal nonattainment new source review (NNSR) regulations. ADEQ submitted these amendments to EPA as a SIP revision on October 29, 2012 (the “2012 NSR SIP”).

On June 22, 2016, EPA published a limited disapproval of the 2012 NSR SIP for failure to regulate VOCs and ammonia as PM_{2.5} precursors in the West Central Pinal (WCP) and Nogales PM_{2.5} nonattainment areas. This limited disapproval established a deadline of January 22, 2018 (18 months after the disapproval) for ADEQ to cure the deficiency or face the imposition of offset sanctions in those nonattainment areas. If an additional six months passed after that deadline before ADEQ failed to cure the deficiency, highway sanctions would be imposed.

On February 2, 2017, ADEQ adopted amendments to its rules designed, among other things, to cure the deficiencies relating to PM_{2.5} precursors identified in EPA’s June 22, 2016 limited disapproval. On April 28, 2017, ADEQ submitted these amendments as a SIP revision (the “2017 NSR SIP”).

On June 6, 2017, EPA proposed limited approval and limited disapproval of the 2017 NSR SIP. The limited disapproval noted that the 2017 NSR SIP addressed all requirements for PM_{2.5} precursors, except for

establishing a significant level for ammonia. A significant level is the threshold for emissions increases at major sources that are subject to NNSR. EPA rules establish significant levels for all pollutants subject to NNSR, except ammonia. Under section 189(e) of the Clean Air Act and 40 CFR 51.165(a)(1)(x)(F), states containing PM_{2.5} nonattainment areas are obligated either to adopt a significant level for ammonia or to demonstrate that ammonia does not contribute to the failure to attain the PM_{2.5} NAAQS.

On December 6, 2017, ADEQ sent EPA a letter committing to correct the deficiency with regard to ammonia by March 31, 2019 by submitting either (1) a demonstration that ammonia does not contribute to nonattainment in the WCP and Nogales PM_{2.5} nonattainment areas or (2) a rule establishing a significant level for ammonia (the “December 2017 commitment”). Based on this commitment, EPA proposed conditional approval of the 2017 NSR SIP with regard to PM_{2.5} precursors on January 10, 2018. This proposal had the effect of deferring sanctions. EPA published a final conditional approval on May 4, 2018.

On March 29, 2019, ADEQ submitted a SIP revision to EPA, pursuant to 40 CFR § 51.165(a)(13), demonstrating that ammonia does not significantly contribute to PM_{2.5} nonattainment in Arizona. ADEQ’s March 29, 2019 SIP Revision: Demonstration of a Significant Emission Rate for Ammonia is available at: <http://azdeq.gov/node/5742>. Based on subsequent conversations between EPA and ADEQ staff, EPA staff believes the March 29, 2019 submission is not approvable. In order to assure that the requirements of Title I, Part D of the CAA are met and the terms of the 2018 conditional approval are satisfied, ADEQ amend its rules to include a SER for ammonia, as a PM_{2.5} precursor, in PM_{2.5} nonattainment areas.

Amendment is Necessary to Address NSR Deficiency

Pursuant to ADEQ’s December 2017 commitment and the EPA’s conditional approval (83 Fed. Reg. 19631 (May 4, 2018)), this rulemaking establishes a significant level for ammonia as a precursor of PM_{2.5} in PM_{2.5} nonattainment areas in Arizona.

As described above, the purpose of this rulemaking is to correct the single, remaining deficiency identified in the 2016 limited disapproval, and the 2018 conditional approval. This rulemaking will ensure Arizona’s NSR program conforms to federal requirements and qualifies for full approval by EPA. In order to address the remaining deficiency identified by the EPA regarding ammonia as a PM_{2.5} precursor, ADEQ committed to adopt rule revisions to satisfy the requirements of CAA § 189(e) and related NNSR regulations. Therefore, ADEQ amends the definition of significant, as it relates to PM_{2.5} nonattainment areas (R18-2-101(131)(e)), to add an emission rate of ammonia in the amount of 40 tons per year.

The SER of 40 tons per year of ammonia was selected by examining other, similarly situated PM_{2.5} nonattainment areas within EPA Region IX. Recently, EPA approved a California SIP revision that implemented a SER for ammonia for the South Coast Air Quality Management District. 83 FR 39012 (Aug. 8, 2018) (proposed rule); 83 FR 61551 (Nov. 30, 2018) (final rule). In order to meet its NNSR obligations under the CAA, the South Coast Air Quality Management District selected a SER of 40 tons per year of ammonia. Additionally, EPA proposed approval of the Imperial Valley Air Pollution Control District's SIP revision establishing a SER of 40 tons per year of ammonia. 84 FR 10573 (Mar. 22, 2019).

Additionally, this SER for ammonia is consistent with the SER of 40 tons per year that EPA has established for sulfur dioxide, oxides of nitrogen, and volatile organic compounds (VOCs) as precursors to PM_{2.5}. 73 FR 28321, 28333 (May 16, 2008); *see also* 40 CFR § 51.165(a)(1)(x)(A).

Subsections not amended listed as “No change”: ADEQ has made use of the option in the Secretary of State rule A.A.C. R1-1-502(B)(18)(f) to list some sections not amended as “No change” rather than showing sometimes long sections of text that are not being changed. Certain other subsections’ unchanged text are shown to provide context for nearby rule changes. “No change” does not mean comments on rule text listed as “No change” will not be considered. However, the exception to the rules moratorium granted by the Governor to ADEQ to do this rulemaking may limit what ADEQ can actually implement.

Section by Section explanation of rule changes:

- R18-2-101 Amend the definition of “significant” used in the major NSR programs and related permit rules to add significant emission rate for ammonia and to clarify language related to volatile organic compound significant emission rate.
- R18-2-301 Amend incorporation by reference of 40 CFR 51, Appendix W.
- R18-2-302.01 Amend language regarding affected areas to improve clarity and consistency and correct typographical error in citation to 40 CFR 51, Subpart I.
- R18-2-304 Amend internal cross references to improve clarity.
- R18-2-334 Amend incorporations by reference of 40 CFR 51, Appendix W; amend language regarding affected areas to improve clarity and consistency.
- R18-2-406 Amend incorporation by reference of 40 CFR 51, Appendix W.

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

Not applicable.

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

Not applicable.

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

The following discussion addresses each of the elements required for an Economic, Small Business, and Consumer Impact Statement (EIS) under A.R.S. § 41-1055.

An identification of the rulemaking.

The rulemaking addressed by this EIS is the adoption of amendments designed to bring ADEQ's new source review (NSR) rules into conformance with federal requirements. This rulemaking will remedy the remaining deficiency identified by EPA in its 2016 limited disapproval and 2018 conditional approval to bring Arizona's NSR program into conformity with federal requirements. All other deficiencies were remedied in previous rulemakings. The changes are described in greater detail in section 5 of this notice of final rulemaking.

This change is procedural or technical in nature and should have at most a trivial economic impact on the agency, businesses or consumers.

An identification of the persons who will be directly affected by, bear the cost of or directly benefit from the rule making.

In order for the ammonia SER in this rulemaking to have any regulatory impact, an existing source with the potential to emit 100 tons per year for ammonia located in one of the two PM_{2.5} nonattainment areas would have to undergo a physical or operational change that results in a net increase of at least 40 tons per year of ammonia emissions. There are currently no such sources located anywhere in the Nogales or West Central Pinal nonattainment areas, and it is extraordinarily improbable that any will be constructed in the future. Thus, this rulemaking is highly unlikely to impose any economic costs on the regulated community or to result in any environmental benefits. Additionally, if a new source of ammonia with a maximum capacity to emit, with elective limits, equal to or greater than 40 tons of ammonia per year seeks to be constructed or commence operation in a PM_{2.5} nonattainment, that source will be required to obtain a Class II Permit. A.A.C. R18-2-302(B)(2). Finally, if there is a physical or operational change at source, that would cause the source to emit or have the maximum capacity to emit with any elective limits equal to or greater than 40 tons of ammonia, it would be required to obtain a Class II permit. *Id.*

On the other hand, avoiding the potential federal highway funds sanctions will benefit the State and residents of Arizona.

A cost benefit analysis of the following:

(a) The probable costs and benefits to the implementing agency or other agencies directly affected by the implementation and enforcement of the rule making.

ADEQ's increased cost of implementing the NSR program resulting from the procedural and technical changes contained in this rule change will likely be minimal. This rulemaking consists of adjustments to existing programs to conform to EPA's conditional approval and federal and state requirements.

(b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the rule making.

The costs to political subdivisions subject to permitting under ADEQ's rules from these rule amendments should be minimal. In general, the types of sources operated by political subdivisions are very unlikely to be subject to major NSR, and as noted above it is highly unlikely that any source will be subject to NNSR as a result of this rulemaking. ADEQ considers any impacts to sources in counties with their own pollution control programs to be indirect.

(c) The probable costs and benefits to businesses directly affected by the rule making, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the rule making.

As discussed above, the amendment to R18-2-101 rules is necessary to comply with federal requirements for the program. If ADEQ fails to adopt this amendment, the same or similar standard would ultimately apply to sources in Arizona through the adoption of a federal implementation plan (FIP) or the application of 40 CFR Part 51, Appendix S. In addition, Title I, Part D of the CAA imposes a limited time for ADEQ to adopt the NSR amendments. Failure to meet the statutory timeframe will result in sanctions by the federal government, as described above.

The changes to R18-2-301, R18-2-302.01, R18-2-304, R18-2-334, and R18-2-406 are technical corrections for clarity and have no economic impact.

Thus, failure to adopt these amendments would not in the long run result in the avoidance of any costs of compliance for the reasons given above, but would result in a substantial negative impact on the state's economy.

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

ADEQ does not believe that any additional costs will be imposed on businesses as a result of the amended NSR requirements for the reasons described above. Accordingly, there should be no impact on private employment or on the employment of any political subdivision subject to NSR.

A statement of the probable impact of the rulemaking on small businesses.

(a) An identification of the small businesses subject to the rulemaking.

Under A.R.S. § 41-1001(21) “Small business” means a concern, including its affiliates, which is [1] independently owned and operated, which is [2] not dominant in its field and which [3] employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year.

As previously mentioned, there are no existing or proposed major sources of ammonia within ADEQ’s jurisdiction and therefore no small businesses would be subject to this rulemaking.

(b) The administrative and other costs required for compliance with the rule making.

Not Applicable.

(c) A description of the methods that the agency may use to reduce the impact on small businesses.

Not Applicable.

(d) The probable cost and benefit to private persons and consumers who are directly affected by the rule making.

Not Applicable.

A statement of the probable effect on state revenues.

Since any costs associated with the rulemaking will be recoverable through air quality permit fees, there will be no net effect on state revenues.

A description of any less intrusive or less costly alternative methods of achieving the purpose of the rule making.

ADEQ was not able to identify any less intrusive or costly alternative methods for achieving the purpose of the rulemaking—compliance with the federal NSR requirements for ammonia as PM_{2.5} precursor.

A description of any data on which a rule is based with a detailed explanation of how the data was

obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.

Data on which this final rulemaking is based on can be located by referring to the Federal Register notices referenced in part 5 of this Notice of Final Rulemaking (NFRM). Copies of the Federal Register are available at either <https://www.federalregister.gov/> or <https://www.govinfo.gov/app/collection/fr/>. A copy of ADEQ's SIP Revision: Demonstration of a Significant Emission Rate for Ammonia is available at: <http://azdeq.gov/node/6450>.

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

In response to the NPRM (25 A.A.R. 993), ADEQ received a public comment from EPA stating that other rules related to the NSR program require amendment. ADEQ agrees that these changes need to be made but believes that some of them are substantially different from the rule proposed in the NPRM. Therefore, the public is entitled to comment on them through a Notice of Supplement Proposed Rulemaking before they are adopted. A.R.S. § 41-1025.

EPA commented that incorporations by reference of 40 C.F.R. Part 51, Appendix W (Appendix W) in R18-2-301 and R18-2-406, as of July 1, 2015, were out of date. On June 30, 2017, EPA substantially amended Appendix W. R18-2-406 is part of ADEQ's prevention of significant deterioration (PSD) program. PSD is a required element of an infrastructure SIP (I-SIP) and these out of date references could interfere with future I-SIP approvals. CAA § 110(a)(2). Therefore, to ensure consistency and prevent I-SIP approval issues, ADEQ is amending all references to Appendix W, except for the reference in A.A.C. Title 18, Chapter 2, Appendix 2, which is already up to date.

Additionally, EPA's comment pointed out inconsistent language between A.A.C. R18-2-334(C)(2) and R18-2-302.01(C)(1) related to ambient air quality assessments. In order to improve clarity, ADEQ amended the language to make these two rules consistent.

EPA's comment identified several internal cross-references in A.A.C. R18-2-304(F) and (J), and R18-2-334(G) that contained minor typographical errors. ADEQ is making these corrections to improve the clarity of its NSR rules. ADEQ does not believe that these changes are substantial.

ADEQ received comments from other stakeholders. ADEQ will respond to these comments in the Notice of Final Rulemaking.

Finally, ADEQ's amended language for the definition of significant that differs from the NPRM's proposed language. A.R.S. § 41-1025. The NPRM's proposed language would have affected Class II permitting requirements. Such an affect would have been beyond NNSR's requirements for ammonia, as a precursor to PM_{2.5}, in PM_{2.5} nonattainment areas. A.R.S. § 49-104(A)(16). Therefore, the amended language assures the SER for ammonia only applies to NNSR. Second, ADEQ is amending the definition of significant for VOCs to make the language consistent with other subsections.

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

Comment 1 (EPA): In response to the NPRM, ADEQ received a public comment from EPA that generally expressed support for the proposed significant emission rate of 40 tons per year of ammonia, as a PM_{2.5} precursor, in PM_{2.5} nonattainment areas.

ADEQ's Response to Comment 1: ADEQ appreciates the EPA's comment in support of the proposed significant emission rate of 40 tons per year of ammonia, as a PM_{2.5} precursor, in PM_{2.5} nonattainment areas.

Comment 2 (EPA): EPA commented regarding potential typographical errors in following rules: A.A.C. R18-2-304(F)(1, 6, and 8), R18-2-304(J)(2), and R18-2-304(B).

ADEQ's Response to Comment 2: ADEQ amended the typographical errors in the R18-2-304(F)(1, 6, and 8), R18-2-304(J)(2), and R18-2-304(B).

Comment 3 (EPA): EPA commented regarding a typographical error in A.A.C. R18-2-334(G).

ADEQ's Response to Comment 3: ADEQ corrected the typographical error in A.A.C. R18-2-334(G).

Comment 3 (EPA): EPA commented regarding various references to 40 CFR Part 51, Appendix W (Appendix W) in ADEQ's rules in A.A.C. R18-2-301(21), R18-2-334(H), R18-2-406(A)(6), and Appendix 2 to Title 18, Chapter 2. EPA commented that these references to Appendix W do not consistently refer to the same incorporation by reference date.

ADEQ's Response to Comment 3: ADEQ updated the incorporations by reference to 40 CFR Part 51, Appendix W (Appendix W) in ADEQ's rules in A.A.C. R18-2-301(21), R18-2-334(H), R18-2-406(A)(6).

Comment 4 (EPA): EPA commented regarding inconsistent language related to ambient air quality assessment between R18-2-334(C)(2) which refers to "Arizona or any affected state" and R18-2-302.01(C)(1) which refers to "Arizona or any affected state or Indian reservation." EPA suggested that the reference to "or Indian reservation" appears to have been inadvertently not added to R18-2-334(C)(2).

ADEQ's Response to Comment 4: ADEQ has made the suggestion EPA suggested.

Comment 5 (Jane Magee): In response to the NPRM, ADEQ received one public comment that expressed support for the proposed rule.

ADEQ's Response to Comment 5: ADEQ appreciates this commenter's support for this rulemaking.

Comment 6 (Daniel Blackson): In response to the NPRM, ADEQ received a public comment that supported the proposed rule change. Additionally, the comment expressed a desire the ADEQ re-evaluate Section 8 of its preamble in the Notice of Proposed Rulemaking (NPRM). The commenter expressed their desire that ADEQ regulate air pollution emissions from animal feeding operations. The commenter specifically discussed the Hickman's Family Farms property located 12710 N. Murphy Road, Maricopa County, Pinal County, Arizona.

ADEQ's Response to Comment 6: ADEQ appreciates this commenter's support for its proposed rule. Regarding the commenter's interpretation of the Clean Air Act's requirement, ADEQ agrees that there can be circumstances where agricultural feeding operations can be subject to the Title V of the Clean Air Act, as a major stationary source. However, as stated in Section 8 of the NPRM's preamble, ADEQ is not aware of any major sources of ammonia located in either the Nogales or WCP PM_{2.5} nonattainment areas. The boundaries of the PM_{2.5} nonattainment areas are defined at 40 C.F.R. § 81.303.

Regarding this commenter's point about a specific stationary source, specific permitting decisions are beyond the scope of this rulemaking. Additionally, this comment focused on ammonia emissions from the Hickman's Family Farm's property located at 12710 N. Murphy Road, Maricopa County, Pinal County, Arizona. This facility is located on the Ak-Chin Indian Community of the Maricopa Indian Reservation, a federally recognized tribe, and is therefore outside of ADEQ's jurisdiction. Further, this particular agricultural property is not located within either the Nogales or the WCP PM_{2.5} nonattainment area. *See* 40 C.F.R. § 81.303.

Comment 7 (Arizona Electric Power Cooperative): In response to the NPRM, AEPCO commented that it believed ADEQ did not consider whether the regulated community would be significantly impacted if PM_{2.5} NAAQS is changed. AEPCO's comment focused on EPA's current review and collaboration with the Clean Air Scientific Advisory Committee (CASAC) regarding the current particulate matter NAAQS. AEPCO's comment expressed concern that about the possibility of redesignation of different parts of the Arizona if a new PM_{2.5} NAAQS is adopted by EPA and CASAC. AEPCO's comment expressed concern because the Apache Generating Station utilizes a technology to reduce oxides of nitrogen (NO_x) that can emit ammonia into the ambient air, if parts of Cochise County become designated as nonattainment, it could become subject to this requirement. In support of this concern, AEPCO pointed to a presentation by Anna Marie Wood, former Director for the Air Quality Policy Division at the EPA's Office of Air Quality Planning and Standards.

ADEQ's Response to Comment 7: ADEQ understands AEPCO's concern that a revised NAAQS could affect the regulated community and the anticipated costs of this rulemaking. However, ADEQ believes three factors weigh against AEPCO's concern.

First, while CASAC is reviewing the PM_{2.5} NAAQS at this time, ADEQ believes it is unlikely that the CASAC will update this standard upon completion of its review. In December 2018 and March 2019,

CASAC reviewed the EPA's October 2018 Draft Integrated Science Assessment for Particulate Matter (Draft ISA). CASAC's overall finding was that "the Draft ISA does not provide a sufficiently, comprehensive, systematic assessment of the available science relevant to understanding the health impacts of exposure to particulate matter." CASAC Letter to EPA Administrator Andrew Wheeler (April 11, 2019), available at [https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebReportsLastMonthCASAC/6CFCBBC3025E13B4852583D90047B352/\\$File/EPA-CASAC-19-002+.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebReportsLastMonthCASAC/6CFCBBC3025E13B4852583D90047B352/$File/EPA-CASAC-19-002+.pdf) (last accessed June 10, 2019). CASAC went on to recommend that a second draft of the ISA be prepared for CASAC review to address the limitations that CASAC identified in the first draft. *Id.* Based on the current status of CASAC's review, ADEQ believes that it is highly unlikely that CASAC and EPA will revise the current PM_{2.5} NAAQS at this time.

Additionally, Director Woods' presentation cited by AEPCO provides a timeline for the NAAQS review process. However, there is no information in the presentation to indicate that EPA is likely to alter this NAAQS. This presentation merely provided stakeholders a timeline for the statutorily required CASAC review process. *See generally* CAA § 109 (42 U.S.C. § 7409).

Second, Cochise County (where the Apache Generating Station is located) is currently designated as unclassifiable/attainment for the PM_{2.5} NAAQS. *See* 40 C.F.R. § 81.303. ADEQ believes that is unlikely that Cochise County will redesignated as a PM_{2.5} nonattainment area as ambient air concentrations of PM_{2.5} are approximately 43% of the current NAAQS. ADEQ's 2017 Annual Ambient Air Assessment Report details PM_{2.5} ambient air concentrations in greater detail. Available at http://static.azdeq.gov/aqd/air_report2017.pdf. ADEQ's report and current monitoring data support ADEQ's position that, based on current and historic PM_{2.5} levels, it is highly unlikely that any portions of Cochise County will be redesignated as nonattainment if the PM_{2.5} NAAQS is lowered. Therefore, AEPCO's concerns are speculative and ADEQ is unable to quantify AEPCO's conjecture about cost. ADEQ is mindful of AEPCO's concerns, but is limited to analyzing the probable impacts of its rulemaking.

Third, ADEQ disagrees with AEPCO's assertion that it views this rulemaking as merely procedural and failed to consider the costs. A.R.S. § 41-1055 requires ADEQ's EIS to be limited to the *probable* costs and benefits of any particular rulemaking. AEPCO's comment regarding the potential costs is too speculative for ADEQ to predict at this time. AEPCO is requesting ADEQ speculate on unpredictable variables, including: 1) whether CASAC will set a new PM_{2.5} NAAQS; 2) what standard CASAC might establish; 3) what portions of Arizona might be redesignated under this hypothetical NAAQS revision; and 4) whether the Apache Generating Station will engage in a major modification that would increase its ammonia emissions by an additional 40 tons per year. These concerns are too speculative for ADEQ to predict and are outside of the scope of the analysis required by A.R.S. § 41-1055. As required by A.R.S. § 41-1056, ADEQ will periodically reassess the economic impact of this rule. A.R.S. § 41-1056(a)(6) requires that ADEQ review its rules every five years, including a comparison of the estimated economic, small business, and consumer impact of these rules compared to the EIS in this rulemaking.

Comment 8 (AEPSCO): AEPSCO's second comment analyzed the history of how the EPA established the 40 tpy SER for SO₂, NO_x, and VOCs in 1980. AEPSCO's comment takes the position that these SERs established with very conservative modeling approaches and is therefore too low. AEPSCO suggested that if this analysis was conducted today using AERMOD, EPA would reach a different result.

ADEQ Response to Comment 8 (AEPSCO): ADEQ appreciates AEPSCO's comment regarding the EPA's 1980 analysis for various criteria pollutants. However, reassessing the EPA's analysis is beyond the scope of this rulemaking. Unlike ADEQ, EPA has the legal authority to address this commenter's concerns about its historical modeling. While EPA's approach to this modeling was conservative, it does not conflict with the CAA's requirements. Additionally, reassessing EPA's modeling from 1980 is beyond the scope of this rulemaking.

Comment 9 (AEPSCO): AEPSCO commented that technical support for California's selection of the NNSR ammonia SER of 40 tpy was not provided beyond a simple adoption of the other pollutants' SER. This comment discussed the San Joaquin Valley Air Pollution Control District's approach (SJVAPCD) that reducing NO_x emissions is the most effective way to reduce PM_{2.5} and that ammonia plays an inconsequential role in particulate formation in the San Joaquin Valley. Additionally, AEPSCO commented that in 2018, the California Air Resources Board (CARB) drafted a report that concluded that PM_{2.5} levels in the San Joaquin Valley are not sensitive to ammonia reductions.

ADEQ Response to Comment 9 (AEPSCO): ADEQ agrees that the South Coast Air Quality Management District's (SCAQMD) ammonia SER was selected by adopting the SER for other pollutants. ADEQ agrees the Imperial Valley Air Pollution Control District's (IVAPCD) ammonia SER and EPA's proposed approval utilize this same conservative approach. ADEQ agrees that this approach is a conservative one. However, this approach is consistent with the CAA and satisfies EPA's requirements.

In order to have fully approved NSR SIP revision, Arizona's plan must meet the requirements of CAA § 189(e) and 40 C.F.R. Part 51. Under 40 C.F.R. §§ 51.165(a)(13) and 51.1006, a state may choose to pursue a precursor demonstration by conducting a concentration-based contribution analysis. 40 C.F.R. § 51.1006(a)(i). If the concentration-based contribution analysis does not demonstrate a finding of insignificant contribution, the state may submit a sensitivity-based contribution analysis. 40 C.F.R. § 51.1006(a)(ii). However, this precursor demonstration is optional and within the discretion of the State to elect to undertake. 40 C.F.R. § 51.1006(a) ("A state **may elect** to submit to the EPA one or more precursor demonstrations for a specific nonattainment areas.") (emphasis added). This permissive option does not require ADEQ to conduct this precursor demonstration.

On March 29, 2019, ADEQ submitted a precursor demonstration, pursuant to 40 CFR § 51.165(a)(13), demonstrating that ammonia does not significantly contribute to PM_{2.5} nonattainment in Arizona. This demonstration cited the study by Watson, J., Chow , J. Lurmann F., Musarra S., 1994, "Ammonium Nitrate,

Nitric Acid and Ammonia Equilibrium in Wintertime Phoenix Arizona,” in support of its position that there is excess ammonia in Arizona.

In addition to the study cited by the commenter, ADEQ’s analysis also showed: 1) from 2010 to 2014, emissions in the Nogales NAA of NO_x and SO_x decreased by 319.8 tons and 31.2 tons respectively while ammonia emissions increased slightly by 3.9 tons; showing the area was shifting even further toward being SO_x/NO_x limited; 2) Interagency Monitoring of Protected Visual Environments (IMPROVE) monitoring data from the Nogales Post office shows that sulfates and nitrates are a small contributor (12%) to PM_{2.5} concentrations in the Nogales area; 3) a 2010 ADEQ study (based on the 2003 – 2005 data) in the WCP NAA shows that secondary particulate formation is a minor contributor (7%) to fine particulate matter concentrations; 4) a 2013 ADEQ study (based on 2009 – 2010 data) showing that ammonia species account for less than 10% of total PM_{2.5} concentration; and 5) a review of data collected by Clean Air Status and Trends Network (CASTNET) and the National Atmospheric Deposition Program (NADP) ammonia monitoring network (AMoN) in the western United States showed the monitors recorded excess ammonia in the atmosphere when compared to concentrations of NO_x and SO_x.

ADEQ took the position regulation of ammonia in Arizona’s PM_{2.5} nonattainment areas is not necessary. Based on subsequent conversations between EPA and ADEQ staff, EPA staff believes that this submission is needs to be supplemented with an ammonia SER in order to be approvable. ADEQ disagrees with EPA staff’s assessment. However, in order to assure that the requirements of Title I, Part D of the CAA are met and the terms of the 2018 conditional approval are satisfied, ADEQ adopts and submits a SER for ammonia, as a PM_{2.5} precursor in PM_{2.5} nonattainment areas, at a rate of 40 tpy.

If a State elects not to undertake the optional precursor demonstration or if a State’s demonstration is not approved, the State must comply with 40 C.F.R. § 51.165(x)(F). Specifically the regulation states, in relevant part that “the plan shall also define ‘significant for Ammonia for that area, subject to approval by the Administrator.’” 40 C.F.R. § 51.165(x)(F). The SCAQMD and ICAQMD SIP revisions do not provide technical demonstrations, instead relying on EPA’s established SERs for other precursors. 40 C.F.R. 51.165(x)(F). For SCAQMD, the EPA Administrator determined that the 40 tpy SER for ammonia satisfied the requirements of CAA § 189(e). For IVAPCD, this approach is also likely approvable. While this may represent a conservative approach, meets CAA requirements and is very likely approvable by the EPA Administrator under CAA § 110. As the 40 tpy SER for ammonia has met the Administrator’s approval, ADEQ will adopt that 40 tpy SER for ammonia to obtain full approval of its NSR SIP revision.

Arizona’s demonstration is similar to the San Joaquin Valley Air Pollution Control District (SJVAPCD)’s demonstration, in that both take the position that ammonia does not significantly contribute to particulate formation in the relevant PM_{2.5} nonattainment areas. It is important to note that EPA has not acted on the SJVAPCD’s precursor demonstration. While ADEQ expresses no opinion regarding the potential approvability of SJVAPCD’s plan, ADEQ notes that EPA has not proposed approval of this plan either.

Comment 10 (AEPCO): AEPCO commented that a 70 tpy SER for ammonia has been demonstrated by Utah for nonattainment areas (NAAs) and is more applicable than 40 tpy, though still likely conservative, for Arizona. This comment analyzed the Utah Department of Environmental Quality's modeling in support of their proposed ammonia SER of 70 tpy. AEPCO stated, "Being in a warmer climate than Utah, if Arizona were to perform its own NNSR demonstration, it would likely result in a higher ammonia SER because, as noted by Watson et al., ammonium nitrate dominates over ammonium sulfate in Arizona and less particulate matter is formed at higher temperatures for the same precursor emissions."

ADEQ Response to Comment 10: As discussed above in ADEQ's response to Comment 9, on March 29, 2019, ADEQ submitted a precursor demonstration, pursuant to 40 CFR § 51.165(a)(13), demonstrating that ammonia does not significantly contribute to PM_{2.5} nonattainment in Arizona. Given EPA's position regarding the approvability of that demonstration, ADEQ has chosen to adopt and submit an ammonia SER as a PM_{2.5} precursor in PM_{2.5} nonattainment areas. A 40 tpy ammonia SER will assure that the requirements of Title I, Part D of the CAA are met and the terms of the 2018 conditional approval are satisfied.

ADEQ declines to conduct a second demonstration to attempt establishing a higher SER for ammonia. While a 70 tpy SER for ammonia might be as effective as the proposed 40 tpy SER in controlling PM_{2.5} pollution, EPA will likely only approve such a SER if ADEQ submits modeling in support of this SER. *See* 40 C.F.R. § 51.1006. As discussed above, this precursor demonstration is optional. Given the EPA's position on the March 29, 2019 precursor demonstration, ADEQ's December 2017 commitment letter, and the imminent risk of sanctions ADEQ utilizes its discretion to not submit a second precursor demonstration.

Finally, EPA, which ultimately must approve this rule into Arizona's SIP, has provided its support for the 40 tpy SER (*See* Comment 1, *supra*). Therefore, ADEQ will adopt the proposed rule language for the 40 tpy SER for ammonia, as a PM_{2.5} precursor in PM_{2.5} nonattainment areas.

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

There are no matters prescribed by statute applicable specifically to ADEQ or this specific rulemaking.

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

These rules do not require any permits as it is to comply with CAA NSR regulations for any applicable new construction or major modification of a stationary source that falls under ADEQ's jurisdiction.

Federal law does allow for the enforcement of major NSR requirements through the issuance of permits,

because major NSR requires case-by-case, facility specific determinations.

- 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:**

These rules help Arizona comply with the federal Clean Air Act, Title I, Parts C and D. These rules are no more stringent than required by federal law.

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

No person(s) submitted an analysis to ADEQ.

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

Incorporation	Locations in Rule
40 CFR 51, Appendix W The Code of Federal Regulations is published by the United States Government Printing Office, 732 North Capitol Street, NW, Washington, DC 20401-0001, is on file with the Department of Environmental Quality, 1110 West Washington Street, Phoenix, Arizona 85007, and is available at the Arizona State Library, Archives & Public Records, 1700 West Washington Street, Phoenix, Arizona 85007 and at other Federal depository libraries in the state (see http://catalog.gpo.gov/fdlpdir/FDLPdir.jsp?st_12=AZ&flag=searchp). It is also available online at http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR .	R18-2-301(21), R18-2-334(H), and R18-2-406(A)(6)

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 final rulemaking packages:

Not applicable.

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY – AIR POLLUTION CONTROL

ARTICLE 1. GENERAL

R18-2-101. Definitions

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. No change
2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. No change
10. No change
11. No change
12. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
13. No change
 - a. No change
 - b. No change
 - c. No change

- 14. No change
- 15. No change
- 16. No change
 - a. No change
 - b. No change
- 17. No change
- 18. No change
- 19. No change
- 20. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - b. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - vi. No change
 - c. No change
- 21. No change
- 22. No change
- 23. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 - h. No change
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- k. No change
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 - o. No change
 - p. No change
 - q. No change
 - r. No change
 - s. No change
 - t. No change
 - u. No change
 - v. No change
 - w. No change
 - x. No change
 - y. No change
 - z. No change
24. No change
- a. No change
 - b. No change
 - c. No change
 - d. No change
 - i. No change
 - ii. No change
 - iii. No change
 - e. No change
25. No change
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28. No change
29. No change
30. No change
31. No change
- a. No change
 - b. No change
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- 33. No change
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- 45. No change
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- 47. No change
- 48. No change
- 49. No change
- 50. No change
- 51. No change
 - a. No change
 - b. No change
 - c. No change
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 - e. No change
 - f. No change
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 - i. No change
 - j. No change
 - k. No change
 - l. No change
- 52. No change
- 53. No change
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59. No change

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61. No change

62. No change

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67. No change

68. No change

- a. No change

- i. No change

- ii. No change

- iii. No change

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- v. No change

- vi. No change

- vii. No change

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- vi. No change

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 - vi. No change
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 - vii. No change

- viii. No change
- ix. No change
 - (1) No change
 - (2) No change
- x. No change
- xi. No change
- d. No change

75. No change

- a. No change
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 - i. No change
 - ii. No change
- c. No change

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89. No change

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112. No change

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116. No change

117. No change

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118. No change

119. No change

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b. No change

c. No change

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120. No change

121. No change

122. No change

a. No change

b. No change

c. No change

d. No change

i. No change

ii. No change

e. No change

123. No change

a. No change

b. No change

124. No change

a. No change

i. No change

ii. No change

iii. No change

iv. No change

- b. No change
 - i. No change
 - ii. No change
 - iii. No change
 - c. No change
 - d. No change
125. No change
- a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - vi. No change
 - vii. No change
 - b. No change
 - c. No change
126. No change
127. No change
128. No change
129. No change
- a. No change
 - b. No change
130. No change
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 ₁₀	15 tpy
PM _{2.5}	10 tpy of direct PM _{2.5} emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions.
Ozone	40 tpy of VOC or nitrogen oxides
Lead	0.6 tpy

- b. For purposes of determining the applicability of R18-2-302(B)(2) or R18-2-406, in addition to the rates specified in subsection (131)(a), a rate of emissions of non-conventional pollutants that would equal or exceed any of the following:

Pollutant	Emissions Rate
Particulate matter	25 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H ₂ S)	10 tpy
Total reduced sulfur (including H ₂ S)	10 tpy
Reduced sulfur compounds (including H ₂ S)	10 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-	3.5 x 10 ⁻⁶ tpy

dioxins and
dibenzofurans)

Municipal waste 15 tpy

combustor

metals (measured as
particulate matter)

Municipal waste 40 tpy

combustor acid gases
(measured as sulfur
dioxide and hydrogen
chloride)

Municipal solid waste 50 tpy

landfill emissions

(measured as
nonmethane organic
compounds)

Any regulated NSR Any emission
pollutant not rate
specifically listed in
this subsection (or)
subsection (131)(a),
except for ammonia.

- c. In ozone nonattainment areas classified as serious or severe, the emission rate for nitrogen oxides or VOC determined under R18-2-405.
- d. In a carbon monoxide nonattainment area classified as serious, a rate of emissions that would equal or exceed 50 tons per year, if the Administrator has determined that stationary sources contribute significantly to carbon monoxide levels in that area.
- e. In PM_{2.5} nonattainment areas, an emission rate that would equal or exceed 40 tons per year of VOC as a precursor of PM_{2.5}.
- f. In PM_{2.5} 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_{2.5}. This subsection shall take effect on the effective date of the Administrator's action approving it as part of the state implementation plan.

- gf. 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/m³ (24-hour average).
132. No change
133. No change
134. No change
135. No change
136. No change
- a. No change
- b. No change
137. No change
138. No change
139. No change
140. No change
141. No change
142. No change
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146. No change
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- ii. No change
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- vi. No change

- vii. No change
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 - xix. No change
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 - xxi. No change
 - xxii. No change
 - xxiii. No change
 - xxiv. No change
- c. No change
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- viii. No change
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 - vii. No change
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 - i. No change
 - ii. No change
 - h. No change
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 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - vi. No change
- 147. No change
 - 148. No change
 - 149. No change
 - 150. No change

- 151. No change
- 152. No change
- 153. No change
- 154. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 - h. No change
 - i. No change
 - j. No change
 - k. No change
 - l. No change
 - m. No change
 - n. No change
 - o. No change
 - p. No change
 - q. No change
 - r. No change
 - s. No change
 - t. No change
 - u. No change
 - v. No change
 - w. No change
 - x. No change
 - y. No change
 - z. No change
 - aa. No change
 - bb. No change
 - cc. No change
 - dd. No change
 - ee. No change

ff. No change
gg. No change
hh. No change
ii. No change
jj. No change
kk. No change
ll. No change
mm. No change
nn. No change
oo. No change
pp. No change
qq. No change
rr. No change
ss. No change
tt. No change
uu. No change
vv. No change
ww. No change
xx. No change
yy. No change
zz. No change
aaa. No change
bbb. No change
ccc. No change
ddd. No change
eee. No change
fff. No change
ggg. No change
hhh. No change
i. No change
ii. No change
iii. No change
iv. No change
iii. No change
155. No change

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. Department of Environmental Quality – Air Pollution Control

ARTICLE 3. PERMITS AND PERMIT REVISIONS

R18-2-301. Definitions

R18-2-302.01. Source Registration Requirements

R18-2-304 Permit Application Processing Procedures

R18-2-334 Minor New Source Review

ARTICLE 3. PERMITS AND PERMIT REVISIONS

R18-2-301. Definitions

The following definitions apply to this Article:

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
 - a. No change
 - b. No change
 - c. No change
 - i. No change
 - ii. No change
 - (1) No change
 - (2) No change
 - (3) No change
 - iii. No change
 - iv. No change
 - v. No change
 7. No change
 8. No change
 9. No change
 10. No change
 11. No change

12. No change
13. No change
14. No change
 - a. No change
 - i. No change
 - ii. No change
 - b. No change
 - c. No change
 - d. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - vi. No change
 - vii. No change
 - viii. No change
 - (1) No change
 - (2) No change
- ix. No change
- x. No change
- xi. No change
 - (1) No change
 - (2) No change
- xii. No change
- xiii. No change
- e. No change
 - i. No change
 - ii. No change
 - iii. No change
15. No change
16. No change
17. No change
18. No change
19. No change

20. No change
 - a. No change
 - i. No change
 - ii. No change
 - b. No change
 - c. No change
 - d. No change
 - i. No change
 - ii. No change
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. No change
23. No change
24. No change

R18-2-302.01. Source Registration Requirements

- A.** No change
 1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 6. No change
 7. No change
- B.** No change
 1. No change
 2. No change
 3. No change
 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. No change
- 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-Arizona or affected state or Indian reservation~~. In making the determination required by this subsection, the Director shall take into account the following factors
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 2. No change
 3. No change
 4. No change
- D.** No change
1. No change
 2. No change
 3. No change
- E.** No change
1. No change
 2. No change
 3. No change
 4. No change
- F.** No change
1. No change
 - a. No change
 - b. No change
 2. No change
 - a. No change
 - b. No change
 3. No change
 - a. No change
 - b. No change
 - c. No change

- d. No change
 - e. No change
4. No change
- a. No change
 - b. No change
 - c. No change

G. No change

- 1. No change
 - a. No change
 - i. No change
 - ii. No change
 - b. No change
 - c. No change
- 2. No change

H. No change

- 1. No change
- 2. No change
- 3. No change
- 4. No change

I. No change

R18-2-304. Permit Application Processing Procedures

- A.** No change
- B.** No change
- 1. No change
 - 2. No change
 - 3. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 - h. No change
4. No change

- a. No change
 - b. No change
5. No change
6. No change
7. No change
8. No change
- a. No change
 - b. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - c. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - d. No change
 - e. No change
9. No change
- a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - b. No change
 - c. No change
 - d. No change
10. No change
- C.** No change
- 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- D.** No change

1. No change
 2. No change
 3. No change
- E.** No change
- 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 (HI) (Certification of Truth, Accuracy, and Completeness).
 2. No change
 3. No change
 4. No change
 5. No change
 6. If, while processing an application that has been determined or deemed to be complete, the Director determines that additional information is necessary to evaluate or take final action on that application, the Director may request such information in writing and set a reasonable deadline for a response. Except for minor permit revisions as set forth in R18-2-319, a source's ability to continue operating without a permit, as set forth in subsection (JK), 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. No change
 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 (EF)(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 (EF)(2) or (3), the Director shall notify the applicant in writing and specify additional information required.
 9. No change
 10. No change
- G.** No change
- H.** No change
- I.** No change
- J.** No change

1. No change
 2. In addition, a permit may be issued, revised, or renewed only if all of the following conditions have been met:
 - a. The application received by the Director for a permit, permit revision, or permit renewal shall be complete according to subsection (E)(F).
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 3. No change
 4. No change
 5. No change
- K. No change

R18-2-334. Minor New Source Review

- A. No change
1. No change
 - a. No change
 - b. No change
 2. No change
 3. No change
 4. No change
- B. No change
- C. No change
1. No change
 - a. No change
 - b. No change
 - c. No change
 - i. No change
 - ii. No change
 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~~Arizona or any affected state~~.
 - a. No change

- b. No change
 - i. No change
 - ii. No change
 - c. No change
- D.** No change
- 1. No change
 - 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
- E.** No change
- 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
- F.** No change
- G.** A copy of the notice required by R18-2-330 for permits or significant permit revisions subject to this Section must also be sent to the Administrator through the appropriate regional office, and to all other state and local air pollution control agencies having jurisdiction in the region in which the source subject to the permit or permit revision will be located. The notice also must be sent to any other agency in the region having responsibility for implementing the procedures required under 40 CFR 51, Subpart I.
- H.** All modeling required pursuant to this Section shall be conducted in accordance with 40 CFR 51, Appendix Was of June 30, 2017 (and no future amendments or additions).
- I.** No change
- J.** No change

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. Department of Environmental Quality – Air Pollution Control

ARTICLE 4. PERMIT REQUIREMENTS FOR NEW MAJOR SOURCES AND MAJOR MODIFICATIONS TO EXISTING MAJOR SOURCES

**ARTICLE 4. PERMIT REQUIREMENTS FOR NEW MAJOR SOURCES AND MAJOR
MODIFICATIONS TO EXISTING MAJOR SOURCES**

R18-2-406. Permit Requirements for Sources Located in Attainment and Unclassifiable Areas

A. No change

1. No change
2. No change
3. No change
4. No change
5. No change
 - a. No change
 - b. No change
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 additions)~~July 1, 2015 (and no future amendments or editions)~~, which shall be referred to hereinafter as “Guideline” and is adopted by reference and is on file with the Department.

b. No change

B. No change

C. No change

D. No change

E. No change

1. No change
2. No change
3. No change
4. No change
5. No change

F. No change

G. No change

H. No change

I. No change

J. No change

1. No change

2. No change

K. No change

1. No change

2. No change

L. No change

1. No change

2. No change

M. No change

N. No change



Zachary Dorn <dorn.zachary@azdeq.gov>

EPA Region 9 Comments on Proposed Rulemaking for the Addition of a Significant Emission Rate for Ammonia

1 message

BECKHAM, LISA <BECKHAM.LISA@epa.gov>

Fri, May 24, 2019 at 4:06 PM

To: Zachary Dorn <dorn.zachary@azdeq.gov>

Cc: "Rios, Gerardo" <Rios.Gerardo@epa.gov>, "Kurpius, Meredith" <Kurpius.Meredith@epa.gov>

Mr. Dorn,

The U.S. Environmental Protection Agency, Region 9 (EPA) provides the attached comments on the Arizona Department of Environmental Quality's (ADEQ) April 26, 2019 Notice of Proposed Rulemaking, which would revise ADEQ's regulations implementing the Clean Air Act's New Source Review (NSR) program to add a significant emission rate (SER) for ammonia, as a precursor in the formation of fine particulate matter (PM_{2.5}), in PM_{2.5} nonattainment areas. The EPA is generally supportive of the 40 ton per year SER for ammonia proposed by ADEQ. We note, however, that in reviewing ADEQ's NSR rules, we discovered what appear to be a few minor errors with the rules that we would like to bring to your attention. This rulemaking action may present an opportunity for ADEQ to address these issues.

Please feel free to contact me if you have any questions. Have a great long weekend!

Thanks,

Lisa Beckham

Environmental Engineer

Air Permits Section (AIR-3-1)

U.S. EPA Region 9

415.972.3811



EPA Comments on ADEQ NPRM Ammonia SER 2019-05-24.pdf

97K

EPA Region 9 Comments on Proposed Rulemaking for the Addition of a Significant Emission Rate for Ammonia – Minor Errors in ADEQ’s NSR Rules

1. Apparently inadvertent typographical errors resulting from revisions to R18-2-304.
 - a. Reference in R18-2-304(F)(1) to subsection (H) should instead be a reference to subsection (I)
 - b. Reference in R18-2-304(F)(6) to subsection (J) should instead be a reference to subsection (K)
 - c. Reference in R18-2-304(F)(8) to subsection (E)(2) or (3) should instead be a reference to subsection (F)(2) or (3)
 - d. Reference in R18-2-304(J)(2)(a) to subsection (E) should be a reference to subsection (F)
 - e. R18-2-304(B) is likely missing a reference to Class II permits, as the general context of paragraphs (A), (C), and (F) implies it is meant for both Class I and Class II permits.
2. Apparently inadvertent typographical error in R18-2-334(G); should refer to 40 CFR 51 Subpart I.
3. Apparently inadvertent reference to an older version of 40 CFR part 51, Appendix W in R18-2-406(A)(6) (“as of July 1, 2015 (and no future amendments)”). In other instances, ADEQ’s permitting rules simply reference “40 CFR 51, Appendix W” without a reference to a particular version of Appendix W. See R18-2-334(H) and R18-2-301(21). It is our understanding that it is ADEQ’s intent to rely on the version of Appendix W incorporated by reference in Appendix 2 to Title 18, Chapter 2 of the Arizona Administrative Code, which incorporates by reference 40 CFR 51, Appendix W as of June 30, 2017. Thus, it appears the reference in R18-2-406(A)(6) to an older version of Appendix W was left in the rule inadvertently.

ADEQ’s current version of Appendix 2 includes the recently revised version of Appendix W that became effective on May 22, 2017. See 81 FR 5182 (Jan. 17, 2017), 82 FR 14324 (Mar. 20, 2017). We recommend that ADEQ submit the updated Appendix 2 for inclusion in Arizona’s State Implementation Plan (SIP), as the version that is currently approved into the SIP references an older version of 40 CFR part 51, Appendix W.

4. Language related to ambient air quality assessments in R18-2-334(C)(2) and R18-2-302.01(C)(1). R18-2-334(C)(2) refers to “in Arizona or any affected state” in evaluating whether a project will interfere with attainment or maintenance of a national ambient air quality standard (NAAQS), while in the same context R18-2-302.01(C)(1) refers to “in Arizona or any affected state or Indian reservation.” The reference to “or Indian reservation” appears to have been inadvertently not added to R18-2-334(C)(2).



Zachary Dorn <dorn.zachary@azdeq.gov>

re: May 28 proposed rulemaking

1 message

j magee <jmagee8@yahoo.com>
To: "dorn.zachary@azdeq.gov" <dorn.zachary@azdeq.gov>

Fri, May 24, 2019 at 10:57 AM

I support this proposed rule, see below copied from ADEQ website.
Jane Magee, resident of Tonopah, Arizona

ADEQ's Air Quality Division welcomes comments on the notice of proposed rulemaking for the addition of a significant emission rate for ammonia, as a precursor in the formation of secondary fine particulate matter (PM_{2.5}), in PM_{2.5} nonattainment areas. The rule amendment will be submitted to the EPA as a revision to the Arizona State Implementation Plan (SIP), pursuant to Clean Air Act § 110 (42 USC § 7410).



Zachary Dorn <dorn.zachary@azdeq.gov>

Notice of Rulemaking 18A.C.C 2 - Department of Environmental Quality - Air Pollution Control

1 message

Daniel Blackson <blackson.daniel@yahoo.com>
To: "dorn.zachary@azdeq.gov" <dorn.zachary@azdeq.gov>
Cc: Daniel Blackson <blackson.daniel@yahoo.com>

Tue, May 28, 2019 at 5:48 PM

Mr. Dorn,

Please accept my comments on the proposed rule making for the addition of significant emission rate for ammonia. I originally submitted it this morning and in checking my email, found that it was undelivered because of an error in your email address. I've forward the email as a demonstration of my effort and hope that you will accept it as a timely comment.

Please see attached document with my comments at the bottom of the email.

Thank-you,

Dan Blackson

----- Forwarded Message -----

From: "MAILER-DAEMON@yahoo.com" <MAILER-DAEMON@yahoo.com>
To: "blackson.daniel@yahoo.com" <blackson.daniel@yahoo.com>
Sent: Tuesday, May 28, 2019, 9:52:50 AM MST
Subject: Failure Notice

Sorry, we were unable to deliver your message to the following address.

<dorn.zachary@azdeq.gov>
No mx record found for domain=azdeq.gov

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DKIM-Signature: v=1; a=rsa-sha256; c=relaxed/relaxed; d=yahoo.com; s=s2048; t=1559062369; bh=fL5CW7CV/iAgfPoNi7JU+Q8JRtAD1G5QtInfRSY077I=; h=From:Subject:Date:Cc:To:From:Subject; b=J9MMe4TP25UDhXx2XxB8i/HIKzH1J02X1pk/3VMvC0dFbJXufSIAi+BGWYab1GH2m3LW+w31HMFhYCubtNpYDeha7ZsUjvPVAZx4xWIXWT/E6Wu9gomY2OQmHDJUXHXVOVXdUa423X2vxCP5UBraRIHKwZP7y39ZSzc+0j/PdodpLBUiC3Z2bxsbYTf3iaOEVxuC800KLEBc5NhERhmVWu9ZNdl/hY2ZHoxDSrTIJ8sK5BA42F6FZ7uYu+x7cMfLUIsBVpgTQsZH/RKTi3oCmCh9KPKx18K+6hSqzGpsqQynR/LbFQrmmOaM/3lhAw3XBEIPHc48BvvyF5E6MQ== X-YMail-OSG: Psjf4wYVm1IFDPYelPs6MJGXpl_IWAKfJire8NjGfSwXGcZCai7vxOaD4vF0Cz3r8O7rMgYjd7vz.8L.w4Mvq8z.4S9_54Hv2GgrX19rvEPk0kbPth6iM4trM30ujkYaH14uGbTclX2_hESl8n9UtKwW7nQLEQBleNjrHKteVeVKqTwKTsallHCpjO0xdtAsEWsbVfPmr8Gy0S0zCGfOebHirrZBFbnusdFIKSBVdiUtuWXf3TSS4On4191PlznRvF7G7ztHbzlvbFWv7Y4iwVSKUvF3yA19C GPfPAVCJ720_pBYAot2_q0_Tx9iLKXllaVbF3WKYUZetpO1fuzZysTsHaVOZ2I_oPMcVBGHTnqLN LMIViE_MqLwL.CQV8gdIQVLG.j6hJ7FpN09RnxMm7KQ67dKpUIDOaAYvkAPXiGnyljXly1f2ewGcnfssrEvxyz9QEIMhVVwWVu73FDjD7B3LCuOxyNnSkw.TA4Vwc9cZPWYtUjh554Q5LeUZVdBQk19Iuzg6lyo9P2M.MDJFMZeIJKJUYd3oi8iUPE4k0wRlrDlxalvUKhnbng7KVbnKA9HKPsMR.d.9cMU6ybJ6F0EadkwXL7nkwxSxc3Np.z4DBBfW782BLHSnfH2motmvAFIkth9M_kuxn9.aQfNmw24Mvrr0QFNHQvhTHMQOtAKF.VkgwMJHto0IolybFeneHkOaTmAv.uzl6hcKqPAErbFPciZCfbSouOyMbfJat2HK2pHw1JhLlzC_7zT5t6xH4hoczuu_qFv8v48bUCM8Hw5BVR1Z7EhVrL3tHjy1oRSDN12KAB_4LVW5i5kz6VssUFc5d6hdgaraysuKy9KH7xtOXpDTRH7lapAQbNxGymRLyr7EyduMN7kXnhcNZVK.NiCrAbc8M8D3SrYvKrSHecomA0Gc8o5Awp2DICozelUmeY79iF8DA33teiPPY7c.2DQGw50nuYkmho.mNIOg1wOWqtBrH87YEIf2qS_gKdDgJiUR_oYNNOL9kTDzpRlo2YzqtAe_BIBglE9lh6OiT Ce34NrKv_LV9JFby4txcn5_cLryfaUJOShQ23EUUnAjc_Y3UymzDy62JyUPrbndyTJVJbKzMccE2x iC37QQiNiOiqv7mmU5JW3ZScDpnYaxFt0W7LOfaNRiwaPbPiaKdzhV.ntBwvCveka3EGeWiATWv

May 28, 2019

I support the proposed change to Arizona Administrative Code, Title 18, Chapter 2 to update the New Source Review rule to include specific significant emissions rate for major stationary sources of ammonia (NH_3) as a precursor to $\text{PM}_{2.5}$.

Section 8 of the Preamble states:

In order for the ammonia SER proposed in this rulemaking to have any regulatory impact, an existing source with the potential to emit 100 tons per year for ammonia located in one of the two PM2.5 nonattainment areas would have to undergo a physical or operational change that results in a net increase of at least 40 tons per year of ammonia emissions. There are currently no such sources located anywhere in the Nogales or West Central Pinal nonattainment areas, and it is extraordinarily improbable that any will be constructed in the future.

In order to actually do something to change non-attainment areas to attainment areas, ADEQ must re-evaluate this statement and permitting action. Animal Feeding Operations have the potential to emit and can exceed emission of 100 tons/year of particulate matter, volatile organic compounds and/or ammonia. For example, according to Continuous Release Reporting Forms filed by Hickman's with the EPA on March 30, 2017, the Maricopa egg factory (12710 N. Murphy Road, Maricopa, Pinal County) emits 896 pounds of ammonia/day or 163.5 tons/year.

The Clean Air Act does not have an exemption for animal feeding operations (AFOs), nor do EPA regulations. In fact, the EPA stated (Federal Register/Vol.67, No. 199/Tuesday, October 15, 2002; in response to question #18):

"EPA agrees that dairy, poultry, and swine CAFOs are all sources of criteria pollutant emissions. The NAS' Interim Report on air emissions from animal feeding operations (AFOs) notes that, "substantial emission of nitrogen, sulfur, carbon, particulate matter, and other substances from AFOs do occur." However, as we stated above, emissions from large animal feeding operations (e.g., dairies, poultry operations, swine facilities) are not as well characterized as are those from diesel agricultural engines. While EPA expects that the state of CAFO emission data will improve in the future, the implementation of the title V permitting program for state-exempt major stationary agricultural sources must move ahead based on the best data available at this time."

The EPA encourages States and local agencies to move forward (Federal Register/Vol.70, No. 19/Monday, January 31, 2005, p. 4961):

"EPA recognizes that State and local agencies are undertaking efforts to improve emissions estimation methodologies for AFOs. EPA supports continued action to improve emissions information for all source categories and will use the best information available as we implement our programs. EPA also supports State and local efforts to demonstrate improved emissions reduction strategies and recognizes the value of State or local control requirements tailored to the needs of specific geographic areas. For these reasons, nothing in the Air Compliance Agreement will be used to delay or otherwise interfere with the implementation and enforcement of existing State statutes that eliminate exemptions to CAA requirements for agricultural sources of air pollution."

AFOs meet the Arizona definition of "source" (R18-2-101.134) and "stationary source" R18-2-101.140) and can be a "major source" (R18-2-101.750 of "regulated air pollutants" (R18-2-101.122). AFOs emit nitrous oxides, volatile organic compounds, hydrogen sulfide, particulate matter, and ammonia.

ADEQ must be bold in protecting human health and regulating sources so non-attainment areas become attainment areas. AFO air pollution must not continue to be considered "background" pollution or pollution from insignificant sources. AFO pollution is real, harmful to human health, and is a significant contributor to non-attainment areas.

Dan Blackson
Blackson.daniel@yahoo.com



Zachary Dorn <dorn.zachary@azdeq.gov>

Proposed SIP Revision: Addition of a Significant Emission Rate for Ammonia - COMMENT PERIOD EXTENSION REQUEST

1 message

Michelle Freeark <mfreak@azgt.coop>
To: "dorn.zachary@azdeq.gov" <dorn.zachary@azdeq.gov>

Thu, May 23, 2019 at 4:03 PM

Mr. Dorn,

Arizona Electric Power Cooperative, Inc. formally requests an extension to the comment period for the above mentioned rulemaking. Please see attached letter that provides an explanation why the extension is being requested.

Thanks,

Michelle

Michelle Freeark, Executive Director of Legal & Corporate Services



1000 S. Hwy 80 | Benson, AZ 85602

o: 520-586-5122 | m: 520-237-1825 | mfreak@azgt.coop

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From: Arizona Department of Environmental Quality <AZDEQ@public.govdelivery.com>
Sent: Friday, April 26, 2019 2:00 PM
To: Michelle Freeark <mfreak@azgt.coop>
Subject: [GRAYMAIL] Public Notice | Proposed SIP Revision: Addition of a Significant Emission Rate for Ammonia



AIR QUALITY DIVISION

Public Comment Period and Hearing

ADEQ welcomes comments on the notice of proposed rulemaking for the addition of a significant emission rate for ammonia, as a precursor in the formation of secondary fine particulate matter (PM_{2.5}), in PM_{2.5} nonattainment areas. The rule amendment will be submitted to the EPA as a revision to the Arizona State Implementation Plan (SIP), pursuant to Clean Air Act § 110 (42 USC §§ 7410).

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ADEQ encourages and values your input and participation in our SIP process.

About ADEQ

Under the Environmental Quality Act of 1986, the Arizona State Legislature established the Arizona Department of Environmental Quality in 1987 as the state agency for protecting and enhancing public health and the environment of Arizona. For more information, visit azdeq.gov.

ADEQ will take reasonable measures to provide access to department services to individuals with limited ability to speak, write or understand English and/or to those with disabilities. Requests for language interpretation, ASL interpretation, CART captioning services or disability accommodations must be made at least 48 hours in advance by contacting Ian Bingham, Title VI Nondiscrimination Coordinator at 602-771-4322 or Bingham.Ian@azdeq.gov. Teleprinter services are available by calling 7-1-1 at least 48 hours in advance to make necessary arrangements.

ADEQ tomará las medidas razonables para proveer acceso a los servicios del departamento a personas con capacidad limitada para hablar, escribir o entender inglés y / o para personas con discapacidades. Las solicitudes de servicios de interpretación de idiomas, interpretación ASL, subtítulos de CART, o adaptaciones por discapacidad deben realizarse con al menos 48 horas de anticipación contactando a Ian Bingham, Coordinador de Anti-Discriminación del Título VI al 602-771-4322 o Bingham.Ian@azdeq.gov. Los servicios de teleimpresores están disponibles llamando al 7-1-1 con al menos 48 horas de anticipación para hacer los arreglos necesarios.



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 **Amonia SER externsion request 2019 5 23.pdf**
313K

May 23, 2019

Mr. Zachary Dorn
Arizona Department of Environmental Quality
Air Quality Division, AQIP Section
1110 W. Washington Street
Phoenix, AZ 85007

VIA US MAIL AND EMAIL

**RE: REQUEST TO EXTEND COMMENT DEADLINE TO JUNE 7, 2019
PROPOSAL TO ADOPT NEW AMMONIA SIGNIFICANCE LEVEL, 25 A.A.R. 993
(APR. 26, 2019)**

Dear Mr. Dorn:

Arizona Electric Power Cooperative, Inc. (AEPCO) owns and operates the Apache Generating Station located in Cochise County. The Apache Generating Station uses certain air pollution control technologies that may generate inadvertent ammonia (known as “ammonia slip”). AEPCO therefore is interested in this rule in the event that Cochise County or a part thereof should ever be designated nonattainment for particulate matter < 2.5 microns (PM_{2.5}).

AEPCO has contracted with AECOM to complete a literature review of recent technical and scientific work on the ammonia/PM_{2.5} interaction. AEPCO believes that AECOM’s results will likely prove useful to ADEQ in setting the final significant emission rate for ammonia as a precursor to PM_{2.5}. Due to the time required for this review, AEPCO does not believe that the AECOM report will be ready by May 28, 2019. Accordingly, AEPCO requests that ADEQ extend the public comment period by ten days, until Friday, June 7, 2019, to allow AECOM to complete its literature review and AEPCO to submit its comments on the proposed significant emission rate based upon that literature review.

AEPCO appreciates ADEQ’s consideration of this request so that the best analysis can be presented in support of the rule. Please let AEPCO know as soon as possible whether this request can be granted so we can plan appropriately. I can be reached at 520-237-1825 or mfreeark@azgt.coop. We look forward to hearing from you.

Sincerely yours,



Michelle Freeark
Executive Director
Regulatory Affairs & Corporate Services



Zachary Dorn <dorn.zachary@azdeq.gov>

RE: Proposed SIP Revision: Addition of a Significant Emission Rate for Ammonia - COMMENT PERIOD EXTENSION REQUEST

1 message

Michelle Freeark <mfreak@azgt.coop>
To: Zachary Dorn <dorn.zachary@azdeq.gov>
Cc: Eric Hiser <ehiser@jhjlawyers.com>

Fri, Jun 7, 2019 at 1:56 PM

Mr. Dorn,

This email provides AEPCO's comments to the proposed SIP revision. There are two attachments to this email.

1. AEPCO's comment letter
2. AECOM technical comments to the proposed revision

A third document was too large to email and will be mailed to you. It supplies supporting documents references in the AECOM comments that are not readily available via the internet.

We appreciate the opportunity to comment on this proposed revision. Please reach out with any questions.

Thanks,

Michelle

From: Zachary Dorn <dorn.zachary@azdeq.gov>
Sent: Friday, May 24, 2019 11:19 AM
To: Michelle Freeark <mfreak@azgt.coop>
Subject: Re: Proposed SIP Revision: Addition of a Significant Emission Rate for Ammonia - COMMENT PERIOD EXTENSION REQUEST

Dear Michelle,

I have discussed AEPCO's request with my manager. ADEQ will accept AEPCO's comment regarding the Notice of Proposed Rulemaking, at 25 A.A.R. 993 (Apr. 26, 2019), no later than 5:00 P.M. on June 7, 2019.

Thank you,

Zac

On Thu, May 23, 2019 at 5:34 PM Michelle Freeark <mfreeark@azgt.coop> wrote:

Thank you very much.

From: Zachary Dorn <dorn.zachary@azdeq.gov>

Sent: Thursday, May 23, 2019 4:24 PM

To: Michelle Freeark <mfreeark@azgt.coop>

Subject: Re: Proposed SIP Revision: Addition of a Significant Emission Rate for Ammonia - COMMENT PERIOD EXTENSION REQUEST

Good afternoon Michelle,

I will discuss AEPCO's request with my manager tomorrow morning. We will get back to you as soon as possible.

Thank you,

Zac

On Thu, May 23, 2019 at 4:04 PM Michelle Freeark <mfreeark@azgt.coop> wrote:

Mr. Dorn,

Arizona Electric Power Cooperative, Inc. formally requests an extension to the comment period for the above mentioned rulemaking. Please see attached letter that provides an explanation why the extension is being requested.

Thanks,

Michelle

Michelle Freeark, Executive Director of Legal & Corporate Services



1000 S. Hwy 80 | Benson, AZ 85602

o: 520-586-5122 | m: 520-237-1825 | mfreeark@azgt.coop

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Michelle Freeark, Executive Director of Legal & Corporate Services

1000 S. Hwy 80 | Benson, AZ 85602

o: 520-586-5122 | m: 520-237-1825 | mfreeark@azgt.coop

Michelle Freeark, Executive Director of Regulatory Affairs and Corporate Services

1000 S. Hwy 80 | Benson, AZ 85602

o: 520-586-5122 | m: 520-237-1825 | mfreeark@azgt.coop

From: Arizona Department of Environmental Quality <AZDEQ@public.govdelivery.com>
Sent: Friday, April 26, 2019 2:00 PM
To: Michelle Freeark <mfreeark@azgt.coop>
Subject: [GRAYMAIL] Public Notice | Proposed SIP Revision: Addition of a Significant Emission Rate for Ammonia

AIR QUALITY DIVISION**Public Comment Period and Hearing**

ADEQ welcomes comments on the notice of proposed rulemaking for the addition of a significant emission rate for ammonia, as a precursor in the formation of secondary fine particulate matter

(PM_{2.5}), in PM_{2.5} nonattainment areas. The rule amendment will be submitted to the EPA as a revision to the Arizona State Implementation Plan (SIP), pursuant to Clean Air Act § 110 (42 USC § 7410).

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ADEQ encourages and values your input and participation in our SIP process.

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ADEQ tomará las medidas razonables para proveer acceso a los servicios del departamento a personas con capacidad limitada para hablar, escribir o entender inglés y / o para personas con discapacidades. Las solicitudes de servicios de interpretación de idiomas, interpretación ASL, subtítulos de CART, o adaptaciones por discapacidad deben realizarse con al menos 48 horas de anticipación contactando a Ian Bingham, Coordinador de Anti-Discriminación del Título VI al 602-771-4322 o Bingham.lan@azdeq.gov. Los servicios de teleimpresores están disponibles llamando [al 7-1-1](#) con al menos 48 horas de anticipación para hacer los arreglos necesarios.

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Zachary Dorn

Air Quality Planner

Ph: 602-771-4585

azdeq.gov

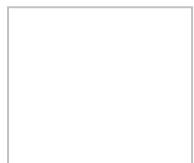
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--
Zachary Dorn

Air Quality Planner

Ph: 602-771-4585

azdeq.gov



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2 attachments

[AEPCO ammonia comment letter 06072019.pdf](#)
396K

[AECOM ammonia SER comments_06jun19.pdf](#)
347K

389 879

AQD
AIR QUALITY DIVISION
19 JUN 17 AM 11:46

June 7, 2019



Mr. Zachary Dorn
Arizona Department of Environmental Quality
Air Quality Division, AQIP Section
1110 W. Washington Street
Phoenix, AZ 85007

Sent Via US Mail And Email

RE: COMMENTS OF ARIZONA ELECTRIC POWER COOPERATIVE, INC. ON ADEQ'S PROPOSAL TO ADOPT NEW AMMONIA SIGNIFICANCE LEVEL, 25 A.A.R. 993 (APRIL 26, 2019)

Dear Mr. Dorn:

Arizona Electric Power Cooperative, Inc. (AEPCO) owns and operates the Apache Generating Station located in Cochise County. The Apache Generating Station uses certain air pollution control technologies that reduce precursor emissions of Nitrogen Oxides (NOx) that can form secondary particulates that may generate inadvertent ammonia emissions (known as "ammonia slip"). AEPCO therefore is interested in this rule in the event that Cochise County or a part thereof should ever be designated nonattainment for particulate matter < 2.5 microns (PM_{2.5}).

As indicated in AEPCO's request for extension, which the Arizona Department of Environmental Quality (ADEQ) graciously granted, AEPCO has contracted with AECOM to review the technical bases for the proposed 40-ton significant emission rate. AECOM's report outlines concerns with ADEQ's assumption of no impact on existing facility operations, which AEPCO shares. More importantly, the AECOM report documents that there is little technical justification for the proposed 40-ton significant emission rate for ammonia and that the Environmental Protection Agency (EPA) has recently approved a higher, 70-ton significant emission rate for ammonia in Utah. AECOM also notes that currently available literature, including a Phoenix-based study, supports a higher significant emission rate for ammonia than the 40-ton rate proposed in California due to differences in the Arizona environment.

AEPCO appreciates ADEQ's consideration of these comments and the possible revision of the proposed 40-ton/year significant emission rate because of the lack of scientific and technical support for that value and the need to ensure that regulatory limits have appropriate scientific and technical bases. Please contact Michelle Freeark at 520-586-5122 or mfreark@azgt.coop or Mr. Eric Hiser, AEPCO's air counsel, at 480-505-3927 or ehiser@JHJLawyers.com, if you have any questions.

Sincerely yours,

A handwritten signature in black ink that reads "Michelle R. Freeark".

Michelle R. Freeark
Executive Director of Regulatory Affairs & Corporate Services

Attachment:

AECOM, Technical Comments on Arizona's Proposed Ammonia Significant Emission Rate (June 6, 2019)

Technical Comments on Arizona's Proposed Ammonia Significant Emission Rate

By Laura Warren and Robert Paine, AECOM

Overview

In 2015, Arizona Department of Environmental Quality (ADEQ) developed a significant update to their existing New Source Review (NSR) program and submitted the program for State Implementation Plan (SIP) approval to the U.S. Environmental Protection Agency (EPA). The SIP was partially disapproved by EPA Region IX because the SIP did not establish a nonattainment NSR (NNSR) program Significant Emission Rate (SER) for ammonia, which is a PM_{2.5} precursor pollutant. On April 26, 2019, ADEQ proposed to adopt the ammonia SER to 40 tons per year (tpy) for the State of Arizona.¹ ADEQ provides the following justification for the proposed 40 tpy ammonia SER:

"The SER of 40 tons per year of ammonia was selected by examining other, similarly situated PM_{2.5} nonattainment areas within EPA Region IX. Recently, EPA approved a California SIP revision that implemented an SER for ammonia for the South Coast Air Quality Management District. 83 FR 39012 (Aug. 8, 2018) (proposed rule); 83 FR 61551 (Nov. 30, 2018) (final rule). In order to meet its NNSR obligations under the CAA, the South Coast Air Quality Management adopted an SER of 40 tons per year of ammonia. 84 FR 10573 (Mar. 22, 2019).

Additionally, this SER for ammonia is consistent with the SER of 40 tons per year that EPA has established for sulfur dioxide, oxides of nitrogen, and volatile organic compounds (VOCs) as precursors to PM_{2.5}. 73 FR 28321, 28333 (May 16, 2008); see also 40 CFR § 51.165(a)(1)(x)(A)."1

This document provides technical comments on the ADEQ proposed ammonia SER. Specifically, these comments relate to the following topics:

1. ADEQ did not consider whether significant impacts would occur on the regulated community for new potential PM_{2.5} NAAs should the PM_{2.5} National Ambient Air Quality Standard (NAAQS) be lowered.
2. The 40 tpy SER for SO₂, NO_x, and VOCs was established in 1980 using very conservative modeling approaches, and is therefore too low.
3. Technical support for California's selection of the NNSR ammonia SER of 40 tpy was not provided beyond a simple adoption of the other pollutants' SER. In fact, technical evidence that ammonia is an insignificant precursor to particulate formation in California was not considered in that rulemaking.
4. A 70 tpy SER for ammonia has been demonstrated by Utah for two nonattainment areas (NAAs) and is more applicable than 40 tpy, though still likely conservative, for Arizona.

¹ Arizona Administrative Register, Vol. 25, Issue 17, 998 for R18-2-101

Discussion of Specific Topics

1. ADEQ did not consider whether significant impact would occur on the regulated community for new potential PM_{2.5} NAAs should the PM_{2.5} NAAQS be lowered.

ADEQ states that this SIP change will have no significant impact on the regulated community; it is merely a procedural rule that will avoid federal highway fund sanctions. Specifically, ADEQ states the following:

"In order for the ammonia SER proposed in this rulemaking to have any regulatory impact, an existing source with the potential to emit 100 tons per year for ammonia located in one of the two PM_{2.5} nonattainment areas would have to undergo a physical or operational change that results in a net increase of at least 40 tons per year of ammonia emissions. There are currently no such sources located anywhere in the Nogales or West Central Pinal nonattainment areas, and it is extraordinarily improbable that any will be constructed in the future. Thus, this rulemaking is highly unlikely to impose any economic costs on the regulated community or to result in any environmental benefits."¹

ADEQ considers only the two existing PM_{2.5} NAAs for the 2006 24-hour average NAAQS in its determination that the regulated community will be largely unaffected. Progress that has been made in these two PM_{2.5} NAAs where design values² are below the 24-hour PM_{2.5} NAAQS.^{3,4,5} However, EPA is currently undergoing a review of the PM NAAQS that may potentially lead to a lower PM_{2.5} NAAQS.⁶ The Clean Air Act requires review of criteria pollutants' NAAQS every five years to ensure that the current levels are protective of human health for the primary standard and welfare impacts such as vegetation for the secondary standard. This review process requires EPA to review scientific studies and collaborate with a scientific committee, the Clean Air Scientific Advisory Committee (CASAC), to develop an assessment of the current scientific knowledge and to make a determination of whether an existing standard requires modification. EPA also allows review and comment by industry, interest groups, and the public throughout the process.

Following the ongoing PM_{2.5} NAAQS review, any lower PM_{2.5} NAAQS could result in existing design values currently in attainment to indicate nonattainment for a lower NAAQS even if air quality levels are stable or slowly improving. Therefore, the proposed 40 tpy ammonia SER would have a much wider reach and cause a greater impact than ADEQ claims. For some regions in Arizona not currently designated as a NAA, an ammonia SER of 40 tpy is potentially restrictive, and operation of post-combustion NOx controls by power plants and other industries can result in emissions that approach this level. As the comments below indicate, the reduction of NOx emissions as a precursor to PM_{2.5} is important, and collateral increases of ammonia emissions due to these activities is expected to have an insignificant effect on PM_{2.5} formation. Any ADEQ regulation that would compromise or complicate the effective operation of post-combustion controls for NOx in Arizona would be counterproductive.

2. The 40 tpy SER for SO₂, NOx, and VOCs was established in 1980 using very conservative modeling approaches, and is therefore too low.

Similar to the recent EPA approach for establishing Modeled Emission Rates for Precursors (MERPs)⁷, EPA conducted a modeling analysis⁸ in 1980 to justify the establishment of Significant Emission Rates for several criteria pollutants (CO, SO₂, NO₂, VOCs as ozone precursors, and particulate matter). The results of modeled emissions were expressed in units of concentration divided by emissions ("Chi/Q") and the value of the significant emission rate was determined by establishing a significant impact level, which ranged from 2 to 4% of the National Ambient Air Quality Standard (NAAQS).

Although the general approach of the modeling analysis was considered to be well-founded by almost all of the commenters (see the August 7, 1980 Federal Register notice at 45 FR 52706), the modeling approaches in hindsight were very conservative. First of all, EPA did not allow sufficient time or resources in 1980 to conduct refined modeling with use of hourly meteorological data. Instead, screening modeling approaches (such as PTMAX⁹) were used that are designed to

² The "design value" is that which is monitored or modeled at a specific point with the statistical form of the NAAQS. For PM_{2.5}, this is, for the daily NAAQS, the 98th percentile ranked daily concentration (8th highest in a 365-day or 366-day year), or the weighted yearly average (weighted by quarterly sample size) for the annual NAAQS.

³ <https://www.epa.gov/naaqs>

⁴ <https://www.epa.gov/air-trends/air-quality-design-values>

⁵ 78 FR 54394, <https://www.govinfo.gov/content/pkg/FR-2013-09-04/pdf/2013-21366.pdf>

⁶ EPA, Anna Wood. NAAQS and Other Implementation Updates, <https://www.cleancairact.org/events/2019SpringMeetingPresentations.aspx>

⁷ EPA, 2019. Guidance on the Development of Modeled Emission Rates for Precursors (MERPs) as a Tier 1 Demonstration Tool for Ozone and PM_{2.5} under the PSD Permitting Program. EPA-454/R-19-003. https://www3.epa.gov/ttn/scram/guidance/guide/EPA-454_R-19-003.pdf.

⁸ EPA, 1980. Impact of Proposed and Alternative De Minimis Levels for Criteria Pollutants. EPA-450/2-80-072.

⁹ EPA, 1973. Users' Guides to the Interactive Versions of Three Point Source Dispersion Programs: PTMAX, PTDIS, and PTMPT. (D. Bruce Turner and Adrian D. Busse, National Environmental Research Center, Office of Research and Monitoring, USEPA).

obtain peak 1-hour predictions and then to scale those values to longer averaging times using conservative scaling factors. The "Volume 10" screening procedures¹⁰ included a step (see page 4-3 of the 1977 Volume 10 document) that multiplied the modeling result by a factor of 2 for a "margin of safety". This would have the effect of reducing all of the recommended SERs by a factor of 2 relative to the result that would have been obtained if an unbiased approach were to be used. In addition, the scaling factor to convert the peak 1-hour prediction to longer averaging times was also conservative (see page 4-22 of the 1977 Volume 10 document).

For complex terrain modeling, the "VALLEY" modeling approach¹¹ was used as a conservative screening tool. That model was eventually incorporated into the Industrial Source Complex (ISCST3) model¹² and was evaluated against the current EPA-preferred short-range model, AERMOD¹³. The results of the model evaluation¹⁴ for complex terrain sites indicate a model overprediction by the VALLEY approach by a factor ranging from about 3 to 10, depending upon the site and the averaging time.

It is noteworthy that in 1980, EPA stated that models for use in establishing a relationship between individual source hydrocarbon (VOC) emissions and ozone concentrations were not available. Thus, it was not possible for EPA to model an emissions rate from an air quality design value. However, in view of the link between VOC and NOx emissions in the formation of ozone, the emissions rate for VOC was also set at 40 tons per year. EPA's current 2019 MERPs guidance, noted above, indicates that in nearly all areas of the United States, ozone formation is NOx-limited, and it follows that the VOC SER in most areas should be higher than the NOx SER.

In summary, if EPA were to redo their 1980 analysis with AERMOD using a refined approach with all other aspects of the analysis remaining the same, they would have likely concluded that the SO₂, NO₂, and VOC SERs would be at a level of 100 tons per year.

3. Technical support for California's selection of the NNSR ammonia SER of 40 tpy was not provided beyond a simple adoption of the other pollutants' SER.

The ADEQ SIP revision establishing a 40 tpy ammonia SER is consistent with some California jurisdictions. However, the 40 tpy ammonia SER is admitted to be "conservative" in a California South Coast Air Quality Management District (SCAQMD) staff report¹⁵ because, on a regional basis, "NOx emissions have a greater influence in the formation of secondary ambient PM_{2.5} than ammonia emissions." SCAQMD does not provide any technical justification for setting the ammonia SER at 40 tpy other than the determination that this is a conservatively low value.¹⁶ The California Imperial Valley action merely cites the South Coast action and says that the proposed 40 ton/year significant emission rate is "likely approvable" because it was approved in the South Coast action.¹⁷

Further evidence that establishes the inconsequential role of ammonia to particulate formation in the California, specifically in the San Joaquin Valley, is available at <https://ipelc.org/scientific-evidence-indicates-that-reducing-nox-emissions-is-the-most-effective-strategy-to-reduce-concentrations-of-ammonium-nitrate-a-significant-contributor-to-pm2-5-concentrations-in-california/>. This discussion authored by the San Joaquin Valley Air Pollution Control District indicates that in the San Joaquin Valley in California (where there is plenty of ammonia), it has been found that reducing NOx emissions is the most effective way to reduce PM_{2.5}, and that (similar to the Watson et al. Phoenix study noted below), reductions of ammonia emissions have a very small effect on PM_{2.5} concentrations.

The California Air Resources Board (CARB) issued a draft report at <https://www.arb.ca.gov/planning/sip/sipm25/2018plan/precursordemo.pdf> in 2018 that concluded that ammonia is not a precursor to PM_{2.5} formation because, in effect, "PM_{2.5} levels are not sensitive to ammonia reductions".

¹⁰ EPA, 1977. Guidelines for Air Quality Maintenance Planning and Analysis Volume 10 (Revised): Procedures for Evaluating Air Quality Impact of New Stationary Sources. EPA-450/4-77-001.

¹¹ EPA, 1977. Valley Model User's Guide. EPA-450/2-77-018. USEPA Office of Air Quality Planning and Standards.

¹² EPA, 1995. User's guide for the Industrial Source Complex (ISC3) dispersion models. Volume II: Description of model algorithms. EPA-454/B-95-003b, 120 pp. [NTIS PB95-222758.] <https://www.epa.gov/scram/air-quality-dispersion-modeling-alternative-models#isc3>.

¹³ EPA, 2019. AERMOD modeling system, available at <https://www.epa.gov/scram/air-quality-dispersion-modeling-preferred-and-recommended-models#aermod>.

¹⁴ EPA, 2003. AERMOD: Latest Features and Evaluation Results. EPA-454/R-03-003. https://www3.epa.gov/ttn/scram/7thconf/aermod/aermod_mep.pdf.

¹⁵ Docket item EPA-R09-OAR-2018-0413-0002 (Attachment G; Final Staff Report dated November 2016), page 7.

¹⁶ The Board Letter and Resolution of the South Coast Air Quality Management District Governing Board contains no justification for the 40 ton significant emission rate selected for ammonia. See <http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/par-1325/par-1325-resolution.pdf?sfvrsn=8>; <http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/par-1325/par-1325-board-letter.pdf?sfvrsn=11>.

¹⁷ Staff Report, section III (available at <https://www.regulations.gov/document?D=EPA-R09-OAR-2019-0056-0002> at A.4).

Technical Comments on Arizona's Proposed Ammonia Significant Emission Rate

4. A 70 tpy SER for ammonia has been demonstrated by Utah for two nonattainment areas (NAAs) and is more applicable than 40 tpy, though still likely conservative, for Arizona.

EPA regulation and guidance states that for the NNSR program, a NNSR demonstration can be made to evaluate the effect of emissions increases from major stationary sources at hypothetical new and existing sources in a NAA.^{18,19} This demonstration could be performed as a photochemical modeling sensitivity analysis that models an increase in a major source's precursor emissions, such as ammonia, and predicts the impact on PM_{2.5} concentrations. Utah Department of Air Quality (UDAQ) has performed a modeling analysis of this type for two Serious PM_{2.5} NAAs (2006 24-hour PM_{2.5} NAAQS) to determine their proposed ammonia SER of 70 tpy, the same emission level for which Serious NAA major sources are defined.²⁰ In the UDAQ modeling analysis, CAMx photochemical modeling was performed for the Salt Lake City, UT NAA and the Provo, UT NAA. Several hypothetical new major sources were added to the model's emissions inventory as tall stack point sources, each of which emitted 70 tpy of ammonia at a constant rate. The modeled PM_{2.5} concentrations with these hypothetical sources were compared with modeled PM_{2.5} concentrations without the hypothetical sources. Based on the PM_{2.5} impact shown from 70 tpy ammonia-emitting sources, the 70 tpy ammonia SER was determined to be protective for these NAAs because the concentration increase was less than the PM_{2.5} significance level²¹. This approach is completely consistent with the original 1980 SER analysis as well as with the more recent MERPs analysis.

UDAQ performed a similar NNSR modeling sensitivity analysis for the Logan, UT (Cache County) Moderate PM_{2.5} NAA and determined that an ammonia SER was not necessary for this region.²² In this modeling analysis, two hypothetical ammonia-emitting major sources were added to the emissions inventory with over 100 tpy. Two modeling runs were performed, one with high plume releases and one with low plume releases.

The UDAQ NNSR demonstrations are technical analyses that are relevant for establishing Arizona's ammonia SER. Being in a warmer climate than Utah, if Arizona were to perform its own NNSR demonstration, it would likely result in a higher ammonia SER because, as noted by Watson et al.²³, ammonium nitrate dominates over ammonium sulfate in Arizona and less particulate is formed at higher temperatures for the same precursor emissions. This principle is also noted in EPA's 2019 Guidance on the Development of Modeled Emission Rates for Precursors, referenced above. Because Arizona is in a warmer climate than Utah, a NNSR demonstration similar to UDAQ's specifically for Arizona would likely result an ammonia SER higher than 70 tpy (100 tpy would be the highest potential SER, equal to the Moderate NAA major source PM_{2.5} emission threshold).

The Watson et al. (1994) study for the Phoenix, AZ metropolitan area found that, "ammonia was so abundant in Phoenix during the winter of 1989-1990 that massive reductions in its ambient concentrations would be needed before significant reductions in particulate ammonium nitrate would be observed. When total nitrate is reduced, however, by reductions in its oxides of nitrogen precursors, proportional reductions in particulate nitrate are expected." Watson et al. determined that the change in particulate matter in Phoenix would be expected to be about 10 times as reactive to a unit emissions change of NOx as opposed to ammonia. Given this information, the ammonia SER would be expected to be much higher than the NOx SER.

Conclusions

The ammonia SER of 40 tpy proposed by ADEQ is more appropriately set to 100 tpy or, at a minimum, to the same level adopted by Utah at 70 tpy. Our key comments to support this conclusion are summarized below.

- Although there may be no large ammonia sources in or near current PM_{2.5} nonattainment areas in Arizona, that status may change if EPA lowers the PM_{2.5} NAAQS.
- The ammonia SER adopted by SCAQMD has no technical foundation except that it is admitted to be conservatively low by that agency. Other California agency technical discussions establish ammonia as an insignificant precursor to PM_{2.5} emissions.

¹⁸ 81 FR 58010, August 24, 2016 final rule on SIP requirements for PM_{2.5} nonattainment areas.

¹⁹ <https://www.epa.gov/pm-pollution/pm25-precursor-demonstration-guidance>

²⁰ UDAQ, 2018. Major Source Modification Ammonia Threshold. <https://documents.deq.utah.gov/air-quality/pm25-serious-sip/DAQ-2018-004852.pdf>

²¹ EPA, 2018. Significant Impact Levels for Ozone and Fine Particles. <https://www.epa.gov/nsr/significant-impact-levels-ozone-and-fine-particles>.

²² UDAQ, 2017. Logan Moderate PM_{2.5} SIP NNSR Demonstration. <https://documents.deq.utah.gov/air-quality/planning/air-quality-policy/DAQ-2017-015881.pdf>

²³ Watson, J.G., J.C. Chow, F.W. Lurmann, and S.P. Musarra, 1994. Ammonium Nitrate, Nitric Acid, and Ammonia Equilibrium in Wintertime Phoenix, Arizona. *J. Air & Waste Manage. Assoc.* 44: 405-412.

Technical Comments on Arizona's Proposed Ammonia Significant Emission Rate

- The SERs for SO₂, NOx, CO, and particulate matter are based upon 1980-era screening modeling techniques that inherently have a significant level of conservatism, although the concept of determining a critical emission rate that is based upon a modeled impact no higher than a significant impact level has wide support.
- The modeling approach used by EPA in 1980 and more recently by Utah is consistent with EPA's recent establishment of Modeled Emission Rates for Precursors (MERPs) for secondary PM_{2.5} and ozone.
- A rigorous photochemical modeling analysis in Utah indicates that an ammonia SER of 70 tpy is appropriate.
- The warmer climate of Arizona relative to Utah suggests that an ammonia SER higher than the value adopted for Utah would be appropriate due to the temperature-sensitive ammonium nitrate – nitric acid – ammonia equilibrium.
- A peer-reviewed paper that focuses upon nitrate particulate formation in the Phoenix, AZ area indicates that the nitrate aerosol formation is not ammonia-limited. The authors conclude that up to 10 times as much ammonia emissions relative to NOx emissions are needed for a given increase in particulate matter concentrations. Therefore, ammonia should either be considered as an insignificant precursor to PM_{2.5}, or the ammonia SER should be substantially higher than the NOx SER in Arizona.

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- The image shows a Microsoft Word document window with a list of 23 references. The references are numbered 8 through 23 and include various EPA publications and a study on ammonium nitrate equilibrium.
8. EPA, 1980. Impact of Proposed and Alternative De Minimis Levels for Criteria Pollutants. EPA-450/2-80-072.
 9. EPA, 1973. Users' Guides to the Interactive Versions of Three Point Source Dispersion Programs: PTMAX, PTDIS, and PTMPT. (D. Bruce Turner and Adrian D. Busse, National
 10. EPA, 1977. Guidelines for Air Quality Maintenance Planning and Analysis Volume 10 (Revised): Procedures for Evaluating Air Quality Impact of New Stationary Sources. EPA-450/4-77-001.
 11. EPA, 1977. Valley Model User's Guide. EPA-450/2-77-018. USEPA Office of Air Quality Planning and Standards.
 12. 1994. Ammonium Nitrate, Nitric Acid, and Ammonia Equilibrium in Wintertime Phoenix, Arizona

Thursday
August 7, 1980

Part III

**Environmental
Protection Agency**

**Requirements for Preparation, Adoption,
and Submittal of Implementation Plans;
Approval and Promulgation of
Implementation Plans**

**ENVIRONMENTAL PROTECTION
AGENCY**
40 CFR Parts 51, 52, and 124
[FRL 1538-2]
**Requirements for Preparation,
Adoption, and Submittal of
Implementation Plans; Approval and
Promulgation of Implementation Plans**
AGENCY: Environmental Protection Agency.

ACTION: Final rules.

SUMMARY: In response to the decision of the U.S. Court of Appeals for the D.C. Circuit in *Alabama Power Company v. Costle*, EPA is today amending its regulations for the prevention of significant deterioration of air quality. 40 CFR 51.24, 52.21. Today's amendments also include regulatory changes affecting new source review in nonattainment areas, including restrictions on major source growth (40 CFR 52.24) and requirements under EPA's Emission Offset Interpretative Ruling (40 CFR Part 51, Appendix S) and Section 173 of the Clean Air Act (40 CFR 51.18 (j)).

DATES: The regulatory amendments announced here come into effect on August 7, 1980. State Implementation Plan revisions meeting today's regulatory changes are to be submitted to EPA within nine months after this publication.

FOR FURTHER INFORMATION CONTACT: James B. Weigold, Standards Implementation Branch (MD-15), Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, 919/541-5292.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline. A section entitled Summary of PSD Program has been added to provide a concise narrative overview of this program.

Outline

- I. Summary of PSD Program
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 - B. Who is Subject to the Prevention of Significant Deterioration Regulations?
 - C. What Must a Source or Modification Do to Obtain a PSD Permit?

- II. Background

- III. Highlights

- IV. Transition

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 - I. Restrictions on Construction
 - J. Reconstruction
 - K. Exclusions
 - L. Example of How The Definitions Work
- XI. *De Minimis* Exemptions
- XII. Geographic and Pollutant Applicability
 - A. Background
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 - C. Nonattainment Applicability
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 - G. Economic Impact Assessment
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I. Summary of PSD Program

The purpose of this summary is to help those people who are unfamiliar with the PSD program gain an understanding of it. Because this

summary seeks to condense the basic PSD rules, it may not precisely reflect the amendments announced in this notice. Should there be any apparent inconsistency between the summary and the remainder of the preamble and the regulations, the remaining preamble and the regulations shall govern.

A. PSD Allows Industrial Growth Within Specific Air Quality Goals

The basic goals of the prevention of significant air quality deterioration (PSD) regulations are (1) to ensure that economic growth will occur in harmony with the preservation of existing clean air resources to prevent the development of any new nonattainment problems; (2) to protect the public health and welfare from any adverse effect which might occur even at air pollution levels better than the national ambient air quality standards; and (3) to preserve, protect, and enhance the air quality in areas of special natural recreational, scenic, or historic value, such as national parks and wilderness areas.

States are required to develop SIP revisions for PSD pursuant to regulations published today. See 40 CFR 51.24, "Requirements for Preparation, Adoption and Submittal of Implementation Plans." If EPA approves the proposed PSD plan, the state can then implement its own program. In the absence of an approved state PSD plan, another portion of today's regulations will govern PSD review. See 40 CFR 52.21, "Approval and Promulgation of Implementation Plans." EPA will implement this regulation itself if the state does not submit an approvable PSD program of its own.

States can identify in their SIPs the local land use goals for each clean area through a system of area classifications. A "clean" area is one whose air quality is better than that required by the National Ambient Air Quality Standards. Each classification differs in the amount of growth it will permit before significant air quality deterioration would be deemed to occur. Significant deterioration is said to occur when the amount of new pollution would exceed the applicable maximum allowable increase ("increment"), the amount of which varies with the classification of the area. The reference point for determining air quality deterioration in an area is the baseline concentration, which is essentially the ambient concentration existing at the time of the first PSD permit application submittal affecting that area. To date, only PSD increments for sulfur dioxide and particulate matter have been established. Increments or alternatives

to increments are currently under investigation for the other criteria pollutants.

There are three types of area classifications. Class I areas have the smallest increments and thus allow only a small degree of air quality deterioration, while Class II areas can accommodate normal well-managed industrial growth. Class III designations have the largest increments and are appropriate for areas desiring a larger amount of development. In no case would the air quality of an area be allowed to deteriorate beyond the National Ambient Air Quality Standards. Except for certain wilderness areas and national parks, which are mandatory Class I areas, all clean areas of the country were initially designated as Class II. Flexibility exists under the Act to adjust most of these designations, except for those mandated by Congress.

The principal mechanism within the SIP to implement the objectives of the PSD program is the preconstruction review process. These provisions require that new major stationary sources and major modifications are carefully reviewed prior to construction to ensure compliance with the National Ambient Air Quality Standards, the applicable PSD air quality increments, and the requirements to apply the best available control technology on the project's pollutant emissions. In addition, proposed SIP relaxations which would limit further use of increment must be reviewed for their anticipated impact and not be approved if the applicable increment would be violated. The SIP must also contain PSD provisions for periodically reviewing all emissions increases, including those which occur outside the SIP revision and the new source review (NSR) process, and for restoring clean air when such increases cause violations of the applicable PSD increment. This corrective action may require additional controls on existing emissions sources which contribute to the problem.

B. Who is Subject to the Prevention of Significant Deterioration Regulations?

The requirements of today's PSD regulations apply to major stationary sources and major modifications which meet certain criteria concerning the geographic location, type of pollutants to be emitted, and timing of proposed construction. No source or modification subject to today's rules may be constructed without a permit which states that the stationary source or modification would meet all applicable PSD requirements. This section summarizes how PSD review as

modified in response to *Alabama Power* will apply.

The primary criterion in determining PSD applicability is whether the proposed project is sufficiently large (in terms of its emissions) to be a major stationary source or major modification. Source size, for applicability purposes, is defined in terms of "potential to emit." "Potential to emit" means the capability at maximum design capacity to emit a pollutant after the application of all required air pollution control equipment and after taking into account all federally enforceable requirements restricting the type or amount of source operation. A "major stationary source" is any source type belonging to a list of 28 source categories which emits or has the potential to emit 100 tons per year or more of any pollutant subject to regulation under the Act, or any other source type which emits or has the potential to emit such pollutants in amounts equal to or greater than 250 tons per year. A stationary source generally includes all pollutant-emitting activities which belong to the same industrial grouping, are located on contiguous or adjacent properties, and are under common control. Pollutant activities which belong to the same major group as defined in a standard industrial classification scheme developed by the Office of Management and Budget are considered part of the same industrial grouping. (See SOURCE).

A "major modification" is generally a physical change in or a change in the method of operation of a major stationary source which would result in a significant net emissions increase in the emissions of any regulated pollutant. In determining if a proposed increase would cause a significant *net* increase to occur, several detailed calculations must be performed. First, the source owner must quantify the amount of the proposed emissions increase. This amount will generally be the potential to emit of the new or modified unit. Second, the owner must document and quantify all emissions increases and decreases that have occurred or will occur contemporaneously (generally within the past five years) and have not been evaluated as part of a PSD review. The value of each contemporaneous decrease and increase is generally determined by subtracting the old level of actual emissions from the new or revised one. Third, the proposed emissions changes and the unreviewed contemporaneous changes must then be totalled. Finally, if there is a resultant *net* emissions increase that is larger than certain values specified in the

regulations, the modification is major and subject to PSD review.

Certain changes are exempted from the definition of major modification. These include: (1) routine maintenance, repair, and replacement; (2) use of an alternative fuel or raw material by revision of an order under sections (2)(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation); (3) use of an alternative fuel by reason of an order or rule under section 125 of the Clean Air Act; (4) use of an alternative fuel at a steam generating unit to the extent it is generated from municipal solid waste; (5) use of an alternative fuel which the source is capable of accommodating; and (6) an increase in the hours of operation, or the production rate. The last two exemptions can be used only if the corresponding change is not prohibited by certain permit conditions established after January 6, 1975.

If a source or modification thus qualifies as major, its prospective location or existing location must also qualify as a PSD area, in order for PSD review to apply. A PSD area is one formally designated by the state as "attainment" or "unclassifiable" for any pollutant for which a national ambient air quality standard exists. This geographic applicability test does not take into account what new pollutant emissions caused the construction to be major. It looks simply at whether the source is major for any pollutant and will be located in a PSD area.

Once a source applicant has determined that proposed construction falls under PSD based on the above size and location tests, it must then assess whether the pollutants the project would emit are or are subject to PSD. If a new major stationary source emits pollutants for which the area it locates in is designated nonattainment, then the source is exempt from PSD review for those pollutants. These sources must, however, meet the applicable requirements of NSR for each nonattainment pollutant. Similarly, if a major modification to be constructed in a PSD area involves changes only for nonattainment pollutants then the source is not subject to PSD. These modifications must meet the appropriate nonattainment NSR under the SIP for the pollutant. Once the question of NSR jurisdiction is resolved, then the PSD review applies to all significant emissions increases of regulated air pollutants. Specific numerical cutoffs which define what emissions increases are "significant" have been spelled out in the regulations. These pollutant-

specific cutoffs can exempt a source from PSD review for a particular pollutant, except where the proposed construction would adversely impact a Class I area.

If a proposed source or modification would be subject to PSD review based on size, location, and pollutants emitted, then its construction schedule must meet certain tests before the PSD rules promulgated today would apply. All major construction otherwise qualifying for PSD review would not need a PSD permit under these regulations if the proposed construction: (1) was subject to the old PSD rules, has submitted a complete application under these rules before today, and was or is subsequently approved to construct based on this application; or (2) was not subject to the old PSD rules, has received all federal, state, and local air permits needed before today and commences construction in a continuous fashion at the proposed site within a reasonable time.

Finally, the PSD regulations contain some specific exceptions for some forms of source construction. The requirements of today's regulations do not apply to any major stationary source or major modification that is: (1) a nonprofit health or educational institution (only if such exemption is requested by the governor); or (2) a portable source which has already received a PSD permit and proposes relocation.

C. What Must A Source or Modification Do To Obtain A PSD Permit?

1. It must apply the best available control technology.

Any major stationary source or major modification subject to PSD must conduct an analysis to ensure application of best available control technology (BACT). During each analysis, which will be done on a case-by-case basis, the reviewing authority will evaluate the energy, environmental, economic and other costs associated with each alternative technology, and the benefit of reduced emissions that the technology would bring. The reviewing authority will then specify an emissions limitation for the source that reflects the maximum degree of reduction achievable for each pollutant regulated under the Act. In no event can a technology be recommended which would not meet any applicable standard of performance under 40 CFR Parts 60 and 61.

In addition, if the reviewing authority determines that there is no economically reasonable or technologically feasible way to accurately measure the emissions, and hence to impose an

enforceable emissions standard, it may require the source to use source design, alternative equipment, work practices or operational standards to reduce emissions of the pollutant to the maximum extent. For example, if an immense pile of uncovered coal emits coal dust into the atmosphere, it would make little sense to impose an emission standard, since measuring the amount of coal dust rising off the pile is nearly impossible. A much more direct approach to controlling emissions is, for example, requiring the owner to wet the coal pile daily. This type of standard or practice will be equivalent to an emissions limitation for purposes of the BACT requirement.

2. It must conduct an ambient air quality analysis.

Each PSD source or modification must perform an air quality analysis to demonstrate that its new pollutant emissions would not violate either the applicable NAAQS or the applicable PSD increment. This analysis ensures that the existing air quality is better than that required by national standards and that baseline air quality will not be degraded beyond the applicable PSD increment.

Each proposed major construction project subject to PSD must first assess the existing air quality for each regulated air pollutant that it emits in the affected area. This analysis requirement does not apply to pollutants for which the new emissions proposed by the applicant would cause insignificant ambient impacts. Today's PSD regulations define pollutant-specific impacts that are typically considered inconsequential and that can be exempted from analysis, unless existing air quality is poor or adverse impacts to a Class I area are in question. For pollutants for which a NAAQS exists, the applicant must provide ambient monitoring data that represent air quality levels in the year's period preceding the PSD application. Where no existing data are judged representative or adequate, then the source applicant must conduct its own monitoring program. This is often the case where the applicant will be establishing the baseline concentration for the affected area. Typically air quality dispersion modeling is used by applicants to support or extend the assessment made with gathered monitoring data. For pollutants for which there is no NAAQS, the required analysis will normally be based on dispersion modeling alone.

Source applicants who are subject to the ambient analysis requirement for sulfur dioxide or particulate matter must also perform an analysis to compute

how much of the PSD increment remains available to them. In general the amount of increment that is available depends on certain changes in actual emission. First, actual emissions changes occurring after January 6, 1975 which are associated with physical changes or changes in the method of operation at a major stationary source can affect the available increment. Accordingly, cleanup adds to the available growth margin while new emissions diminish it. Second, all changes in emissions, including those from minor sources and other types of changes at major sources, affect the available increment provided they occur after the baseline date. The baseline date is essentially the time that the first PSD application affecting the area is filed.

Once the question of how much increment remains is resolved, then the applicant must demonstrate that his proposed new emissions would not exceed the remaining PSD increment. Where a proposed project would cause a new violation of the increment or contribute to an existing violation, it cannot be approved. Existing violations must be entirely corrected before PSD sources which affect the area can be approved.

3. It must analyze impacts to soils, vegetation, and visibility.

An applicant is required to analyze whether its proposed emissions increases would impair visibility, or impact on soils or vegetation. Not only must the applicant look at the direct effect of source emissions on these resources, but it also must consider the impacts from general commercial, residential, industrial and other growth associated with the proposed source or modification. The results of this analysis may be used to determine if the project would have an adverse impact on a Class I area.

4. It must not adversely impact a Class I area.

If the reviewing authority receives a PSD permit application for a source that could impact a Class I area, it will immediately notify the Federal Land Manager and the federal official charged with direct responsibility for managing these lands. These officials are responsible for protecting the air quality-related values in Class I areas and for consulting with the reviewing authority to determine whether any proposed construction will adversely affect such values. If the Federal Land Manager demonstrates that emissions from a proposed source or modification would impair air quality-related values, even though the emissions levels would not cause a violation of the allowable air quality increment, the Federal Land

Manager may recommend that the reviewing authority deny the permit.

5. Its application must undergo adequate public participation.

The regulations solicit and encourage participation by the general public, industry, and other affected persons impacted by the proposed major source or major modification. Specific public notice requirements and a public comment period are required before the PSD review agency takes final action on a PSD application. The public notice must indicate whether the reviewing authority proposed permit approval, denial, or conditional approval of a proposed major source or major modification. Consideration is given to all comments received provided they are relevant to the scope of the review. Where requested, or at its own discretion, the reviewing authority may conduct a public hearing to help clarify the issues and obtain additional information to assist in making a final permit decision.

6. It must start construction on time.

The source owner, once receiving a PSD permit, must start construction within a reasonable period of time (typically within 18 months of approval) and must stay on a continuous construction schedule. Normally, long delays will invalidate the permit.

II. Background

On August 7, 1977, the President signed the Clean Air Act Amendments of 1977 (1977 Amendments) into law. Those amendments established, in the form of Part C of Title I of the Clean Air Act (CAA), a set of requirements for the prevention of significant deterioration (PSD) of air quality in "clean air" areas. Sections 160-69, 42 U.S.C. 7470-79. The requirements for preconstruction review of new stationary sources and modifications in Part C follow the outline of the PSD regulations that EPA promulgated in 1974, but are more elaborate and in many ways more stringent. Part C also requires that each state implementation plan (SIP) contain the new PSD requirements.

In response to Part C, EPA promulgated two sets of PSD regulations on June 19, 1978. One set specified the minimum requirements that a PSD SIP revision would have to contain in order to warrant EPA approval. See 43 FR 26380 (codified at 40 CFR 51.24 [1979]) (hereinafter, the "1978 Part 51 regulations"). The other set comprehensively amended the 1974 PSD regulations, incorporating into them the new Part C requirements. 43 FR 26388 (codified at 40 CFR 52.21 [1979]) (hereinafter, the "1978 Part 52 regulations"). EPA intended that, until it

had approved a PSD SIP revision for a state, the permitting of new sources and modifications for PSD purposes would continue under the 1978 Part 52 regulations.

On June 18, 1979, the United States Court of Appeals for the District of Columbia Circuit issued a decision that upheld some of the substantive provisions of both the 1978 Part 51 and Part 52 regulations and overturned others. *Alabama Power Company v. Costle*, 13 ERC 1225. In its opinion, the court merely summarized its holdings, but promised to issue supplemental opinions after it had considered any petitions for reconsideration. In an order that accompanied the summary opinion, the court stayed the effect of its decision until it had issued the supplemental opinion. The purpose of that procedure, the court explained, was "to enable EPA to proceed as soon as possible to commence rulemaking or other proceedings necessary to promulgate those revisions in the PSD regulations required by [the court's] rulings * * *." *Id.* at 1227.

By a notice that appeared in the Federal Register for September 5, 1979, EPA began the process the court had in mind. 44 FR 51924. There EPA proposed various amendments to the PSD regulations that were to replace the provisions the court had held invalid, for instance, the definitions of "source," "modification," and "potential to emit." EPA also proposed amendments that were to add entirely new provisions to supplement the replacement provisions, for instance, the *de minimis* exemptions.

Prior to September, EPA had issued, also in response to the 1977 Amendments, various regulations and guidelines relating to the construction of new sources and modifications in and near "nonattainment" areas. In January 1979, the Agency revised its Emission Offset Interpretative Ruling ("Offset Ruling"), which now appears at 40 CFR Part 51, Appendix S (1979). Then, in April 1979, EPA issued a guideline entitled "General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas." 44 FR 20372.¹ Finally, in July 1979, EPA issued an interpretative rule concerning certain statutory restrictions on new construction in nonattainment areas. 44 FR 38471 ("construction moratorium").² EPA also asked for comment on certain

issues concerning new construction in such areas. 44 FR 38583.

In the September Federal Register notice, EPA also proposed various changes to those nonattainment regulations and guidelines. The purpose of those changes generally was to conform those regulations and guidelines to the decisions in *Alabama Power* concerning the statutory terms "source," "modification," and "potential to emit."

On September 18, 1979, EPA announced that it would hold public hearings on the September proposal on October 15 and 16 in Washington, D.C., and on October 18 and 19 in San Francisco. See 44 FR 54069. At the same time, the Agency set November 18 as the deadline for submitting information rebutting or supplementing any presentation at the hearings. Subsequently, EPA held the public hearings as scheduled.

On October 4, 1979, EPA announced various corrections to technical errors in the September proposal. 44 FR 57107. At the same time, it extended the period for submitting written comments until November 5, 1979. It added that it would hold the rulemaking docket open until November 18, 1979, not only for information rebutting or supplementing any presentation at the hearings, but also for information rebutting or supplementing any written comment.

On November 9, 1979, EPA announced that it had recently released for public comment a draft of a revision of the *Ambient Monitoring Guideline for Prevention of Significant Deterioration (PSD)* (OAQPS 1.2-096), which the Agency had originally published in May 1978. 44 FR 65084. EPA also announced that it would accept any written comments on the draft until December 10, 1979.

On December 14, 1979, the Court of Appeals handed down its final opinion in *Alabama Power*. 13 ERC 1993. Subsequently, in order to avoid the uncertainty and confusion that would occur in PSD permitting if the final opinion came into effect before EPA completed the rulemaking, EPA and many of the other parties to the litigation petitioned the court to keep the final opinion from coming into effect until June 2, 1980. On March 14, 1980, the court granted the request.

On May 30, 1980, EPA and other parties to the litigation again petitioned the court, requesting a further extension of time until July 18, 1980. The court granted an extension, to July 28, on June 23, 1980.

On January 30, 1980, EPA announced that it would reopen the rulemaking docket for the receipt of written

¹For supplements to the General Preamble. See 44 FR 38583 (July 2, 1979); 44 FR 38371 (August 28, 1979); 44 FR 51924, 51928-29 (September 5, 1979); 44 FR 53761 (September 17, 1979); and 44 FR 67182 (November 23, 1979).

²For a fuller description of those nonattainment regulations and guidelines, See 44 FR 51925 and 45 FR 31304-05.

comments on various aspects of the rulemaking, including the final opinion of the court, certain issues that the Agency described in the notice, the redraft of the monitoring guidelines, and various meetings between EPA and others. 45 FR 6802.

On February 5, 1980, EPA issued a stay of the 1978 Part 52 PSD regulations as to certain sources and modifications. 45 FR 7800. The stay was effective as of January 30, 1980. Its purpose was "to relieve from the permitting requirements of the 1978 PSD regulations roughly those sources and modifications that would not be subject to the permitting requirements of valid replacement regulations that would comport with the *Alabama Power* opinion." *Id.*

On May 13, 1980, EPA promulgated a stay of the Offset Ruling and the construction moratorium that is similar to the PSD stay. See 45 FR 31304. On the same day, EPA promulgated certain amendments to the Offset Ruling, the regulations relating to new source review at 40 CFR 51.18, and the construction moratorium. Those amendments established the geographic applicability of the various nonattainment requirements relating to the construction of new sources and modifications. 44 FR 31307. Those amendments embody EPA's responses to many of the comments on the September proposal.

Finally, on May 19, 1980, EPA promulgated regulations aimed at consolidating and unifying various permit requirements and procedures. 45 FR 33290. Those new regulations contain provisions which will govern the processing of applications for permits under the new Part 52 PSD regulations.

During the course of the rulemaking that EPA began in September, it received approximately 375 written comments. The discussion that follows summarizes the proposals, the comments on them, EPA's responses, and the final provisions.

III. Highlights

Several significant changes from the September 5, 1979 proposal have occurred. These changes include the addition of certain provisions not addressed by the September 5, 1979 proposal but which are necessary under the Act. Several regulatory provisions which are unchanged in substance by today's notice have also been reprinted to clarify the effects of any revised paragraph numbering.

A. Transition: The proposed transition scheme for phasing in the additional monitoring requirements has been expanded to require no new monitoring requirements for PSD applications

submitted and complete within 10 months of the promulgation date. In addition, today's rules allow less than a full year of monitoring data to be included with PSD applications filed after the above times but before 18 months after the promulgation date. PSD applications filed later than 18 months from the date of promulgation will be subject to the full new monitoring requirements.

B. Potential To Emit: Potential to emit is the maximum design capacity of the source, except as constrained by federally enforceable permit conditions. This would include permit conditions restricting hours or type of source operation.

C. 50-Ton Exemption: Today's regulations essentially delete the "50-Ton Exemption" for both nonattainment and PSD. The eligibility date for the section 165(b) exemption has been changed from August 7, 1977 to March 1, 1978.

D. Fugitive Emissions: For the purpose of PSD and nonattainment, "fugitive emissions" now means those emissions released directly into the atmosphere, which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening. Fugitive emissions are not to be considered in determining whether a source would be a major source, except when such emissions come from specified source categories.

E. Fugitive Dust: Today's regulations promulgate the proposed deletion of the "fugitive dust exemption" from the applicable provisions of both PSD and the Offset Ruling.

F. Stationary Source: The definition of source for PSD purposes has been made more liberal than the previous regulations. Under today's rules, a PSD source is a grouping of all pollutant emitting activities at one location and owned or under the control of the same person or persons. This generally relates to the common notion of a plant. Smaller portions of such a plant no longer will be examined for applicability purposes. For added clarification, pollutant-emitting activities will now be considered part of the same "plant" if they belong to the same "major group" as described in the Standard Industrial Classification Manual. At this time, however, the Agency has decided not to change its previous approach to defining source for nonattainment purposes. Therefore, today's rules continue to incorporate the "dual definition" concept of source which requires consideration of overall emissions from a "plant" and from each "installation" within that plant. In a change from the proposal, this dual definition will apply

to major sources in all nonattainment areas designated under section 107 of the Act, regardless of SIP approvability or degree of completion.

G. Modification: The definition and treatment of modifications have been changed since the September 5, 1979 proposal. The concept of accumulating minor changes made at an existing minor source until the sum was equivalent to a major stationary source has been deleted. Rather, a source must now qualify as a major stationary source prior to making a modification to become subject to review, unless the change itself is greater than 100 or 250 tons per year. Contemporaneous changes now generally refer to emissions increases and decreases occurring within the same 5-year time period unless the state opts for a different time period in its Part D SIP or PSD program. Reductions, to be creditable, must be enforceable under the SIP before the contemporaneous emission increase would begin construction. Such reductions, as well as significant increases, will be quantitatively assessed on the basis of an "actual emissions" baseline, rather than a "potential to emit" baseline, as was proposed. "Reconstruction" (i.e., 50% or more capital replacement) has been deleted from PSD but has been retained for nonattainment NSR, including the prohibition on construction.

H. "De Minimis" Exemptions: Three types of changes from the September 5 proposal appear in today's regulations: (1) different numbers have been developed for defining significant emissions from new sources and significant net emissions increases from modifications; (2) new air quality *de minimis* numbers have been generated and can only be used to exempt PSD sources from the ambient monitoring requirements; and (3) a ten kilometer proximity cutoff has been specified to indicate when a source, regardless of pollutant emissions, must be prepared to demonstrate that no 24-hour impact greater than 1 $\mu\text{g}/\text{m}^3$ would occur in the Class I area.

I. Geographic Applicability: PSD will generally apply only if the otherwise subject major construction locates in a section 107 area which is designated attainment or unclassified under section 107 for any criteria pollutant (regardless of what pollutants the proposed construction would emit or what pollutant qualified it as major). An exception to this rule is that no PSD permit is required for major construction which emits only the pollutant for which the area of location is nonattainment.

J. Pollutant Applicability: Any net significant emissions increase of any pollutant subject to regulation under the Act (not just those pollutants for which the source is major) now qualifies as a PSD modification. Nonattainment review will continue to focus on only the major nonattainment pollutant. No PSD review will be required for a given criteria pollutant, if a source would construct in an area designated nonattainment for that pollutant.

K. Baseline Area/Date: Baseline area now refers to all section 107 areas which are designated attainment or unclassified for PM or SO₂ (as may be redesignated) in which the PSD source triggering the baseline date would locate or would have an annual air quality impact equal to or greater than 1 $\mu\text{g}/\text{m}^3$. Interstate impacts, however, do not trigger baseline date. This differs from the proposal, which focused on the AQCR rather than the designated area. Baseline dates are pollutant specific and can be established by the first PSD application of a source with significant emissions of the applicable pollutant. States will have the flexibility to redesignate clean or unclassified areas under section 107 and thereby remove baseline dates for certain areas. However, no redesignation may subdivide the impact area ($>1 \mu\text{g}/\text{m}^3$) of the source triggering a baseline date.

L. Best Available Control Technology: Today's regulations reflect the proposal with one exception. A provision has been added that requires BACT for modifications only when both a net emissions increase occurs at the changed unit(s) and a significant net emissions increase occurs at the plant; BACT applies only to the units actually modified.

M. Monitoring: The proposed transition scheme for phasing in the additional monitoring requirements will provide relief for sources covered under the existing regulations that are in the process of monitoring and offer allowances for setup time of monitors in gathering the required data.

N. Notification: The notification provisions appearing in the September 5, 1979 proposal have been deleted from today's regulations.

O. PSD SIP Revisions: The requirements proposed on September 5 for governing the development of PSD SIP submittals are essentially unchanged. These regulations allow limited flexibility in the development of different but equally effective state plans.

P. Increment Consumption: A discussion has been included in the preamble to summarize the effects that the *Alabama Power* decision has had on

increment tracking. This section also discusses how certain SIP related issues are to be addressed, such as the Gulf Coast problem (SIP shows a theoretical increment violation in a clean area, unrelated to actual air quality impact) and temporary SIP relaxations. (SIP would be relaxed and only temporary emissions would occur).*

Q. Public Participation: The requirements of paragraph (r) of § 52.21 have been replaced with the public participation procedures associated with the consolidated permit regulations (40 CFR 124).

IV. Transition

This section focuses on those provisions of the final PSD and nonattainment regulations which govern the transition from the preexisting requirements to the new ones. It begins with a discussion of the new transition provisions of the Part 52 PSD regulations and then deals in turn with the transition provisions of the Part 51 PSD regulations, the Offset Ruling, the Part 51 nonattainment regulations, and finally the construction moratorium.

A. Part 52 PSD Regulations

The new transition provisions of the Part 52 PSD regulations fall into three categories: those that relate to the new coverage of the regulations, those that relate to the new requirements for best available control technology (BACT) and air quality assessments, and those that relate to the new procedural requirements. The discussion which follows deals with each in that order.

1. Coverage.

a. Proposed transition provisions: The preconstruction permit requirements of the 1978 Part 52 regulations applied to a certain class of projects that emit or would emit pollutants. The keystone of those regulations, section 52.21(i)(1), provided that "[n]o major stationary source of major modification shall be constructed unless the [permit] requirements of [the Part 52 regulations] have been met." It established the general rule that the permit requirements applied to any "major stationary source" or "major modification." The balance of section 52.21(i) then listed certain exceptions to that general rule. The main exceptions established various "grandfather" exemptions. The permit requirements of the regulations applied, therefore, to any pollutant-emitting project that was "major" and had no "grandfather" status.

In September 1979, EPA proposed to establish new Part 52 PSD regulations whose coverage would be substantially different from that of the 1978

regulations. First, it proposed to define "major stationary source" differently than it had defined that term in the 1978 regulations. Under the 1978 regulations, whether a "source" was "major" depended upon whether its "potential to emit" any pollutant regulated under the Act would equal or exceed certain thresholds. "Potential to emit" referred largely to the maximum rate at which a "source" would emit a pollutant *without* control equipment. Under the amendments that EPA proposed in September, "potential to emit" would be the maximum rate at which a "source" would emit a pollutant *with* control equipment. Second, EPA proposed to define "major modification" differently than it had defined that term in the 1978 regulations. There, a "major modification" was any change at a "source" that would increase the "potential to emit" of the "source" by 100 tons per year of any pollutant regulated under the Act, or 250 tons per year, depending on source type and ignoring any emission reductions. Under the amendments that EPA proposed in September, "major modification" would have become any change at a "source" that would result in a *significant net* increase in the "potential to emit" of the "source." "Significant" is defined as emissions greater than certain *de minimis* values. Finally, EPA proposed to limit the geographic applicability of the PSD permit requirements by adding an exception to section 52.21(i) that would exclude a "source" or "modification" from PSD review on the basis of its location.³

Amendments of the sort that EPA proposed in September would have left many projects that previously fell or would have fallen within the coverage of the 1978 Part 52 regulations outside the coverage of the resulting Part 52 regulation. For instance, many new "sources" that were "major" under the 1978 regulations would not have been "major" under the proposed amendments, because while their maximum uncontrolled emissions would exceed the applicable thresholds, their maximum controlled emissions would not.

Of those projects that were or would have been subject to the PSD permit requirements under the 1978 PSD regulations, but not under the proposed

*Specifically, EPA proposed that the permit requirements would apply only to any "major stationary source" or "major modification" that would be located in an area designated under section 107 of the Act as attainment or unclassifiable for a pollutant for which the "source" or "modification" would be major or would significantly impact an area in another state which is designated as attainment or unclassifiable for any such pollutant.

amendments, some have already received a PSD permit, while others have not. In September, EPA proposed to put both sets of projects outside the reach of the permit requirements as soon as possible by putting the new definitions of "potential to emit" and "modification" and the new limitation on geographic applicability into effect immediately upon their promulgation. *See 44 FR 51927.* But EPA also proposed that any permit that had already been issued would remain in effect, binding any particular project to its terms, until the permit had been rescinded under a proposed paragraph (w) or had expired under an existing paragraph (s). *See id.* at 51927, 51958. Under paragraph (w), a permittee would have been able to obtain rescission only if the permittee filed a complete application with the issuing authority within 90 days after paragraph (w) had come into effect.

Amendments of the sort that EPA proposed in September would also have brought some projects that previously fell or would have fallen outside the coverage of the 1978 regulations inside the coverage of the Part 52 regulations. For instance, many changes at a "source" that would result in a gross increase in "potential to emit" well below 100 or 250 tons per year might nevertheless result in a significant net increase.

In September, EPA proposed to exempt from PSD review certain of these projects that fell or would have fallen beyond the reach of the PSD permit requirements under the 1978 regulations, but not under the proposed amendments. In particular, EPA proposed to "grandfather" any such project which before the promulgation of the new amendments had received each preconstruction permit that the state implementation plan (SIP) required and which will have "commenced" construction within 18 months after promulgation. *See id.* at 51928 (first column), 51953 (proposed § 52.21(i)(7)); 44 FR 57108 (items B(1) and C(2)).

Finally, EPA proposed to add another new grandfather provision to § 52.21(i). That provision would have stated that the permit requirements of those regulations do not apply to any "source" or "modification" on which construction "commenced" before August 7, 1977, the date of enactment of the 1977 Amendments. *See id.* at 51928 (first column), 51953 (proposed § 52.21(i)(3)). The purpose of the proposal was merely to state in regulatory form what section 168(b) of the Act, 42 U.S.C. 7478(b), already provides.

b. *Comments and final action on the proposed transition provisions relating to coverage:* EPA received no comments

on its proposal to put the new definitions of "potential to emit" and "modification" and the new limitation on geographic applicability into effect immediately upon promulgation. EPA therefore has put those provisions into effect as of the date this notice appears in the Federal Register. Some projects that were within the coverage of the 1978 Part 52 regulations, but have yet to receive a PSD permit, are now outside the coverage of the new Part 52 regulations, since the prohibition on construction without a permit in § 52.21(i)(1)(i) no longer applies to them. As a result, construction on them may begin immediately.⁴ Because further delay is pointless, and might be harmful in some cases, EPA finds that it has "good cause" to put the new applicability provisions into effect immediately upon promulgation, within the meaning of section 4(d)(3) of the Administrative Procedure Act (APA), 5 U.S.C. 553(d)(3). *See also* APA 4(d)(1), 5 U.S.C. 553(d)(1).

EPA did receive numerous comments on its proposal to rescind certain permits, and to treat them as binding unless and until rescinded. While one commenter agreed with the proposal, most did not. They objected primarily to two aspects of the proposal: first, that it would place on the permittee the dual burden of coming forward with an application for rescission and of providing proof that the project in question does fall outside the coverage of the new Part 52 regulations; and, second, that it would bar rescission if the permittee failed to file a complete application within a certain period of time. The commenters argued that EPA had no authority originally to require a permit for any project that falls outside the coverage of the new regulations and that it therefore has no authority now either to place the burden of coming forward and of proof on a permittee or to keep a rescindable permit in effect merely because of a failure to file a complete application for rescission by a certain time.

In response, EPA has promulgated a new provision, § 52.21(w), which does place the burden of coming forward and of proof on the permittee, but imposes no deadline for filing an application. Whether EPA had authority originally to require a permit for a project that falls outside the coverage of the new regulations is immaterial. EPA has authority under section 301(a)(1) of the Act, 42 U.S.C. 7601(a)(1), to fashion

within reason the regulatory tools it needs to carry out its tasks. Here EPA has undertaken not only to release certain PSD permittees from the constraints of their PSD permits, but also to settle as finally, as publicly, and as quickly as possible which old permits are binding and which are not. Prospective applicants, in order to prepare applications, and permitting authorities, in order to meet their obligations under the PSD regulations, must assess increment consumption. Confusion and uncertainty over whether particular projects are subject to the emissions limitations in their PSD permits can only frustrate efforts to assess increment consumption. Now § 52.21(w) maximizes EPA's ability to perform satisfactorily the tasks it has undertaken.

First, by stating explicitly that a permit generally remains in effect until rescinded, § 52.21(w) gives each permittee with a rescindable permit a strong reason to bring it before the reviewing authority as soon as possible. Second, by putting the burdens of coming forward and of proof on the permittees, § 52.21(w) ensures that the reviewing authority will spend its time efficiently and will have adequate information with which to make a sound decision. Third, by establishing that only the reviewing authority may rescind a permit, the provision promotes the soundness and therefore the finality of the rescission, since the reviewing authority will have the expertise and objectivity necessary to check adequately whether the permittee has applied the intricate applicability rules correctly. Finally, by requiring that the reviewing authority publish each rescission, § 52.21(w) ensures that the status of each permit will be in the public record.

Certain commenters suggested two alternatives to EPA's proposed rescission provision. One alternative was to declare upon promulgation that any PSD permit for a project that falls outside the coverage of the new regulations is null and void as of that time, but that any permittee which concludes it holds such a permit must send the reviewing authority a bare notice of that conclusion. The other alternative was to require any such permittee to send the reviewing authority an application for rescission and to establish that the failure of the reviewing authority to act on the application within a certain period would operate to grant the application. EPA has decided to adopt neither alternative. Under both, a project that should not be able to escape PSD

⁴The partial stay of the 1978 regulations that EPA issued in January 1980 has probably already relieved most of those projects from the permit requirements of those regulations.

constraints would be able to escape them merely because of an oversight or a manpower deficiency. EPA, however, has no authority to allow escape from review on that basis.

Certain commenters also objected to other aspects of the proposed rescission provision. In particular, one commenter asserted that proposed § 52.21(w)(3), which would say that "[t]he permitting authority may approve" an application that does show that the permit is rescindable, should state instead that "[t]he permitting authority shall approve" such an application. (Emphasis added.) EPA agrees, and has placed the necessary mandatory language in the final provision. Other commenters urged that the final provision recognize the possibility that a permitted may wish to obtain rescission of only certain elements of a permit. In response, EPA has introduced language under which the reviewing authority may rescind only certain elements, if that is appropriate in the particular case.

With respect to the rescission provision, it should be noted that rescission of a permit would in no way affect any other limitations on the project that may apply by virtue of the SIP or a state permit. It should also be noted that, if a source or modification whose permit is rescinded were later found to be causing or contributing to an increment violation, additional controls might be necessary. See 40 CFR 51.24(a)(3)(1979).

EPA received many comments on its proposal to "grandfather" certain projects that fall outside the coverage of the 1978 regulations, but not the new Part 52 regulations. Two commenters, while not focusing specifically on that proposal, expressed general opposition to "grandfathering" any project that would otherwise fall within the coverage of the new regulations. In its view, EPA should adhere to the transitional rules that it established in the 1978 regulations, so that in general a project would escape PSD review under the new Part 52 regulations only if certain permits were obtained for it by March 1, 1978, and construction "commenced" on it by March 19, 1979.

EPA disagrees that it should or must adhere to the transitional rules in the 1978 regulations in deciding which of the projects in question here should have to get a PSD permit. Part C of Title I of the Act contains two provisions, sections 165(a) and 168, which describe how the PSD permit requirements of Part C are to be implemented. Those sections, however, contradict each other irreconcilably. See *Citizens to Save Spencer County v. EPA*, 600 F.2d 844, 851-54, 860-73 (D.C. Cir., 1979). EPA has

authority under section 301(a)(1) of the Act, therefore, to set transitional rules which accommodate reasonably the purposes and concerns behind the two contradictory provisions. See *id.* at 873-74.

The court in *Citizens to Save Spencer County* identified those "considerations" as follows:

- (1) enhanced protection of the environmental quality of the nation's air;
- (2) minimization of economic dislocation and loss as a result of such enhanced protection;
- (3) a heightened enforcement role for states * * *; and
- (4) facilitation of an efficient administrative transition from enforcement of the "old" to "new" preconstruction review requirements. (*Id.* at 889 (footnotes omitted).)

Here, the proposed grandfather provision would reasonably accommodate those considerations. Most of the projects in question are modifications that would result in a significant net increase in the maximum controlled emissions of the "source," but not in a gross increase in uncontrolled emissions equal to or above 100 or 250 tons per year. This discrete group of small modifications, even in the aggregate, have a relatively minor effect on air quality. But, because they are numerous, delaying them by imposing new PSD requirements could frustrate economic development. The proposed provision would strike a rough balance between the benefits and the cost of applying PSD to those projects by allowing any company that has already obtained each of the preconstruction permits otherwise necessary under the SIP to proceed to construction without delay. To require such a company to obtain a PSD permit could mean substantial delays. To impose such delays here would be excessive.⁵

One commenter urged EPA to promulgate a grandfather provision that would use the date of complete application instead of the date of permit issuance. The commenter was concerned that the proposed provision would treat unfairly a company that obtained the last permit necessary under the SIP just a day or two after the date this notice appeared in the Federal Register. Use of such a date, however, might exempt many more projects from review. Hence, in EPA's view, it would fail to give adequate expression to the interests behind section 165, especially the goal of protecting air quality.

⁵Even if the conflict between sections 165(a) and 168 had not conferred on EPA the discretion to exempt certain projects that would otherwise be subject to PSD review for the first time, EPA would have authority under section 301(a)(1) to exempt those projects in order to phase-in new requirements on a reasonable schedule.

Certain commenters pointed out that a company might be unable to "commence construction" within the proposed 18-month period, because it might be unable to get sufficiently in advance any preconstruction permits that federal or state law outside the SIP might require. They recommended that EPA set the deadline 18 months from issuance of the last necessary federal authorization. That recommendation parallels a proposal EPA made in July 1979 to amend the grandfather provisions of the 1978 regulations so as to extend the "commence" construction deadlines in those provisions generally to a date nine months from the issuance of the last necessary federal authorization. See 44 FR 42722. EPA has not yet completed that rulemaking. When it does, it will decide whether to accept the recommendation of the commenters here.

EPA has decided to promulgate the grandfather provision basically as proposed. See § 52.21(i)(4)(v). The final provision contains the following clause: "the owner or operator * * * obtained all final federal, state and local preconstruction approvals or permits necessary" under the SIP by a certain date. EPA intends that clause to refer only to the date on which the reviewing authority issues the permit. For emissions increases as a result of SIP relaxations, the appropriate date is the effective date of final EPA approval. Because of the construction moratorium, 40 CFR 52.24, 44 FR 38471, some SIP permits may be issued before the time that the owner or operator is allowed to begin construction. Nevertheless, in EPA's view, the owner or operator "obtains" the permit when the reviewing authority issues it, even if permission to begin construction takes effect subsequently.

EPA received no comments on its proposal to put into regulatory language the provision in section 168(b) of the Act that only the PSD regulations in effect before August 7, 1977, apply to any project on which construction "commenced" by then. Hence, EPA is promulgating that provision basically as proposed. See section 52.21(i)(4)(i).

2. Substantive Provisions Relating to BACT.

a. *Proposed transition provisions:* In September, EPA proposed certain new substantive requirements. One of the new requirements was that a project apply BACT for each pollutant regulated under the Act that the project would emit in a significant, but "minor" amount. Under the 1978 Part 52 regulations, a project has to apply BACT only for each pollutant regulated under the Act that the project would emit in a

"major" amount. EPA added that it intended to put the new BACT requirement into effect immediately upon its promulgation.

In proposing the new BACT requirement, EPA also proposed to exempt certain projects from it. In particular, the Agency proposed not to apply the requirement to any project whose application for a PSD permit was complete before the requirement came into effect. *See 44 FR 51928, 51954 (proposed § 52.21(j)(2)).*

b. Comments and final action on proposed transition provisions relating to BACT requirements: In general, those commenting on the proposal to grandfather any project whose application was complete before the date of publication of this notice from the new BACT requirement favored such an exemption for at least those projects. Only two commenters, the same two who opposed the grandfather provision discussed above, opposed such an exemption for any project. They argued that EPA should adhere to the transitional rules that it established in the 1978 regulations, so that the new BACT requirements would apply to any project that fell or would fall within the coverage of those regulations, even to those which have already received a PSD permit.

EPA disagrees that it should or must adhere to the 1978 transitional rules in applying the new BACT requirements. As discussed above, the court in *Citizens to Save Spencer County* held that EPA has a "responsibility to harmonize the statutory provisions [sections 165(a) and 168] so as to implement the congressional mandate that new federal preconstruction review requirements be instituted promptly but with minimum economic dislocation." 600 F.2d at 851. Requiring a company which has already received a permit, or completed application for one, to amend project designs and permit applications to include BACT for pollutants to be emitted in "minor" amounts would hardly minimize economic dislocation. To the contrary, it would delay construction substantially in many cases. The benefits of that delay in those cases would probably fail to counterbalance its cost, since the new BACT requirements would apply only to pollutants this discrete group of projects would emit in "minor" amounts. Thus, applying the new BACT requirements retroactively to projects that already have a permit or a complete application would fail to give adequate expression to the economic considerations behind section 168.

Another commenter argued that the proposal did not go far enough, in that it

would require companies which on the date of promulgation were just about to file a complete application to amend project designs and applications. The commenter urged EPA to apply the new BACT requirement only to projects whose applications were not complete within one year after the date of publication of this notice in the Federal Register. That alternative, however, would fail to give adequate expression to the environmental considerations behind section 165(a). EPA therefore has rejected it, too.

Instead, EPA has decided to adopt a provision like the proposal which exempts from the new BACT requirements any project whose application was complete before this notice appears in the Federal Register. *See § 52.21(i)(9).* EPA believes that the final provision reasonably accommodates the purposes and concerns behind sections 165(a) and 168.⁶

The final provision differs from the proposed provision somewhat. First, it appears in paragraph (i), instead of paragraph (j); the provision that sets forth the general BACT requirement. EPA has sought to gather each of the exemption provisions into paragraph (i). Second, the new exemption provision exempts an eligible project from the new BACT requirement entirely, but adds that the project is subject to the BACT requirements of the 1978 regulations, if they would otherwise have applied. The purpose of that structure is in part to assure that BACT would apply to a pollutant for which the project would be "major" under the 1978 regulations, but "minor" under the new Part 52 regulations due to the new concepts of "potential to emit" and "modification."

The final Part 52 regulations contain a definition of the term "complete" in reference to an application. Under that definition an application becomes "complete" when it contains all of the information necessary for application processing.

It should be noted, finally, that the date an application was complete will generally differ from the date on which the reviewing authority makes its completeness determination, since the filing of the last necessary piece of information will typically occur before the determination is made. When EPA makes a completeness determination, it will specify the date as of which the application was "complete." That date

⁶Even if the conflict between sections 165(a) and 168 had not conferred on EPA the discretion to exempt projects with a complete application, EPA would have authority under section 301(a)(1) to exempt them, since applying the new BACT requirements to such projects would be unfair.

will be the date on which the last necessary piece of information was received. One of the provisions of the Consolidated Permit Regulations, 40 CFR 124.3(f) (discussed below), refers to the "effective date" of an application. Generally, the "effective date" of an application will follow the date it is "complete."

3. Substantive Provisions Relating to Air Quality Analyses.

a. Proposed transition provisions: Another new substantive requirement that EPA proposed in September was that an applicant provide an analysis of air quality in the area the project would affect for each pollutant regulated under the Act that the project would emit in "minor," but still significant, amounts. Under the 1978 regulations, an applicant had to provide such an analysis only for those pollutants for which the project would be "major" and for which EPA had set a national ambient air quality standard (NAAQS). The remaining new requirement was that, if the project would emit particulate matter or sulfur dioxide in a significant amount, the analysis focus on the extent to which ambient concentrations of the particular pollutant had consumed the applicable PSD increments.

In proposing the new requirements for air quality analyses, EPA also proposed to exempt certain projects from them. In particular, EPA proposed not to apply the new requirements to any project whose application was complete before the requirements came into effect. *See 44 FR 51928, 51954 (proposed § 52.21(n)(1)(i)).*

The 1978 Part 52 regulations contained a requirement that any air quality analysis for a pollutant for which a NAAQS exists ("criteria pollutant") must generally include monitoring data gathered over and relating to the year preceding the submission of a complete application. In September, EPA proposed a reformulation of that requirement. That requirement, however, when coupled with the new requirement for an analysis for each criteria pollutant emitted in "minor" amounts, could cause a prospective applicant substantial delay. As a result, EPA also proposed to require any applicant who does not file a complete application before the date of promulgation to gather monitoring data for any such "minor" pollutant only over the period (up to one year) from the date of promulgation and the date the applicant would file an otherwise complete application. *See id.* at 51928, 51954 (proposed § 52.21(n)(1)(ii)).

b. Comments and final action on transition provisions relating to air quality analysis requirements: Two.

commenters argued that EPA should adhere to the transitional rules of the 1978 regulations with respect to the new requirements for air quality analyses. In their view, the monitoring requirements should apply in general to any "major" project for which certain permits were not obtained by March 1, 1978, and on which construction had not commenced by March 19, 1979. Certain other commenters objected to any application of the new monitoring requirements to a company which, although it had not filed a complete application by the date of promulgation, had nevertheless previously undertaken a program of monitoring the EPA or a state had approved.

Some additional comments were directed to the proposed phase-in provision. Those comments contended that a prospective applicant would find it impossible to satisfy that provision, since the purchase, installation, and "debugging" of new monitoring equipment, together with the analysis of any new data, would require at least several months. Many commenters did note that the draft of the revision of the monitoring guideline would allow three months for those tasks, but asserted that even three months would generally be insufficient. See U.S. EPA, (*Draft Ambient Monitoring Guidelines for Prevention of Significant Deterioration (PSD)*, (October 1979). Some recommended an allowance of 2-5 months, others 6-9 months, and still others more than 10 months.

A number of commenters observed that the proposed regulatory language failed to embody the intent that the preamble had described. First, the proposed exemption for each "major" project whose application was complete before the date of promulgation focused only on the new requirement for an analyses for each pollutant that the project would emit in a "minor" amount. Hence, it would have failed to shield each such project from the new requirement for an analysis for each non-criteria pollutant that the project would emit in a "major" amount. Second, the provision that would have phased-in any new monitoring requirements focused only on projects whose applications were complete by the date of promulgation. Consequently, it specified no phase-in rules for projects whose applications were not complete by then, the very projects that EPA intended the rules to benefit.

Finally, one commenter pointed out an anomaly in the proposed phase-in provision: it focused only on the new requirement, in proposed § 52.21(n)(1)(iii), that an applicant

provide monitoring data for any criteria pollutant that the project would emit in "minor" amounts. As a result, the proposed provision would have required a company with a project that is "major" under the new regulations, but was not under the 1978 regulations, to gather the full amount of monitoring data for each of its "major" pollutants, but none of its "minor" pollutants. But, since the monitoring requirements would have been new for the "major" pollutants, as well as the "minor" pollutants, such a company should have protection with respect to the "major" pollutants, too.

The final transition provisions relating to the new requirements for air quality analyses adhere to the spirit of the proposed provisions, but differ substantially in structure and articulation. One of the four final provisions, § 52.21(i)(9), exempts certain sources and modifications from the new requirements with respect to monitoring entirely. It provides that those requirements shall *not* apply to a source of modification that was subject to the 1978 Part 52 regulations, if its application becomes complete on or before the date this notice appears in the Federal Register. Instead, the air quality analysis requirements in the 1978 regulations apply to the source or modification.

Two of the three remaining provisions exempt certain other sources and modifications from the new monitoring requirements for criteria and non-criteria pollutants. One of those provisions, § 52.21(i)(10)(i), exempts a source or modification that would have been subject to the 1978 Part 52 regulations from those new monitoring requirements, if its application becomes complete with respect to the requirements of the new Part 52 regulations, other than the new monitoring requirements, on or before a date ten months from the date of promulgation. The provision adds the clarification that the monitoring requirements of the 1978 regulations apply instead to the source or modification. The other exemption provision, § 52.21(i)(10)(ii), is similar. It exempts a source or modification that would not have been subject to the 1978 Part 52 regulations, if its application becomes complete with respect to the requirements of the New Part 52 regulations, other than those for monitoring, on or before a date ten months from the date this notice appears in the Federal Register.

The remaining provision, § 52.21(m)(1)(v), phases-in the monitoring requirements of new § 52.21(m)(1)(iv) to the extent that they

place monitoring burdens on an applicant that the 1978 Part 52 regulations would not have imposed. Section (m)(1)(iv) provides in general that any required air quality analysis for a criteria pollutant must include monitoring data gathered over a period of at least one year. However, the new phase-in provision establishes the general rule that for certain applications the required monitoring data shall have been gathered over a period at least equal to the period from the date six months from the date of promulgation to the date the application becomes complete, except as to the monitoring requirements of the new Part 52 regulations. The applications to which this provision applies are those which become complete, except as to those monitoring requirements, between the date ten months from promulgation and the date eighteen months from promulgation. The new phase-in provision then states three exceptions to that general rule. First, an applicant with a project that would have been subject to the 1978 Part 52 regulations must provide at least whatever monitoring data the 1978 Part 52 regulations would have required the applicant to provide. Second, if the Administrator determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a shorter period (not to be less than four months), the required data may be gathered over at least that shorter period. Finally, if the monitoring data would relate exclusively to ozone and would not have been required under the 1978 regulations, the Administrator may waive the otherwise applicable requirements of the phase-in provision to the extent that the applicant shows that the monitoring data would be unrepresentative of air quality over a full year.

The following example illustrates how the proposed phase-in provision works. A company proposes to construct a new plant that would emit sulfur dioxide and particulate matter. Under both the new Part 52 regulations and the 1978 regulations, the plant would be "major" for sulfur dioxide and "minor" for particulate matter. The emissions of particulate matter would not be *de minimis*. But for the phase-in provision, the new Part 52 regulations would require an application for a permit for the plant to contain a year's worth of monitoring data for both sulfur dioxide and particulate matter. (This assumes that the Administrator does not determine that a complete and adequate analysis could be accomplished with data gathered over a shorter period.)

The 1978 regulations would have required the application to contain a year's worth of data for just sulfur dioxide. The company submits an application which becomes complete, except with respect to monitoring, at the end of the fifteenth month after promulgation. Under the phase-in provision, the application must contain (1) a year's worth of monitoring data for sulfur dioxide and (2) nine months' worth of data for particulate matter.

The four final provisions embody EPA's response to the comments on the proposals. First, EPA has adopted the fundamental approach of the proposal, which was to apply the new monitoring requirements prospectively only. EPA has concluded that that approach reasonably accommodates the purposes and concerns of sections 165(a) and (e)(2), on the one hand, and section 168, on the other. In brief, the approach institutes the new requirements promptly, but with minimum economic dislocation. See *Citizens To Save Spencer County v. EPA*, 600 F.2d at 851. Full and immediate application of the new monitoring requirements would have caused substantial delays in the submission of complete applications and hence the issuance of permits, but provided little direct environmental benefit in return. As for applicants who undertook an approved program of monitoring before the date of this notice, the phase-in provision affords them adequate protection from delay, while at the same time generally demanding as much compliance with the new monitoring requirements as possible.⁷ In short, EPA disagreed with the commenters who complained that the proposals would have instituted the new requirements too late, and with those who complained that the proposals would have instituted them too soon.

Second, with respect to the new monitoring requirements for criteria and non-criteria pollutants, EPA has established a grace period of ten months in the final grandfather provisions. It has done so because it agrees with the commenters who asserted that instituting a new monitoring program and analyzing the data it generates requires more than three months in many, if not most, circumstances. EPA has selected a grace period of ten months with respect to monitoring for both criteria and non-criteria pollutants, first, because six months is an estimate

of the amount of time that would generally be needed to complete those tasks and, second, because there is little usefulness to less than four months of data for most pollutants.

The promulgated provisions cure the ambiguities in the proposal observed by some commenters. Section 52.21(i)(10) exempts an eligible project from the requirements relating, not only to any non-criteria pollutant that it would emit in "minor" amounts, but also to any non-criteria pollutant that it would emit in "major" amounts. In addition, the phase-in provisions now deal explicitly with projects whose applications were *not* complete by the applicable deadline. Finally, § 52.21(i)(10) protects not only projects that were subject to the 1978 regulations, but also projects that were not subject to them.

4. Comments on the effective date of the substantive provisions.

In proposing the new substantive provisions relating to BACT and air quality analyses, the Agency stated that it intended to put those new provisions into effect immediately upon their promulgation. One commenter contended that EPA should put the new provisions into effect 30 days after promulgation, rather than immediately on the date of promulgation, so that "potential applicants [would have] sufficient lead time in planning modifications and new sources." With respect to the new provisions relating to air quality monitoring, the 10-month grace period and phase-in provision described above should satisfy the concerns of the commenter. With respect to the new BACT provisions, however, EPA disagrees. Prospective applicants have had ample warning of the new BACT provisions. The court in *Alabama Power* held in June of 1979 that Congress intended them to be imposed and in September 1979 EPA specified when it intended to impose them. Therefore, there is good cause to make these requirements immediately effective. The Administrative Procedure Act (APA), moreover, would not require a 30-day delay in implementation, since the provisions amount to legal interpretations. See APA section 4(d)(2), 5 U.S.C. section 553(d)(2).

5. New Provisions Governing Procedure.

EPA recently promulgated regulations aimed at consolidating and unifying various permit requirements and procedures. See 45 FR 33290 (May 19, 1979) (the "Consolidated Permit Regulations"). Those new regulations contain provisions which will govern the processing of applications for permits under the Part 52 PSD regulations. Those provisions appear as 40 CFR 124.1-

124.21 and 124.41-124.42, 45 FR 33485-93. Paragraph (r) of the 1978 Part 52 regulations has governed the processing of PSD permit applications under those 1978 regulations.

The Consolidated Permit Regulations contain a provision, section 124.21, which describes the transition from the procedures of paragraph (r) to the new consolidated permit procedures. It provides that those new procedures shall "apply to PSD proceedings in progress on July 18, 1980." 45 FR 33492. It adds that the requirements of sections 124.9 and 124.18, which would require the preparation of a formal administrative record, shall apply only to "PSD permits for which draft permits [i.e., preliminary determinations] were prepared after the effective date of these regulations." *Id.*

In promulgating the new Part 52 regulations, EPA has adopted a new paragraph (q). It states that the new consolidated permit procedures govern the processing of PSD permit applications to the extent that they apply. It adds that the procedures of the 1978 Part 52 regulations continue to apply to the extent that the new procedures have not yet displaced them. In time, the new procedures will displace the old ones entirely.

B. Part 51 PSD Regulations

In September, EPA did not propose an amendments to the 1978 Part 51 regulations that paralleled the proposed Part 52 transition provisions. The Part 51 amendments that EPA did propose paralleled only the Part 52 provisions that would affect coverage and substance. The few comments that were submitted focused on this gap.

One commenter asked that EPA state in the Part 51 regulations that a state which has already adopted and obtained EPA approval of its own PSD program may, in conforming that program to the new Part 51 regulations, adopt a rescission provision like new § 52.21(w) into its plan. EPA believes that it is unnecessary to make such a statement in regulatory form. A state is free, in any event, to adopt such a provision and EPA would approve it.

Another commenter asked EPA to establish in the Part 51 regulations that a state with its own PSD program, in adopting new, more stringent requirements for BACT and air quality assessments in accordance with the new Part 51 regulations, may also adopt grandfather provisions that would apply the new requirements prospectively. In response, EPA had added a new section 51.24(a)(6) to the Part 51 regulations. The new section provides that PSD SIP revision may operate prospectively,

⁷Even if the conflict between sections 165(e), 165(e)(2), and 168 had not conferred on EPA the discretion to exempt certain projects from the new air quality analysis requirements, EPA would have had authority under section 301(a)(1) to exempt those projects, because application of those requirements would have been unfair.

thereby establishing that a state may adopt grandfather provisions of that sort. It adds, however, that the revision must take effect no later than the date of its approval. EPA has also added a new section 51.24(i)(9) to the Part 51 regulations. It provides that an approval revision to a state PSD program, which program EPA has already approved, may contain transition provisions that parallel the new Part 52 transition provisions. The new section also establishes that the proposed transition provisions must operate at least as stringently as their Part 52 counterpart would in the context of the state PSD program.

Finally, a third commenter urged EPA to require a state with its own PSD program to delete these aspects of the plan that go beyond the requirements of the new Part 51 regulations within nine months after the date of promulgation of those new regulations, unless the state within that period of time submits "to EPA written acknowledgment that it is not required by federal law to include such provisions in its state plan, but has nevertheless elected to do so under state law pursuant to section 116 of the Act." The commenter feared that, absent such a requirement, inertia and lack of resources might prevent some states from deleting the provisions in question. Such a requirement, however, would interfere unnecessarily in the affairs of a state. EPA, moreover, doubts that it would have the authority in any event to repeal the more stringent aspects of a state plan simply because the state failed to say by a certain time that it wanted to retain those aspects. EPA therefore has not promulgated the requirement sought by the commenter.

After examining the Part 51 regulations in response to those comments, EPA has decided to add two new provisions. The first, section 51.24(a)(6), merely states in regulatory form what section 406(d)(2)(B) of the Clean Air Act Amendments of 1977 already states: any PSD SIP revision required by the new Part 51 regulations must be adopted and submitted within nine months of the date this notice appears in the Federal Register. The second provision, § 51.24(a)(6)(ii), establishes explicitly that any PSD SIP revision must contain provisions which describe when and as to what sources and modifications the revision is to take effect. The purpose of that requirement is merely to minimize confusion and uncertainty during the transition from any old to new PSD SIP requirements.

C. Offset Ruling

The amendments to the Offset Ruling which EPA is announcing in this notice

expand its coverage, just as the amendments to the Part 52 PSD regulations expand its coverage. In EPA's view, the expansion of the coverage of the Offset Ruling should operate prospectively only. Hence, it has inserted into the Ruling a grandfather provision that parallels the relevant PSD grandfather provision. It provides that the Ruling does not apply to any source or modification that was not subject to the version of the Ruling in effect prior to the date this notice appears in the Federal Register, if all necessary SIP permits were obtained for the source or modification by that date and if construction commences within 18 months of that date.

D. Part 51 Nonattainment Regulations

Pursuant to section 406(d)(2)(B) of the Clean Air Act Amendments of 1977, states will have nine months after the date of this notice appears in the Federal Register in which to adopt and submit any new definitions and other regulatory provisions required by new 40 CFR 51.18(j). States need not adopt verbatim the definitions in section 51.18(j)(1), but they must demonstrate that any different definitions they retain or adopt have the effect of being at least as stringent as those set out in § 51.18(j)(1). If a state plan currently includes definitions or regulatory provisions which are more stringent than the nonattainment definitions and other provisions contained in these final rules, the state has the choice of retaining its current regulations or of revising them so as to conform to EPA's rules. If a state does not submit any necessary revisions to its plan within nine months after the date this notice appears in the Federal Register, the construction moratorium will go into effect 15 months after this date in all nonattainment areas in that state. The additional 6 months is consistent with the review period allotted for Part D submitted under section 110(a)(2)(I) and 129(c) of Pub. L. 95-95.

EPA received only one comment on transitional requirements for § 51.18(j). This commenter requested that EPA allow states which have already adopted NSR regulations pursuant to section 173 of the Act be permitted to adopt a rescission provision like that of § 52.21(w). EPA believes that to make such a statement in regulatory form is unnecessary. A state is free to adopt such a provision, and EPA will approve it, provided that the state's NSR program meets the requirements of section 173 and that permit rescission will not interfere with reasonable further progress or attainment of ambient air quality standards.

E. Construction Moratorium

The amendments to the construction moratorium expand its coverage in some ways, too. Hence, EPA has promulgated a grandfather provision patterned after the relevant PSD and Offset Ruling provisions. It appears as § 52.24(g).

F. Pending SIP Revisions

By the date this notice appears in the Federal Register, EPA will not have taken final action on many PSD and nonattainment SIP revisions that states have already submitted. EPA intends to review those pending revisions under the requirements that applied to them before the date of promulgation. To wait until a state had revised its revisions to bring them into line with the new PSD and nonattainment requirements would cause the state and its industry to suffer a heavy and undue burden, particularly in those cases where approval of a Part D plan is needed to lift the construction moratorium.

G. Effective Date of the Nonattainment Provisions

EPA has made all of the new nonattainment provisions announced here effective immediately upon their promulgation. EPA finds that it has "good cause" within the meaning of the relevant provisions of the Administrative Procedure Act to do so. First, the new provisions in the main provide relief from pre-existing regulatory burdens. Second, the decision in *Alabama Power* and the September 1979 proposal provided ample warning of the new changes. Finally, it is important for planning and management by EPA, the states and industry that these new provisions come into effect as soon as possible.

H. Miscellaneous

Under the amendments announced in this notice, each set of PSD and nonattainment regulations uses the phrase "this section" at some points and phrases such as "40 CFR 52.21" at other points. EPA intends "this section," when used in a particular set of regulations to refer only to the version of the regulations which has resulted from the amendments announced here. For example, the phrase "this section" in new § 52.21(i)(1)(i) refers only to the Part 52 PSD regulations as newly constituted. EPA intends phrases such as "40 CFR 52.21" to refer to any version of the particular regulations which has appeared or is to appear at the particular location in the Code of Federal Regulations. For example, "40 CFR 52.21" refers to each version of the Part 52 PSD regulations that has ever

existed, including the version that has resulted from the amendments announced here.

V. Potential to Emit

The preconstruction review requirements of section 165 of the Act apply to any "major emitting facility." 42 U.S.C. 7475. Pursuant to section 169(1), that term includes any stationary source which emits or has the "potential to emit" 100 tons per year or more of any pollutant, for sources included in one of 28 specified source categories, or 250 tons per year or more of any pollutant for any other type of source. 42 U.S.C. 7479(1).

A. Control Equipment

Obviously, many more sources would be affected if the term "potential to emit" referred to the amount of pollution that a source would emit without controls than if it took the operation of control equipment into account. In the PSD regulations promulgated on June 19, 1978, EPA took the former approach and defined "potential to emit" as "the capability at maximum capacity to emit a pollutant in the absence of air pollution control equipment." 40 CFR 51.24(b)(3), 52.21(b)(3) (1979). This approach was rejected by the *Alabama Power* decision which held that Congress intended that, in determining a facility's potential to emit, EPA "must look to the facility's 'design capacity' a concept which not only includes a facility's maximum productive capacity (a criterion employed by EPA) but also takes into account the anticipated functioning of the air pollution control equipment designed into the facility." 13 ERC 1993, 2003.

In response to the court's decision, EPA proposed, on September 5, 1979, a revised definition under which the application of control equipment would be taken into account in computing potential emissions. That approach, which was very strongly supported by public comments, is now being promulgated. 40 CFR 51.24(b)(5) and 52.21(b)(5).

The proposal noted that EPA will assume that a facility's air pollution control equipment will function in the manner reasonably anticipated. In this promulgation the Administrator is implementing the proposed approach by requiring that operation of control equipment be an enforceable requirement. In other words, a company may receive credit for the application of control equipment only to the extent that the resulting reduction in emissions is federally enforceable (see below). This provision is necessary, as a practical matter, to ensure that sources

will perform the proper operation and maintenance for the control equipment. Thus, a source installing control equipment that would reduce emissions more than that required by generally applicable emissions limitations cannot receive credit for the additional increment of pollution reduction, unless it is federally enforceable. The definition of "potential to emit" is being modified appropriately.

Under the definition being promulgated, the potential to emit of existing sources with respect to the treatment of enforceable in-place control equipment shall be defined in the same fashion as discussed above for new sources. This responds to commenters who complained of this discrepancy in the September 5 proposal. Accordingly, potential to emit for all sources means the ability at maximum design capacity to emit air pollution, taking into account any *in-place* control equipment. Design capacity, and thus potential to emit, may be further limited if control equipment better than that normally required by the applicable SIP is installed and a correspondingly more stringent level of emissions control is included as an enforceable permit condition. Finally, it should be noted that the potential to emit of a stationary source in today's rule is of primary importance in defining when a source would be major; it is not generally used in determining increment consumption or the baseline for assessing emission increases and decreases at a source (see Modification).

B. Continuous Operation

Under the existing definition of "potential to emit," a source can avoid PSD review if it binds itself, in a federally enforceable permit, to sufficiently limited hours of operation. 40 CFR 51.24(v)(5), 52.21(b)(5) (1979). In the September 5, 1979 proposal, EPA proposed to delete the clause which allows such adjustments and to presume continuous (24 hours per day, 365 days per year) operation. Consistent with that change, EPA also proposed to delete, from the same regulation, the words "or amount"; those words at present allow permit limitations on amount of materials combusted, processed, or stored to be considered in computing potential to emit. In making this proposal, the Administrator also requested comment on the need to adjust the assumption of continuous operation, in the case of sources which are physically incapable of such operation.

Many commenters (169 of 173) have strongly criticized this proposal, the most frequent response being that few

sources operate constantly, and most cannot do so. These commenters also advised the Agency of certain benefits which would accrue from allowance of permit conditions in computing potential to emit. For example, a benefit noted is that such an approach would better relate the PSD permit applicability of new sources to the offset potential of existing sources, and to how the increment would be consumed. This approach was also claimed to be consistent with EPA's stated goal of developing PSD requirements which will fit into state programs in such a way as to minimize disruption of those programs and promote PSD SIP development by the states. Additionally, insignificant reviews would be minimized and PSD applicability would be more reflective of emissions actually produced by the source.

There was some comment in support of the proposal. A state environmental agency noted that emissions limits calculated from less than continuous operation are less easily enforceable than those which are based on continuous operation. An environmental group supported the proposal on the grounds that it is consistent with the interpretation of "full design capacity," that it would be appropriately technology-forcing, and that it is necessary to protect the short term increment. These concerns are addressed below.

The court based its definition of "potential to emit" on the source's full-design capacity. *Id.* at 2003. The June opinion in *Alabama Power* did not directly address the acceptability of legal limitations on operation but did stress design capacity in the sense of physical and technological, as opposed to operational, limitations. However, in the final opinion, released on December 14, 1979, the court stated:

The design capacity of a facility rarely contemplates uninterrupted operation 24 hours per day, 365 days per year. Projected downtime for repairs and maintenance or other factors may reduce the hours of operation that are appropriately considered in the calculation of a facility's "potential to emit." (*Id.* at 2005, n. 73.) (Emphasis added)

EPA interprets this language as not precluding permit conditions, that are federally enforceable under the applicable SIP, from circumscribing a source's potential to emit. In view of the above, the Agency believes it has discretion to adopt the most reasonable approach to this issue and has, therefore, reconsidered its proposal. Today's regulations recognize the ability of all federally enforceable limitations to constrain the potential to emit of a stationary source.

The Administrator believes that the policy concerning "enforceable permit conditions" is responsive to most of the concerns raised by commenters who were critical of EPA's proposal. New sources are now allowed to avoid NSR for PSD and nonattainment areas by limiting their type or amount of operation. Moreover, potential to emit is now defined in the same way for new and existing stationary sources. The use of certain permit conditions also addresses the concerns raised regarding physical incapability and peak load or standby units. This is, source owners or operators can now agree to source-specific permit conditions to limit their operation as appropriate. Such conditions can make infrequent operation and other physically limiting factors outside the design capacity of an emissions unit legally enforceable and can thereby limit the applicability of NSR.

The final policy concerning enforceable permit conditions has also taken in account the concerns of those favoring the proposal. One commenter noted that limited operation conditions would require greater enforcement attention. The Administrator agrees, but he believes that such conditions can be reasonably enforced. Another commenter also noted the need to minimize any air quality threats to short term increments by sources with intermittent operation but high short term rates of emission. No commenter presented a solution to this problem. EPA believes, however, that short term emissions limitations can be computed to address threats to short term increments, should any problems actually arise. It would be the responsibility of the reviewing authority to identify, in periodic evaluations, any sources causing such problems and apply appropriate limitations on their emissions. The Administrator will consider rulemaking to develop short term applicability thresholds, if necessary, after a reasonable amount of review experience has been developed.

Finally, as a result of today's policy, a potential problem exists concerning the future relaxation of a preconstruction permit that previously caused a proposed stationary source to enjoy minor rather than major status. For example, a source might evade NSR through agreement to unrealistically stringent operating limitations in its permit, and later obtain a relaxation of the condition. The Agency believes that the problem can be dealt with by 40 CFR 52.21(r)(4), entitled "Source Obligation." That paragraph provides that any owner or operator of a source, who would

receive a relaxation of a permit condition that had enabled avoidance of NSR, would then become subject to review for all units subject to the original permit, as if they were new sources. In other words, if operational limitations are to be considered as an aspect of a source's design, it is reasonable that the permit accurately incorporate that design. If such operation is changed, the permit, and concomitant obligations, should be correspondingly changed.

C. Additional Guidance

Fugitive emissions under today's regulations are applicable in defining potential to emit. (See Fugitive Emissions.) However, like the proposal, such emissions do not count in assessing permit applicability unless a specified type of source category is involved. To accomplish this a specific exemption has been added to the final regulations by which fugitive emissions will be included in determining potential to emit only for specified source categories.

The definition of "potential to emit" is important not only to PSD preconstruction review, but also to NSR under the Offset Ruling (44 FR 3274), the statutory requirements for nonattainment areas, and the restrictions on construction in sections 110(a)(2)(I) and 173(4) of the Act. EPA is promulgating for each of those nonattainment programs the same definition of "potential to emit" that it is promulgating for the PSD program, as well as a provision like § 52.21(r)(4). EPA also intends this definition to be implemented for those programs in the same way as for PSD.

EPA has traditionally distinguished, for the purpose of NSR, between the direct emissions of a source and its "secondary emissions." (See Additional Issues.) In revising the Offset Ruling in January 1979 the Agency added a definition of "secondary emissions" and a provision describing for what purposes and under what circumstances those emissions are to be taken into account. See 44 FR 3281, 3283-84 (January 16, 1979). EPA is now adding that concept to the PSD regulations and to the nonattainment provisions relating to NSR and the restrictions on construction. For each of those sets of provisions "secondary emissions" are to be excluded in determining whether the regulations apply to a source (*i.e.*, whether a source or modification is "major"). Similarly, the control technology requirements of BACT and lowest achievable emission rate (LAER) do not apply to secondary emissions. How the Agency would treat those emissions for other purposes, including

PSD air quality impact analysis, is described in Additional Issues.

VI. 50-Ton Exemption

Under the 1978 PSD regulations, stationary sources or modifications with allowable emissions of less than 50 tons per year, 1000 pounds per day, or 100 pounds per hour were in general exempted from the BACT and ambient air quality analysis PSD requirements. 40 CFR 51.24(j)(2), (k), and 52.21(j)(2), (k) (1979). In its preliminary *per curiam* decision the court thought that its ruling on "potential to emit" made a ruling on the 50-ton exemption "academic," since no 50-ton source would ever be major if "potential to emit" referred to controlled emissions. 13 ERC at 1228-29.

Nevertheless, it remanded the exemption to the Agency for reconsideration and noted that the Agency had exceeded its authority in establishing the exemption. In response, EPA proposed to delete the provisions which embodied the exemption, and to delete parallel provisions in the Offset Ruling. EPA, however, proposed adding to the PSD regulations a 50-ton exemption for certain modifications. The proposed exemption tracked section 165(b) of the Act closely, but not exactly. Essentially it provided that a source qualifying for the exemption would face a limited air quality review for SO₂ and PM. Use of the exemption would be restricted to modifications, at a plant existing as of August 7, 1977, entailing emissions increases of 50 tons or less of any pollutant after application of BACT and which would impact no Class I area or interfere with the attainment of PM or SO₂ standards. All net emission changes since August 7, 1977 would be aggregated in applying the exemption.

All of the seventeen commenters who focused on the proposed provision expressed general agreement with this approach, but some commenters stated that the exemption should be broader. For example, four commenters wanted an additional 50-ton exemption after each full review. Five commenters requested a special, more lenient, review for pollutants whose emissions rates fall between 50 tons per year and the *de minimis* level in those cases where the exemption would not apply. The Administrator finds no grounds for providing additional exemptions after each review. Similarly, there is no justification or authority under section 165(b) for a special limited review for emissions increases falling between *de minimis* amounts and the 50-ton level. A few commenters suggested that other eligibility values than 50 tons be used. EPA responds that section 165 of the Act

mandates the 50-ton figure, but that much of these commenters' concerns are dealt with by the *de minimis* provisions being promulgated today. Two other commenters requested that the exemption be governed by net emissions increases. Today's regulations provide that review is applicable to net emissions increases, thus addressing the concerns of the two commenters cited above. With this exception, and the two noted below, the 50-ton exemption is being promulgated as proposed.

Some commenters pointed out that EPA's proposed 50-ton exemption clause was more limited in its application than the Clean Air Act language of section 165(b), in that the September 5 proposal contained additional consideration of Class I area impacts (e.g., 44 FR 51949, 40 CFR 51.24(k)(2)(i)). EPA agrees with these commenters and has eliminated that portion of the 50-ton exemption language dealing with Class I areas. See 40 CFR 51.24(i)(7) and 52.21(i)(7).

The 50-ton exemption contained in the Act made those sources existing as of August 7, 1977, eligible for the exemption; the same applicability date was proposed in September 1979 for this revised exemption. The *Alabama Power* final opinion suggested that EPA had authority to conform the eligibility date for the section 165(b) exemption to the "effective date" of the preconstruction permit requirements of the 1978 regulations, i.e., March 1, 1978. In the January 30, 1980 Federal Register notice EPA sought comment on changing the eligibility date and on whether March 1, 1978 would be the appropriate choice.

Twenty-four commenters addressed the issue of the eligibility date. Nineteen of these favored a date of March 1 or 19, 1978. Four wanted the date to be that of the final promulgation of these regulations. One commenter disagreed with the date change because it considers the exemption itself to be unauthorized; however, the Act clearly provides for the exemption, as explained elsewhere in this section. One industrial group alleged that the date of promulgation would be the proper eligibility date for the specific case of fugitive emissions, in that fugitives were not regulated as of March 1, 1978. This is apparently a reference to the fact that rulemaking relative to potential to emit (see Potential To Emit) had not yet been performed. In fact, though, fugitive emissions were covered by the 1978 regulations and the calculation of potential to emit does not change that circumstance. The commenters preferring March 19 to March 1 referred to a statement in *Alabama Power* that March 19, 1978 is the "effective date" of

the regulations. 13 ERC at 2006, n.79. The "effective date" of those regulations is, however, March 1, 1978. See *Citizens to Preserve Spencer County v. EPA*, 12 ERC 1961, 1978; and Preamble to 1978 Regulations, 43 FR 26380, 26390. Concerning the comments favoring the date of this promulgation as the eligibility date, the Administrator notes that section 165(b) of the Act limits eligibility for the 50-ton exemption to those sources in existence on the date of enactment of the 1977 Amendments to the Act. For the reasons noted in the *Alabama Power* decision, EPA has authority to extend eligibility to March 1, 1978. However, the Agency cannot extend this deadline to today's promulgation. For these reasons March 1, 1978 is now promulgated as the eligibility date for the 50-ton exemption.

VII. Fugitive Emissions

For PSD determinations prior to the *Alabama Power* decision, EPA considered all reasonably quantifiable emissions of a pollutant—including both point emissions (e.g., from a stack or chimney) and fugitive emissions—on the ground that the emissions deteriorate air quality regardless of how they emanate. This practice applied to calculations of a source's emissions and potential emissions of a given pollutant both: (1) for the threshold determination under section 169(1) of whether the source was a "major emitting facility" subject to section 165, and (2) for the permitting requirements of section 165 itself.

The *Alabama Power* court upheld EPA's practice for the latter purpose, and confirmed that:

The terms of section 165, which detail the preconstruction review and permit requirements for each new or modified "major emitting facility" apply with equal force to fugitive emissions and emissions from industrial point sources.

* * * * *

EPA is correct that a major emitting facility is subject to the requirements of section 165 for each pollutant it emits irrespective of the manner in which it is emitted. [13 ERC at 2016-2017.]

However, as to the first practice, the court held that section 169(1) is controlled by the rulemaking provision of section 302(j), and that fugitive emissions of a given pollutant may be included in the threshold calculation under section 169(1) only if the Administrator first determines, by rule, that they are to be included.

Accordingly, as part of the September 5, 1979 rulemaking proposal, the Administrator identified 27 categories of stationary sources for which he proposed to include fugitive emissions in threshold calculations of "major

emitting facility" status for purposes of both section 165 and new source review regulations. Numerous commenters responded that the Administrator's proposal did not constitute "adequate" rulemaking, and that fugitive emissions could not be included in threshold calculations unless the rulemaking also established, on an industry-by-industry basis, methods for quantification of fugitive emissions and for analysis of their impacts on air quality, and included the identification of effective techniques for their control. EPA has considered these comments, but believes that Congress intended the rulemaking provision of section 302(j) to serve a much simpler and narrower purpose.

As the court itself noted, "[t]he legislative history of this rulemaking provision is sparse," and it is therefore particularly difficult to discern Congress' motivation for including it. 13 ERC at 2017. In general, section 302(j) sets out the criteria for determining whether a source is "major" and hence subject to the stringent requirements of certain key provisions of the Act. Congress clearly intended such determinations to always include point emissions, the type most commonly associated with major polluters. It also expressed its affirmative intent not to exclude "non-point" or "fugitive" emissions from those determinations:

[T]he "major stationary source" definition is clarified to indicate the inclusion of major sources of fugitive emissions (last year's bill was unclear in this respect) * * *. [H.R. Rep. 95-294, 95th Cong. 1st Sess. 4 (1977).]

Rather than include fugitive emissions across-the-board, however, Congress left it to the Administrator to determine for which particular categories of sources fugitive emissions will be included in threshold calculations.

EPA therefore believes that the purpose of the rulemaking under section 302(j) is to afford members of affected categories of sources an opportunity to comment on the Administrator's determination to include fugitive emissions in the threshold calculation, and to allow them to present factual or policy arguments in support of claims that it would *not* be appropriate to do so. Although many such presentations will be technically oriented, EPA does not agree that section 302(j) requires the formal promulgation of measurement, modeling or control techniques or guidelines, because the fundamental decision which the Administrator is making under section 302(j) is whether fugitive emissions should be included in threshold calculations.

EPA finds support for this interpretation of section 302(j) in the fact that section 165 does *not* contain any rulemaking provision governing the substantive regulation of fugitive emissions. As explained earlier, the Alabama Power court confirmed that once a source is determined to be a major emitting facility under section 169(1), the substantive preconstruction review and permitting requirements of section 165 "apply with equal force to fugitive emissions and emissions from industrial point sources." In other words, even if fugitive emissions remain excluded from threshold calculations, section 165 requires that fugitive emissions be taken into account in determinations of whether NAAQS or allowable increments will be violated (section 165(a)(3)) and that fugitive emissions be subjected to BACT requirements (section 165(a)(4)). But these substantive provisions do *not* require EPA's prior promulgation of technical rules governing measurement, analysis or control such as those which the commenters suggest are necessary under section 302(j). Since the determination to include fugitive emissions in threshold applicability calculations is discretionary under sections 302(j) and 169(1), while the substantive regulation of fugitive emissions from all major emitting facilities is mandatory under section 165, EPA does not believe that the rulemaking provision of section 302(j) was intended to require the promulgation of such technical guidelines or regulations.

EPA therefore concludes that the rulemaking which it conducted was "adequate" under section 302(j) since affected sources were afforded the opportunity to comment upon the proposed inclusion of fugitive emissions in their threshold calculations. EPA's responses to more specific comments are set out below. Several commenters objected that the first 26 specific categories of sources identified in the proposal (as sources whose fugitive emissions would be taken into account in threshold calculations) were virtually identical to the 28 categories of sources identified in section 169(1) as sources with threshold tonnages of 100 tons per year (rather than 250 tons per year) for determinations of "major emitting facility" status.⁸ The commenter's complained that by merely copying the 28 sources without any other supporting

rationale, EPA failed to conduct proper rulemaking.

Although it is true that the two lists are virtually identical, it is not true that EPA failed to conduct proper rulemaking. To the contrary, the Administrator recognized that in specifically identifying 28 categories of sources in section 169(1), "Congress' intention was to identify facilities which, due to their size, are financially able to bear the substantial regulatory costs imposed by the PSD provisions and which, as a group, are primarily responsible for emission of the deleterious pollutants that besoul our nation's air."¹³ ERC at 2003. In light of that intent, the Administrator initially determined that as a matter of policy, it would be appropriate to count *all* emissions—including fugitive emissions—in threshold calculations of applicability for those 28 categories. The proposal reflected that determination as well as the Administrator's observation that, because those sources have traditionally been considered the major polluters in the country, EPA's experience in quantifying fugitive emissions from them is, in general, greater than its experience in doing so for other sources.⁹

Source Category and Reference

Primary zinc smelters

Technical Guidance for Control of Industrial Process Fugitive Particulate Emissions—March 1977 (EPA-450/3-77-010)

Portland cement plants (EPA-450/3-77-010)

Iron and steel mill plants

Particulate Emission Factors Applicable to Iron and Steel Industry (EPA-450/4-79-028) (EPA-450/3-77-010)

Primary aluminum ore reduction plants (EPA-450/3-77-010)

Primary copper smelters (EPA-450/3-77-010)

Petroleum refineries Compilation of Air Pollutant Emission Factors (AP-42)

Lime plants

(NSPS) (AP-42) (EPA-450/3-77-010)

Phosphate rock processing plants (EPA-450/3-77-010)

Coke oven batteries (EPA-450/4-79-028)

Carbon black plants (AP-42)

Primary lead smelters (AP-42) (EPA-450/3-77-010)

Sintering plants

(See Iron and steel mill plants)

Fossil fuel-fired boilers

(See Fossil fuel-fired steam electric plants)

Petroleum storage and transfer units (AP-42)

Fossil fuel-fired steam electric plants

(EPA-450/3-77-010)

Several commenters pointed out, however, that the two lists were not identical insofar as certain restrictions or limitations for six categories of sources in the section 169(1) list were not reflected in the proposed section 302(j) list. Specifically, the section 169(1) list includes only the following (the italicized portions were omitted from the proposal): fossil-fuel fired steam electric plants *of more than two-hundred-and-fifty million British thermal units per hour heat input*; coal cleaning plants (*thermal dryers*); municipal incinerators *capable of charging more than two-hundred-and-fifty tons of refuse per day*; carbon black plants (*furnace process*); fossil-fuel boilers *of more than two-hundred-and-fifty million British thermal units per hour heat input*; and petroleum storage and transfer facilities *with a capacity exceeding three-hundred-thousand barrels*. These discrepancies are the result of an inadvertent administrative error, since EPA intended to identify in the proposed section 302(j) list the same categories of sources identified by Congress in the section 169(1) list. Accordingly, the final list promulgated today reflects the qualifying descriptions specified above for the six categories of sources. Several commenters objected to the last category on the list of sources for which the Administrator proposed to include fugitive emissions in threshold calculations—namely, "any other stationary source category which, at the time of the applicability determination, is being regulated under section 111 or 112 of the Act." Section 111 concerns the establishment of standards of performance for new stationary sources (new source performance standards or NSPS) and section 112 concerns the establishment of national emissions standards for hazardous air pollutants (NESHAP). The commenters argued that the focus of these provisions is on emissions controls rather than on ambient air quality, and that there is therefore no logical link to support the automatic inclusion of fugitive emissions from a source for PSD threshold calculation purposes simply because the source is being regulated under section 111 or section 112. EPA disagrees with some of the commenters' assumptions and characterizations of NSPS and NESHAP regulation, but concludes for other reasons that the last category should be revised to apply only to sources which are being regulated under section 111 or section 112 as of the effective date of the amended PSD and NSR regulations.

⁸The apparent discrepancy in the number of categories (i.e., 26 versus 28) is explained by the fact that the September 5, 1979 proposal listed hydrofluoric, sulfuric and nitric acid plants together in a single subheading.

⁹For example, EPA has previously published fugitive emissions data for many of the identified categories of sources:

The commenters contend that since an NSPS under section 111 merely reflects, for a category of sources, an emissions limitation which is achievable through the best system of continuous emissions reduction which "the Administrator determines has been adequately demonstrated," the establishment of an NSPS for a source is unrelated to the ambient air quality considerations which are at the heart of PSD review. What the commenters overlook, however, is that under section 111(b)(1)(B), NSPS are only promulgated for categories of stationary sources which have been included in a list under section 111(b)(1)(A); and section 111(b)(1)(A) directs the Administrator to "include a category of sources in such list if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." In other words, although the NSPS itself may be based on technological considerations, the decision to develop the NSPS is clearly based on ambient air quality concerns. Moreover, under section 112, ambient air quality is clearly a compelling concern because a hazardous air pollutant to which a NESHAP will apply is one "which in the judgment of the Administrator causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness."

In short, categories of sources are regulated under section 111 or section 112 on the basis of determinations by the Administrator that their emissions seriously and adversely impact ambient air quality, and the Administrator therefore determined that it would be appropriate to include their fugitive emissions in their threshold calculations for purposes of PSD and NSR review and regulation. That basic policy determination is being finalized today.

At the same time, however, EPA believes that the comments about "automatic" inclusion of categories of sources which are not now regulated under section 111 or section 112, but which may be regulated thereunder at some point in the future, raise valid concerns. Although EPA believes that the same basic policy considerations would support the inclusion of fugitive emissions for such categories of sources, EPA recognizes that unless a source had affirmative notice during this rulemaking that it will be regulated in the future under section 111 or section 112, it will not really have been afforded a meaningful opportunity to comment on the proposed inclusion of its fugitive

emissions in its threshold calculations. Accordingly, EPA has determined to limit the scope of the last category on the proposed list to sources which are being regulated under section 111 or section 112 as of the effective date of these amended PSD and NSR regulations. At the time of any future rulemaking under section 111 or section 112 proposing to regulate additional categories of sources, EPA will conduct parallel section 302(j) rulemaking concerning the proposed inclusion of fugitive emissions in threshold calculations. On the issue of the appropriateness of including fugitive emissions in threshold calculations for particular categories of sources, the basic objection expressed by most commenters was that fugitive emissions data were either unavailable or inadequate, and that it would therefore be inappropriate to include fugitive emissions in threshold calculations for a particular category.

In response, EPA notes that such concerns should and will be addressed in the context of particular applicability determinations, but that they have not changed the basic policy decision made by the Administrator under section 302(j). As explained earlier, fugitive emissions *must* be taken into account under section 165 in determining the impact on ambient air quality of a proposed new source and the BACT requirements which will apply to it, even if there are no existing fugitive emissions data, or if the available data are crude. Obviously, the nature and extent of the available data and technologies are important factors in determining how fugitive emissions should be taken into account and how they should be regulated under the review and permitting process of section 165; but those factors will not avoid or eliminate the consideration of fugitive emissions under that process. Similarly, although the issue of quantification may be relevant to particular applicability determinations, EPA does not believe that that issue alone is critical in determining whether, as a general policy matter, it is appropriate to include fugitive emissions in threshold calculations for a particular category of sources.

EPA emphasizes, however, that fugitive emissions from a source in one of the listed categories will only be included in threshold calculations "to the extent quantifiable." EPA's intent was and is to provide sources the flexibility to explore with the reviewing authority in the context of a particular applicability determination, issues of quantification which might be peculiar

to an individual source. (Of course, fugitive emissions will not have to be quantified for threshold purposes if the source would qualify as a "major emitting facility" on the basis of point emissions alone, a situation which EPA believes will occur more often than not.) As indicated above, EPA has in the past published data and other information relating to the quantification of fugitive emissions for various categories of sources and, as some commenters noted, additional data and information are currently under development. EPA considers these publications concerning quantification of fugitive emissions as guidance to be used as the starting point for analysis, not as methodology or data which must be rigidly adhered to in all circumstances.

EPA encourages the development of more sophisticated or precise methods or models for quantification of fugitive emissions, and will accept any estimate of a source's fugitive emissions if the source can support the accuracy and reliability of the methodology which it has developed or employed. In situations where there are no published emissions factors or other fugitive emissions data for a particular category of sources, EPA will consider quantification estimates developed by a source which have any reasonable and rational basis, including estimates based on the transfer of technology or based on principles of material balance. Moreover, if a source satisfactorily demonstrates that all such methodologies are inappropriate in its circumstances and that there is absolutely no basis for reasonably estimating its fugitive emissions, EPA would be willing to discount fugitive emissions in the threshold calculation for that individual source.

In short, sources will have an opportunity to discuss the appropriateness and reasonableness of fugitive emissions estimates for purposes of both the threshold calculation, as well as the requirements of section 165. EPA is therefore finalizing today the proposed list of categories of sources whose fugitive emissions will be included in threshold calculations. EPA has considered comments with respect to the proposed definition of "fugitive emissions," and has determined that one change is appropriate. Instead of defining fugitive emissions as "those emission which *do not* pass through a stack, chimney, vent, or other functionally equivalent opening," EPA believes that the term should apply to "those emissions which *could not reasonably pass* through a stack, chimney, vent or other

functionally equivalent opening." This change will ensure that sources will not discharge as fugitive emissions those emissions which would ordinarily be collected and discharged through stacks or other functionally equivalent openings, and will eliminate disincentives for the construction of ductwork and stacks for the collection of emissions. Emissions which could reasonably pass through a stack, chimney, vent, or other functionally equivalent opening will be treated the same as all other point emissions for threshold calculation purposes.

In addition, in light of EPA's action today deleting the fugitive dust exemption (see Fugitive Dust Exemption), EPA is finalizing the proposed deletion of the existing definition of "fugitive dust" at 40 CFR 51.24(b)(6) and 52.21(b)(6) (1979).

VIII. Fugitive Dust Exemption

The 1978 PSD regulations provided that "fugitive dust" from a major stationary source or major modification be excluded from air quality impact assessment, 40 CFR 51.24(k)(5), 52.21(k)(5)(1979). Because of its decision regarding inclusion of fugitive emissions in threshold calculations, and because it questioned EPA's authority to establish the exemption in the manner in which it did, the court in *Alabama Power* vacated EPA's generalized exemption for fugitive dust and remanded it to the Agency for further consideration. 13 ERC at 1231 and 13 ERC at 2017.

In response to the court's opinion, EPA proposed deletion of the fugitive dust exemption. It also proposed to delete a parallel provision in the Offset Ruling (44 FR 3274). The majority of the public commenters directly opposed this proposal. The primary reasons were that fugitive dust allegedly has little impact on health and that techniques of evaluating its air quality impacts are unreliable.

As indicated above, the *Alabama Power* court vacated EPA's partial exemption of fugitive dust from the requirements of section 165 because the exemption was premised on the erroneous assumption that "the statute of its own momentum subjects major sources of fugitive emissions to PSD preconstruction review and permit requirements" 13 ERC at 2017. However, the court also expressed serious doubt that EPA had the statutory authority to establish such an exemption by regulation, because (1) section 165 does not distinguish between fugitive emissions and point emissions, but applies "with equal force" to both types of emissions, 13 ERC at 2016, and (2) in the absence of explicit statutory

exemption authority, EPA's "general" exemption authority is narrow in reach. 13 ERC at 2005-2010.

The court did outline, though, a mechanism which it indicated is available under the statutory scheme for accomplishing the objective of partially exempting fugitive dust emitted by major emitting facilities from the requirements of section 165. That approach would involve defining the pollutant "particulate matter" "to exclude particulates of a size or composition determined not to present substantial health or welfare concerns," 13 ERC at 2018, n. 134, and then regulating such "excluded particulates" under section 111. Pursuant to section 109, EPA is currently reviewing the criteria document for the particulate matter NAAQS, and particle size is a factor being considered in this review. If the standard is revised, the rulemaking requirements of section 307(d) will apply.

EPA today is adopting its proposed deletion of the existing "fugitive dust exemption" and is deferring further action on any such "exemption" pending completion of the standard review process.

IX. Source

A. Proposed Definitions of "Source"

In the 1978 PSD regulations, EPA defined "source" as "any structure, building, facility, equipment, installation, or operation (or combination thereof) which is located on one or more contiguous or adjacent properties and which is owned or operated by the same person (or by persons under common control)." The Offset Ruling contained the same definition of "source."

In its June 1979 opinion in *Alabama Power*, the Court of Appeals rejected the definition of "source" in the PSD regulations. It concluded that Congress intended section 111(a)(3) of the Act to govern the definition of "source" for PSD purposes. That section defines "source" as "any building, structure, facility, or installation which emits or may emit any air pollutant." In defining "source," EPA used the terms "building," "structure," "facility," and "installation," but then added "equipment," "operation," and "combination thereof." The court held that EPA, in adding those terms, exceeded its authority. It stated, however, that the Agency has substantial discretion to define one or more of the four terms in section 111(a)(3) to include a wide range of pollutant-emitting activities.

In its June opinion, the court also focused on the clause "which is located on one or more contiguous or adjacent properties and which is owned or operated by the same person (or persons under common control)." The court held that the approach, which that clause embodied, of grouping pollutant-emitting activities solely on the basis of proximity and control is generally acceptable, since the Agency had "evidenced an intention to refrain from unreasonable literal applications of the definition and instead to consider as a single source only common sense industrial groupings." 13 ERC at 1230.

In September 1979, EPA proposed to define "building, structure, facility and installation" for PSD purposes as "any grouping of pollutant-emitting activities which are located on one or more contiguous or adjacent properties and which are owned or operated by the same person (or by persons under common control)." As the preamble to the September proposal explains in detail, EPA concluded that the proposed definition would serve the purposes of PSD adequately by requiring review of those major projects that would cause air quality deterioration. At the same time, the definition would operate to avoid review of projects that would not increase deterioration significantly. In EPA's view, the dominant purpose of PSD review is to maintain air quality within the applicable increments.

In September, EPA proposed to define the four component terms differently for nonattainment purposes. Specifically, the Agency proposed to define "building, structure and facility" as it had proposed to define them for PSD purposes, and "installation" as "an identifiable piece of process equipment." One effect of that proposal would be the application of nonattainment requirements to a new piece of equipment that would emit significant amounts of a pollutant for which the area had been designated nonattainment, regardless of any accompanying emissions offsets at the plant. The preamble to the proposal explained: "Unlike the PSD provision, the nonattainment provisions are primarily intended not merely to prevent excessive increases in emissions, but to reduce emissions. This fundamental difference in purpose requires a different approach to defining the sources that will be subject to NSR." 44 FR 51932. EPA proposed to apply this definition to "incomplete" SIPs, i.e., those which did not demonstrate attainment based exclusively on currently approved requirements. Fully

"complete" SIPs could, under EPA's proposal, use the PSD definition.

In December 1979, the court issued its final opinion on the 1978 PSD regulations, which opinion superseded the June 1979 opinion. In the December opinion, the court reaffirmed its earlier conclusions that EPA must adhere to section 111(a)(3) in defining "source" for PSD purposes and that EPA has discretion to define the component terms "reasonably to carry out" the purposes of PSD. 13 ERC at 2039. The court added that "a plant is to be viewed as a source" and that the Agency "should" provide for the aggregation of polluting-emitting activities "according to considerations such as proximity and ownership." *Id.* at 2039 and 2040. But it warned that "EPA cannot treat contiguous and commonly owned units as a single source unless they fit within the four permissible statutory terms." Finally, the court said that any new definitions "should also provide explicit notice as to whether (and on what statutory authority) EPA construes the term source, as divided into its constituent units, to include the unloading of vessels at marine terminals and 'long-line' operations such as pipelines, railroads, and transmission lines. We agreed with Industry Groups that EPA has not yet given adequate notice as to whether it considers those industrial activities to be subject to PSD." *Id.* at 2040.

In January 1980, EPA solicited comment on the September proposals in light of the December opinion of the court. 45 FR 6803. EPA specifically asked for comment on whether factors other than proximity and control, such as the functional relationship of one activity to another, should be used. The Agency also asked for specific examples of cases where a literal application of the proposed definition would be unreasonable.

B. PSD: Comments on Proposal and Responses

Most commenters agreed that for PSD purposes EPA should adopt definitions of "building," "structure," "facility," and "installation" that would aggregate pollutant-emitting activities, instead of definitions that would restrict one or more of those terms to an individual activity. One commenter, however, argued that EPA should adopt for PSD purposes the same definitions of those terms that it had proposed to adopt for nonattainment purposes. The commenter asserted that the decision of the court in *ASARCO v. EPA*, 578 F.2d 319 (D.C. Cir. 1978), required the Agency to impose BACT on a new unit at a plant, even if the unit would result in no

net increase in emissions. The commenter also asserted that the "all-encompassing definition *** destroys the intent of the PSD program by letting opportunities for reducing increment consumption disappear before control technology standards (*i.e.*, NSPS) can be in place." (Emphasis added.)

EPA has decided to adopt for PSD purposes the sort of "all-encompassing" definitions that the commenter opposed. First, in its December 1979 opinion in *Alabama Power*, the court explicitly held that *ASARCO* "does not prevent aggregation of individual units of a plant into a single source." 13 ERC at 2040. Second, the dominant purpose of PSD review is not to reduce increment consumption, but rather to maintain air quality deterioration below an applicable increment. A definitional structure that aggregates pollutant-emitting activities into one "source" would serve that purpose, since it would allow only those changes at the "source" that would not significantly worsen air quality to escape review.

Some of the commenters who agreed that each of the component terms of "source" should aggregate pollutant-emitting activities also supported the use of proximity and control as the sole criteria for aggregating them. Most of those commenters, however, objected to the use of proximity and control as the sole criteria, some on the ground that the proposed definitions would be too inclusive and others on the ground that the definitions would not be inclusive enough.

The commenters who thought the definitions would be too inclusive asserted that they would group sets of activities at one site and under common control that are functionally or operationally distinct. Typical of the examples they gave are the following activities at one site and under common control: (1) a surface coal mine and coal-burning electrical generators that the mine supplies with coal; (2) a rock quarry and the portland cement plant that the quarry supplies with raw material; (3) a primary aluminum ore reduction plant, an aluminum fabrication plant and an aluminum reclamation plant; (4) a refinery, a service station, a research laboratory, a fertilizer factory, and a pesticide factory; and (5) a uranium mill and an oil field. With the language of the June 1979 opinion in mind, the commenters contended generally that to group the nominally different activities in each of those examples would violate any common-sense notion of "plant."

The commenters who thought the proposed definitions would be too inclusive suggested a wide range of

alternative definitions. For example, one group proposed that activities at one site and under common control should be combined only if: (1) they share the first three digits under the Standard Industrial Classification Code of the U.S. Department of Commerce, (2) they are dependent upon or affect the process of each other, (3) they use a common raw product or produce a common product, and (4) the proponent of the project in question does not show that the activities have entirely separate air quality impacts.

The commenters who thought the proposed definitions would not be inclusive enough urged the Agency to abandon control as a factor and adopt function in its place. Some of them described a plan by a group of independent companies to construct jointly a single coal-burning power plant to replace oil-burning power plants at various manufacturing sites belonging to those companies near to the site of the coal-burning plant. The commenters contended that EPA should treat the old plants and the new plant as being within one "source," so that the new plant might escape PSD review. They argued that the new plant would not deteriorate air quality, since presumably the decrease in emissions from the shutdown of the old plants would offset the increase from the new plant, and that to allow it to escape review would facilitate the national switch from oil to coal.

After considering the comments of those who objected to the use of proximity and control only, EPA has decided to adopt for PSD purposes a definition of "building, structure, facility, and installation" that is different from the one it proposed in September. The final definition provides that those component terms each denote "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' (*i.e.*, which have the same two-digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively)."

In EPA's view, the December opinion of the court in *Alabama Power* sets the following boundaries on the definition for PSD purposes of the component terms of "source": (1) it must carry out

reasonably the purposes of PSD; (2) it must approximate a common sense notion of "plant"; and (3) it must avoid aggregating pollutant-emitting activities that as a group would not fit within the ordinary meaning of "building," "structure," "facility," or "installation."

The comments on the proposed definition of "source" have persuaded EPA that the definition would fail to approximate a common sense notion of "plant," since in a significant number of cases it would group activities that ordinarily would be considered as separate. For instance, a uranium mill and an oil field would ordinarily be regarded as separate entities, yet the proposed definition would treat them as one.

In formulating a new definition of "source," EPA accepted the suggestion of one commenter that the Agency use a standard industrial classification code for distinguishing between sets of activities on the basis of their functional interrelationships. While EPA sought to distinguish between activities on that basis, it also sought to maximize the predictability of aggregating activities and to minimize the difficulty of administering the definition. To have merely added function to the proposed definition as another abstract factor would have reduced the predictability of aggregating activities under that definition dramatically, since any assessment of functional interrelationships would be highly subjective. To have merely added function would also have made administration of the definition substantially more difficult, since any attempt to assess those interrelationships would have embroiled the Agency in numerous, fine-grained analyses. A classification code, by contrast, offers objectivity and relative simplicity.

EPA has chosen the classification code in the *Standard Industrial Classification Manual, 1972*, as amended in 1977 ("SIC"), because it is both widely-known and widely-used. EPA has also chosen to use just one set of categories in the manual, those that describe each "Major Group" in the classification system and that bear a two-digit classification number, although the commenter who suggested that EPA use such a code also suggested that the Agency use the categories at the three-digit level. On the one hand, the two-digit categories are narrow enough to separate sets of activities into common sense groupings. In fact, most of the nominally different sets of activities in the examples given above would fall into a different two-digit

category; only the fertilizer factory and the pesticides factory would fall into the same category. On the other hand, the categories are broad enough to minimize the likelihood of artificially dividing a set of activities that does constitute a "plant" into more than one group and the likelihood of disputes over whether a set of activities falls entirely into one category or another.

Each source is to be classified according to its primary activity, which is determined by its principal product or group of products produced or distributed, or services rendered. Thus, one source classification encompasses both primary and support facilities, even when the latter includes units with a different two-digit SIC code. Support facilities are typically those which convey, store, or otherwise assist in the production of the principal product. Where a single unit is used to support two otherwise distinct sets of activities, the unit is to be included within the source which relies most heavily on its support. For example, a boiler might be used to generate process steam for both a commonly controlled and located kraft pulp mill and plywood manufacturing plant. If the yearly boiler output is used primarily by the pulp mill, then the total emissions of the boiler should be attributed to the mill.

In adopting the new definition of "source," EPA rejected the requests of those commenters who thought that the proposed definition would not be inclusive enough. As noted above, they urged that EPA formulate a definition that looked only to proximity and function. But such a definition by looking to function would unnecessarily increase uncertainty and drain the Agency's resources. In addition, such a definition would present groupings, such as the example the commenters gave, that would severely strain the boundaries of even the most elastic of the four terms, "building," "structure," "facility," and "installation."

Many commenters urged EPA to clarify the extent to which the final definition of those terms encompasses the activities along a "long-line" operation, such as a pipeline or electrical power line. For example, some urged EPA to add to the definition the provision that the properties for such operations are neither contiguous nor adjacent. To add such a provision is unnecessary. EPA has stated in the past and now confirms that it does not intend "source" to encompass activities that would be many miles apart along a long-line operation. For instance, EPA would not treat all of the pumping stations

along a multistate pipeline as one "source."

EPA is unable to say precisely at this point how far apart activities must be in order to be treated separately. The Agency can answer that question only through case-by-case determinations. One commenter asked, however, whether EPA would treat a surface coal mine and an electrical generator separated by 20 miles and linked by a railroad as one "source," if the mine, the generator, and the railroad were all under common control. EPA confirms that it would not. First, the mine and the generator would be too far apart. Second, each would fall into a different two-digit SIC category.

Three commenters focused on whether and to what extent the emissions from each ship that would dock at a proposed marine terminal should be taken into account in determining whether the terminal would be "major" for PSD purposes. One commenter argued in effect that the emissions of each such ship that are quantifiable and occur while the ship is coming to, staying at or going from the terminal should be taken into account. In the view of that commenter, all of those activities would be "integral" to the operation of the terminal. Another commenter asserted that none of the emissions of any such ship should be taken into account, because ships are mobile sources. The remaining commenter contended that only the emissions that: (1) come from a ship which is under the proprietary control of the owner or operator of the terminal and (2) occur while the ship is at the dock should be included in an applicability determination. That commenter viewed the ability of the terminal owner or operator to regulate the behavior of a ship as the critical consideration.

The permit requirements of the final Part 52 PSD regulations apply to a collection of pollutant-emitting activities according to the "potential to emit" of just those activities in that collection which constitute a "stationary source." Whether and to what extent the emissions of ships that would dock at a terminal are to be taken into account in determining PSD applicability depends, therefore, on whether and to what extent the term "stationary source" in the final regulations encompasses not only the activities of the terminal itself, but also the activities of the ships while they are coming to, staying at, or going from the terminal.

The final definition of "building, structure, facility, and installation" resolves that question. EPA intends the term "stationary source" under that

definition to encompass the activities of a marine terminal and only those dockside activities that would serve the purposes of the terminal directly and would be under the control of its owner or operator. The term "dockside activities" means those activities in which the ships would engage while docked at the terminal. While "stationary source" encompasses combinations of activities, it is limited to combinations that would be "stationary," that is, fixed to the particular site. The activities of a terminal itself would be stationary, but all ship activities would not be. Only those that would directly serve the purposes of the terminal, such as loading and unloading, would be stationary since they alone would be in a sense fixed to the particular site. Hence, "stationary source" encompasses the activities of a marine terminal and only those dockside activities that would directly serve its purposes.

In addition, while "stationary source" encompasses combinations of stationary activities, it is further limited to those that would locate on "contiguous or adjacent properties." In EPA's view, only dockside activities would be located on "property" that is contiguous or adjacent to the terminal. Next, "stationary source" is also limited to those combinations of activities that would be "under the control" of one person or one group of persons who are themselves under common control. Hence, "stationary source" encompasses only the activities at a terminal and those dockside activities over which the owner or operator of the terminal would have control. Finally, the activities at a terminal and any such dockside activities fall under a single two-digit SIC category, namely "Water Transportation" (number 44).

Whether a particular dockside activity would directly serve the purposes of a terminal and would be under the control of its owner or operator depends upon the circumstances of a specific situation. Presumably, however, the activity of loading or unloading a ship would in every case directly serve the purposes of the terminal and would be under the control of its owner or operator to a substantial extent. In particular, the Agency would expect that no loading or unloading could occur without the consent of the owner or operator and consequently that the owner or operator would set, or at least have a significant say in the setting of, the schedule for loading or unloading.

In adopting this interpretation of "stationary source," EPA in large measure has rejected the arguments of the commenters on the ship emissions issue. First, to treat *all* of the activities of a ship while it is coming to, staying at, and going from a terminal would violate any common sense notion of "building," "structure," "facility," or "installation." To group just those activities occurring at the terminal that are essential to its functioning entirely comports with common sense. Second, an activity such as loading and unloading is certainly stationary, even if the ships that engage in it have mobility. Ships, moreover, are not "mobile sources" within the meaning of section 110(a)(5) of the Act, the provision restricting indirect source review. Finally, the fact that a terminal owner or operator does not own a particular ship does not mean that the owner or operator has no control over behavior of the ship at the terminal.

In deference to the position taken in *Alabama Power*, EPA has decided to treat the definition of "source" in the 1978 PSD regulations as *not* encompassing any ship or ship activity. As a result, ship emissions are not to be taken into account at all in determining whether a marine terminal is subject to review under the 1978 PSD regulations. A terminal which would not be subject to review under the 1978 regulations if ship emissions are not included in the determination of potential to emit can also be excluded from review under the new regulations provided certain conditions are met. These conditions are that the owner or operator of such a source has obtained each of the permits required under the SIP for the terminal before the date this notice appears in the Federal Register and commences construction on it within 18 months after that date.

The final definition of the component terms of "stationary source" differs from the proposed definition in one significant respect. The proposed definition used the phrase "*any grouping of* pollutant-emitting activities." The final definition uses the phrase "*all of the* pollutant-emitting activities." Taken literally, the proposed definition would have referred not only to all of the activities at a plant, but also to any subgroup of those activities. EPA, however, intended it to refer only to all of the activities. The final definition merely makes that explicit.

C. Nonattainment: Comments on Proposal and Response

Many commenters objected to EPA's proposed definition of "source" for nonattainment areas. Several commenters argued that there was no

statutory basis for the distinction drawn in the proposal between "complete" and "incomplete" SIPs. Most of the commenters further claimed that the "dual definition" (*i.e.*, treating a source as both a plant and an individual piece of process equipment at the plant) both was illegal under the statute and *Alabama Power* and was wrong as a matter of policy.

The legal arguments presented by the commenters fell into two broad categories. First, they argued that the dual definition really defined "source" as a combination of sources, which had been forbidden by both *Alabama Power* and *ASARCO*. EPA therefore could, in these commenters' view, define "source" as either the entire plant or an individual piece of process equipment, but not both. These commenters opted for the former approach.

The second legal argument challenged EPA's contention that use of the plant-wide definition would be improper in nonattainment areas, because the purpose of the nonattainment new source review program is to reduce emissions, not to hold emissions constant. The commenters claimed that the Act gives primary responsibility for assuring reasonable further progress to the states, and the states therefore can choose whatever mix of strategies they want to achieve reasonable further progress. This suggested to the commenters that EPA had no authority to ban a plant-wide definition for new source review if the state could otherwise demonstrate reasonable further progress.

Several commenters also pointed to a variety of policy concerns which they felt militated against EPA's proposed dual definition. First, they argued that the definition would discourage technological innovation that could actually reduce emissions, because sources would be reluctant to modernize for fear that such requirements as LAER would be applied to them. In particular, they felt sources would be unwilling to retire old inefficient facilities and replace them with efficient cleaner ones. Second, some commenters claimed that there was no point to reviewing a facility where offsetting emissions could be obtained, since on the whole ambient air quality would not get any worse. Finally, many commenters complained that the definitional structure as a whole was far too complex, and they urged that EPA simplify the system both by eliminating the distinction between "complete" and "incomplete" SIPs and by adopting one definition for both PSD and nonattainment areas. Most commenters preferred the PSD

definition, although some urged that the dual definition be used.

In revising the Offset Ruling in January 1979, EPA adopted definitions of "source" and "modification" which had the effect of requiring any increase greater than 100 tons in the potential to emit of a plant to undergo nonattainment new source review, even if offsetting reductions at the plant were to accompany the change. The effect of the proposed definitions of "source" and "modification" which are being promulgated today would be basically the same as those in the Offset Ruling. Adoption of the proposed definitions would constitute, therefore, a continuation of an established approach to nonattainment new source review.

The comments on the dual definition have failed to persuade EPA that it should abandon the established approach at this time. As a result, the agency has decided to adopt the dual definition in each set of nonattainment regulations. For the reasons given below, EPA does not agree that the dual definition is either illegal or unsound from a policy standpoint. In addition, the agency has decided that the dual definition should be used regardless of whether the SIP is complete or incomplete. EPA agrees with the commenters that there is little support in the statute for defining "source" according to the complete or incomplete status of the SIP, and that the proposed definition was complicated.

The dual definition, by defining individual units as a "source," will bring more units in for review in areas with unhealthy air and thereby result in reducing emissions from the status quo. The legislative history of the Act indicates that new source review was intended to be an important tool in the drive towards attainment of ambient air quality standards. As the House Report stated:

[M]aximum pollution control from new sources is necessary in order to permit room for maximum potential economic growth. This is particularly true in light of the requirement for reasonable further progress and the indications that emissions from many existing sources in nonattainment areas will be increasing (due to fuel switching, natural gas curtailments) or remaining static (due to delayed compliance orders, et cetera). Finally, the technology forcing purpose of the act is best served by requiring maximum feasible pollution control from these new sources in dirty air areas. For all these reasons, the committee adopted the requirement for proposed new or modified major stationary sources in nonattainment areas to meet the lowest achievable emission rate requirement.

H. Rep. No. 95-294, 95th Congress, 1st Sess. 215 (1977). In addition, after

hearing testimony that no steel sources owned by five major steel companies were in compliance, the House inserted into section 173 a requirement that the owner of a proposed source or modification demonstrate that all other sources owned, operated, or controlled by him in the state are in compliance with the applicable SIP. *Id.* at 210-213. In this way, Congress meant to use new source review as a means of cleaning up existing sources as well.

To realize this goal fully, Congress intended that new source review be applied to the greatest extent possible. For example, Senator Muskie, in presenting the Clean Air Act Amendments of 1977 to the Senate, spoke of reviewing "any physical change which increases [emissions] * * *, and he went on to note:

Thus, [under the offset ruling and Part D NSR requirements] a new source is still subject to such requirements as "lowest achievable emission rate" even if it is constructed as a replacement for an older facility resulting in a new reduction from previous emission levels. 123 Cong. Rec. at S 13702 (daily edition, August 4, 1977).

Since the dual definition would bring in more sources or modifications for review than would the plant-wide definition used for PSD purposes (including many replacement facilities which would not be reviewed under a plant-wide definition), use of the dual definition clearly is more consistent with Congressional intent.

The dual definition also is consistent with *Alabama Power* and *ASARCO*. *Alabama Power* held that EPA had broad discretion to define the constituent terms of "source" so as best to effectuate the purposes of the statute. Different definitions of "source" can therefore be used for different sections of the statute. See 13 ERG at 2039. As EPA discussed in detail in its proposal, the purpose of the nonattainment provisions is to "positively reduce emissions," not merely to hold emissions constant. In addition, unrestricted use of meeting emissions at an entire plant in nonattainment areas would make attainment more difficult, since many of the limited number of cost-effective opportunities to reduce emissions will in fact be used to avoid review. See 44 FR 51932. The dual definition therefore comports with the purposes of Part D of the Act.

Moreover, *Alabama Power* and *ASARCO* taken together suggest that there is a distinction between Clean Air Act programs designed to enhance air quality and those designed only to maintain air quality. In *ASARCO*, the Court of Appeals for the District of Columbia Circuit struck down the

definition of "source" for new source performance standards (NSPS), which had employed a "bubble" concept. An important element in the court's decision was its belief that the "bubble," by allowing sources to escape NSPS, was inconsistent with the purpose of NSPS, which was to improve air quality. See 578 F.2d at 327-28. But in *Alabama Power*, the same court held that for PSD purposes, EPA must use a "bubble" approach, precisely because PSD is designed to maintain air quality and therefore deals with "a significantly different regulation and statutory purpose." 13 ERC at 2044.

Under this analysis, use of a plant-wide definition to avoid new source review would appear to be inappropriate in nonattainment areas, since the purpose of nonattainment SIPs is to improve existing air quality so as to attain the ambient air quality standards. EPA therefore believes that it would be more consistent with the purposes of the Act not to permit states to choose a plant-wide definition of source.

Promulgation of the dual definition follows the mandate of *Alabama Power*, which held that, while EPA could not define "source" as a combination of sources, EPA had broad discretion to define "building," "structure," "facility," and "installation" so as to best accomplish the purposes of the Act. 13 ERC at 2039. This holding contemplates that one term (such as "building") may be more inclusive than another term (such as "installation"), and so a "building" may include many "installations." In this way, a "source" can, under *Alabama Power*, be composed of smaller "sources," yet not be a combination of sources. The dual definition fits into *Alabama Power*, since under EPA's definitional scheme, a "source" is either an individual piece of process equipment or the entire plant; it is not a combination of sources. That is, when deciding whether a source must undergo new source review, the reviewing authority must determine whether there was a significant increase in emissions at either a "major" individual piece of equipment or at the plant as a whole. Wherever such an increase occurs is a "source." Thus the plant itself is a source, not a combination of sources, although it may contain smaller sources.

EPA recognizes that use of different definitions for PSD and nonattainment areas adds to the complexity of the permitting process. But this additional complexity is outweighed by the need for a more inclusive definition of source in nonattainment areas in order to assure attainment of standards.

Although it is claimed that some sources may not be willing to modernize their facilities due to the perceived added expense of LAER and the need to demonstrate statewide compliance, EPA believes that its approach is justified by the fact that the dual definition will bring in more sources and modifications for review and will require better pollution control technology in nonattainment areas.¹⁰

EPA disagrees that use of a plant-wide definition would allow a plant with a new installation to achieve the same emissions reductions as LAER, but in a less expensive manner by finding offsets elsewhere in the plant. This argument assumes that LAER is markedly more costly than the requirements that would otherwise apply. EPA believes that its own past actions, and those of the states, indicate that LAER need not and is not generally being interpreted in this manner.

EPA believes, and most commenters agreed, that new facilities should install state-of-the-art control technology. Such a requirement is imposed by the Clean Air Act for major new sources in PSD areas (BACT), for major new sources in nonattainment areas (LAER), and whenever EPA has set new source performance standards (NSPS). EPA therefore intends to interpret the LAER requirement in a reasonable manner, as it believes it has in the past, and to take a close look whenever LAER would be substantially stricter than these other requirements.

EPA intends that its interpretation of "building, structure, and facility" be identical to that for "building, structure, facility, or installation" used for PSD purposes.¹¹

X. Modification

This section discusses the final PSD and nonattainment definitions of "major modifications" and "net emissions increase" which EPA is promulgating in this notice. The section first describes those final provisions. It then focuses on each of their major aspects, giving in particular the relevant proposal, the comments on it and EPA's responses. An example of how the definitions work appears at the end of the section. The

¹⁰Contrary to one commenter's argument, EPA believes that the dual definition will not cause sources to locate in clean areas. Any such source would be subject to PSD review in any event.

¹¹One commenter requested EPA define "source" as one emitting the criteria pollutants, and not "any pollutant regulated under the Act." EPA has decided to retain its definition, since it comports with section 302(l) of the Act. However, pursuant to section 172(b)(8), EPA will require new source review permits only for those pollutants for which an area has been designated nonattainment and for which the source is major.

section also discusses a provision which appears in the PSD and nonattainment definitions of "major stationary source," but which stems from the final formulation of "major modification." That provision establishes that a physical change at a "minor" stationary source which change by itself would constitute a "major stationary source" shall be treated as a "major stationary source."

A. Final Definitions of "Major Modification" and "Net Emissions Increase"

With the final amendments announced here, the Part 51 and Part 52 PSD regulations now define "major modification" as any "*physical change*" or "*change in method of operation*" at a major stationary source which would result in a "*significant net emissions increase*" in any pollutant subject to regulation under the Act. See §§ 51.24(b)(2) and 52.21(b)(2).

While the new PSD regulations do not define "*physical change*" or "*change in method of operation*," they provide that those phrases do not encompass certain specific types of events. Those types are: (1) routine maintenance, repair and replacement; (2) a fuel switch due to an order under the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or due to a natural gas curtailment plan under the Federal Power Act; (3) a fuel switch due to an order or rule under section 125 of the Clean Air Act; (4) a switch at a steam generating unit to a fuel derived in whole or in part from municipal solid waste; (5) a switch to a fuel or raw material which (a) the source was capable of accommodating before January 6, 1975, so long as the switch would require no change in any preconstruction permit condition established after that date under the SIP (including any PSD permit condition) or (b) the source is approved to make under a PSD permit; (6) any increase in the hours or rate of operation of a source, so long as the increase would require no change in any preconstruction permit condition established after January 6, 1975 under the SIP; and (7) a change in the ownership of a stationary source.

The new PSD regulations define "*significant*" in terms of *de minimis* thresholds for each pollutant subject to regulation under the Act. Those thresholds appear in §§ 51.24(b)(21) and 52.21(b)(21). For example, the threshold for sulfur dioxide is 40 tons per year. A "net emissions increase" in sulfur dioxide below that level is not "*significant*." For a fuller discussion of

the thresholds, see the section entitled *De Minimis Exemptions*.

Finally, the new PSD regulations contain definitions of "net emissions increase," which appear as §§ 51.24(b)(3) and 52.21(b)(3). Under those definitions, "net emissions increase" denotes the positive sum of any increase in "actual emissions" from a particular physical or operational change at a source and any other increases and decreases in "actual emissions" that are contemporaneous with the particular change and otherwise creditable.

The first step in determining whether a "net emissions increase" would occur is to determine whether the physical or operational change in question would itself result in an increase in "actual emissions." If it would not, then it could not result in a "net emissions increase." If it would, the second step is to identify and quantify any other prior increases and decreases in "actual emissions" that would be contemporaneous with the particular change and otherwise creditable. The third step, finally, is to total the increase from the particular change with the other contemporaneous increases and decreases. If the total would exceed zero, then a "net emissions increase" would result from the change.

The definitions of "net emissions increase" specify which increases and decreases in "actual emissions" are contemporaneous. Under the definition in the Part 52 PSD regulations, increases or decreases are contemporaneous with a proposed change only if they occur between two dates: first, the date five years before construction "commences" on the proposed physical or operational change in question and, second, the date the increase from that change "occurs." An increase from a physical change "occurs" when the affected emissions unit becomes operational and begins to emit a particular pollutant. Any unit that requires shakedown becomes operational only after a reasonable shakedown period (not to exceed 180 days). Under the definition in the Part 51 regulations, a state in revising its SIP may set a period other than the five-year period of the Part 52 regulations to define what is contemporaneous and what is not, so long as the period is not unreasonably long.

The definitions of "net emissions increase" in the PSD regulations also specify which contemporaneous increases and decreases in "actual emissions" are creditable. A contemporaneous increase or decrease is creditable only if the relevant reviewing authority has not relied on it in issuing a PSD permit for the source,

and that permit is still in effect when the increase in "actual emissions" from the particular change occurs. A reviewing authority "relies" on an increase or decrease when, after taking the increase or decrease into account, it concludes that the proposed project would not cause or contribute to a violation of an increment or ambient standard. A contemporaneous increase or decrease in "actual emissions" of sulfur dioxide or particulate matter that occurs before the applicable baseline date is creditable only if, in addition, it is required to be considered in calculating how much of a particular increment remains available.

Finally, the definitions of "net emissions increase" in the new PSD regulations specify the extent to which any contemporaneous and otherwise creditable increase or decrease is creditable. Any such increase is creditable to the extent that the new level of "actual emissions" exceeds the old level of "actual emissions." Any such decrease is creditable only to the extent that (1) the old level of "actual emissions" (or the old level of "allowable emissions," if it is lower) exceeds the new level of "actual emissions," (2) the decrease is federally enforceable at the time construction begins on the proposed physical or operational change which it is intended to offset, and (3) the decrease has roughly the same health and welfare significance as the increase from the proposed change.

Under the final PSD regulations, the phrase "actual emissions" means the rate at which an emissions unit actually emits a particular pollutant. See §§ 51.24(b)(21) and 52.21(b)(21). In general, that rate as of a particular date equals the average rate in tons per year at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and is representative of normal source operation. The reviewing authority may presume that any "source-specific allowable emissions" for the unit is equivalent to the actual emissions of the unit. For any unit which has yet to begin normal operations on the date in question, its actual emissions equal its "potential to emit" on that date. For a fuller discussion of the concept of "actual emissions" and in particular of what constitutes "source-specific allowable emissions," see the section on Increment Consumption.

The final PSD regulations also describe in detail the concept of "allowable emissions." See §§ 51.24(b)(16) and 52.21(b)(16). That phrase means in essence the maximum

rate at which an emissions unit under the most stringent of certain legal constraints may emit a particular pollutant. The legal constraints are (1) any applicable standards in 40 CFR Parts 60 and 61, (2) any applicable SIP limitations, including any with a future compliance date, and (3) any applicable condition in a permit issued under the SIP that is federally enforceable, also including any condition with a future compliance date.

The final amendments to the Offset Ruling, 40 CFR 51.18 and 40 CFR 52.24 which are announced here also include new definitions of "major modification," "significant," "net emissions increase," "actual emissions," and "allowable emissions." In general those definitions follow the pattern of the PSD definitions. Only the definitions of "net emissions increase" in those nonattainment provisions vary significantly. They add that a decrease in "actual emissions" which is contemporaneous with the increase in question may be credited only if and only to the extent that the relevant permitting authority has not already accepted it as a satisfactory "offset" in issuing a preconstruction permit under the SIP.

B. No Net Increase

The *Alabama Power* decision rejected EPA's regulatory approach of requiring PSD review of potential emissions increases at existing stationary sources only when such increases would equal or exceed the 100/250 ton threshold used in the review of new sources. It held instead that a change in a major stationary source is subject to review only if it would result in any significant net increase. In response, EPA proposed on September 5, 1979, an approach that would subject to new source review (NSR) under the relevant PSD or nonattainment provisions only each significant net increase that would occur in the potential to emit of a major stationary source. Under the proposal, a significant net increase was to be an overall increase in the potential to emit of the source equal to or greater than a pollutant-specific emissions cutoff (see *De Minimis Exemptions*), taking into account contemporaneous emissions increases and decreases at the same source. An exception to this general rule of netting contemporaneous increases and decreases was to be the case of construction restrictions under sections 110(a)(2)(I) and 173(4). There, accumulated increases would count toward triggering the growth prohibitions, without regard to any contemporaneous reductions occurring at the same source.

Public comment supported this proposal (except with respect to the construction restrictions) as the clear and proper interpretation of the *Alabama Power* decision. Sixty-two of sixty-three commenters endorsed the general netting approach to modification taken in the proposal, although several took issue with certain of the specific rules relating to the concept (see discussion below). Several commenters felt that requiring any significant net increase to undergo review was too strict on existing sources as compared with new sources, since new sources can emit up to 100/250 tons per year and still not be subject to review. The terms of the Act and the court decision preclude allowing such a general exemption for existing sources. Pursuant to *Alabama Power*, the Administrator is today promulgating the netting concept for determining the review applicability of changes at existing major stationary sources (consistent with each program's definition of source). This promulgation affects regulations for PSD (40 CFR 52.21 and 40 CFR 51.24), nonattainment NSR (Emissions Offset Interpretative Ruling and 40 CFR 51.18(j), Review of New Stationary Sources and Modifications), and the construction restrictions under sections 110(a)(2)(I) and 173(4), (40 CFR 52.24, Statutory Restriction on new Stationary Sources). Allowance of netting for determining the applicability of 40 CFR 52.24 is a change from the proposal and is discussed below.

C. Pollutant Applicability

EPA proposed to require preconstruction review only if the increase in potential to emit would be for a pollutant which the source emits in major amounts. Once an increase in the major pollutant triggered PSD review then review would be required for all regulated pollutants emitted in greater than *de minimis* amounts as a result of the modification. Review would also be required if the emissions change itself were equivalent to a major stationary source.

Only limited comment was received on EPA's proposal to require review where major changes in emissions of minor pollutants or greater than *de minimis* changes in emissions of a major pollutant would occur. While a few groups endorsed the September 5 proposal, one group argued that *Alabama Power* did not restrict PSD applicability to just modifications involving the pollutant(s) which the source emits in major amounts. That group pointed out that section 111(a)(4) of the Act defines "modification" as "any physical change in, or change in the method of operation of, a stationary

source which increases the amount of any air pollutant emitted by such source or which results in the emissions of any air pollutant not previously emitted." (Emphasis added.)

The Administrator agrees that requiring review for a net emissions increase in any pollutant subject to regulation under the Act is consistent with the *Alabama Power* decision. Consequently, EPA is promulgating a final rule that requires PSD preconstruction review for net emissions increases in greater than *de minimis* amounts at a major stationary source for any pollutant subject to regulation under the Act emitted by the source, regardless of whether the source is major for that pollutant.

The Administrator is not changing the September 5 proposal with respect to pollutant applicability in nonattainment areas. See Geographic and Pollutant Applicability. The source must be major for the nonattainment pollutant(s) and must make a greater than *de minimis* emissions change in such a pollutant in order to trigger nonattainment review for that pollutant(s). A PSD review, however, would be triggered if a greater than *de minimis* change occurs at that major source for any regulated pollutant emitted by the source other than the nonattainment pollutant(s).

D. Netting of Actual Emissions

EPA proposed on September 5 that an activity be deemed a major modification when the "potential to emit" of the major stationary source experiences a net increase greater than a *de minimis* amount, taking into account all contemporaneous changes. EPA also proposed that a reduction would be creditable only if the physical capability of the source to emit a pollutant were actually reduced. In addition, where "allowable emissions" for a source, as defined in the 1978 PSD regulations and the Offset Ruling would be less than its "potential to emit," no credit would be given for reducing potential emissions to "allowable emissions." "Allowable emissions," as defined in those regulations, meant the emissions rate calculated using the maximum rated capacity of the source and is represented by the most stringent than any of the following: (1) any applicable standards in 40 CFR Parts 60 and 61; (2) any applicable SIP emissions limitations; and (3) any emissions rate specified as a permit condition under the SIP. The applicable SIP limitation in the case of designated nonattainment areas included the emissions rate that was assumed for the source in the attainment demonstration and in the

schedule for making reasonable further progress.

Forty of forty-two commenters favored an allowable emissions baseline, for determining whether a net emissions increase would occur, instead of one using "potential to emit." The other two commenters endorsed EPA's proposal. Many also complained of the different criteria for determining "potential to emit" from new and existing sources. (Under the proposal, "allowable emissions" and physical incapability could have constrained the "potential to emit" of existing but not new stationary sources.)

There are problems with using a baseline for netting that is based on the existing source's "potential to emit." A computation of an existing source's potential emissions could give a figure considerably higher than what it is actually emitting. This would be especially true if the source operated only a small part of the time or used considerably cleaner fuels than it is allowed to burn. Such an approach would therefore create a "paper offset" that could permit actual air quality to deteriorate seriously, while the change which increased actual emissions avoided NSR. Similar problems would arise if offsets were based on allowable emissions, as recommended by most commenters.

In the June 1979 opinion in *Alabama Power*, the court held that the definition of "modification" in section 111(a)(4) governs the definition of that term for PSD purposes. Section 111(a) provides that a "modification" is "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emissions of any air pollutant not previously emitted." (Emphasis added.) Although the *underlined* words in the definition appear to refer to what the source is actually emitting at a particular time, the court in the June opinion described the concept of "modification" in terms of changes in the "potential to emit" of a source. As a result, EPA proposed definitions which also referred to changes in "potential to emit."

In its December 1979 opinion, however, the court used an entirely different set of terms to describe "modification." Instead of using "potential to emit," it used language which, like the section 111(a)(4) definition, suggest changes in actual emissions. For example, at one point the court states: "If these plants increase pollution, they will generally need a permit. Exceptions to this rule will occur when the *increases* are *de minimis*, and

when the *increases* are offset by contemporaneous decreases of pollutants, as we discuss below * * *." (Emphasis added.)

Following the lead of the court, EPA has also shifted the focus of its regulatory definitions from "potential to emit" to "actual emissions." For both PSD and nonattainment purposes, a "major modification" is now any significant "net emissions increase" at a major stationary source that results from certain changes. "Net emissions increase" is, in turn, roughly any net increase in "actual emissions." Not only are those definitions consistent with the court's view of section 111(a)(4), but they also avoid the "paper offset" problem described above, thereby better serving PSD and nonattainment purposes.

E. Contemporaneous Increases and Decreases

Under *Alabama Power*, a modification is any net increase in emissions that would result from "contemporaneous" changes at a major stationary source. The court decision left to EPA the task of defining what changes should be considered "contemporaneous."

A narrow interpretation of the term "contemporaneous" would restrict creditable decreases in emissions to those occurring at the same time as the emissions increases to be offset. The administrator decided against proposing such an interpretation, since it might promote the continued operation of old or obsolete equipment in order to preserve offset credit. Instead, EPA proposed a system that would grant credit for any post-promulgation emissions reduction and for certain pre-promulgation emissions reductions involving recent shutdowns or production curtailments. In order to be creditable, the reductions were to be enforceable before operation of the emissions unit(s) that would result in the emissions increases (except that a 180-day shakedown period could be granted for replacements). A preconstruction notice was also proposed as a mandatory means to record any reduction credit. (For a discussion of that proposed notice requirement, see the section entitled Notification.)

On January 30, 1980 (45 FR 6802), EPA solicited additional comment on its proposal for "contemporaneous." In particular, the Administrator asked whether a three-year time limit should be imposed for qualifying reductions as "contemporaneous." The proposed three-year time cap would have run from the time of the emissions reduction to the time that the source would have filed any necessary permit application.

for the prospective emissions increase(s). Where a permit would have not been required, the reference time would instead be the date on which construction commenced on the change resulting in the emissions increase.

Several comments were received on the September 5 proposal. Many confused the dates for accumulation at minor stationary sources (see discussion below) with the time limits for "contemporaneous" changes at major stationary sources. The majority of commenters on the January 30 Federal Register notice were from the industrial sector and they urged EPA to treat *any* emissions decrease which occurs before a proposed increase as being "Contemporaneous" with that increase. EPA however, has rejected those urgings. To credit any decrease that occurs before a proposed increase would violate any common sense notion of what is "contemporaneous," since a period of contemporaneity must have some definite boundaries.

EPA agrees with those industry commenters, however, to the extent that they contended that the period of contemporaneity should be fairly large. In particular, EPA believes that the period should be wide enough so as to minimize any incentive for keeping old or obsolete equipment in operation beyond its usefulness. As a result, EPA has set five years, plus time for construction, as the period of contemporaneity for the purposes of the Part 52 PSD regulations, the Offset Ruling and the construction moratorium. Specifically, the definition of "net emissions increase" in each of those regulations provides that a decrease in "actual emissions" may be credited only if it occurs between the date five years before construction "commences" on a proposed physical or operational change and the date the increase in "actual emissions" from that change occurs. A five-year limit was selected for those regulations rather than a three-year value, since five years is frequently used as the time duration over which corporate expansion planning is conducted.

For the purposes of the Part 51 PSD and nonattainment regulations, EPA has established that each state may set the period of contemporaneity for its own NSR regulations. The state may not, however, set a period of unreasonable or undefined length.

F. Otherwise Creditable Increases and Decreases

Whether an increase or decrease in "actual emissions" is creditable for PSD or nonattainment purposes depends, not only on whether it is contemporaneous

with the increase in question, but also on certain other factors. First, under each of the PSD and nonattainment definitions, a prior increase or decrease is creditable only if the relevant reviewing authority has not relied upon it in issuing a permit under the relevant NSR program. As stated earlier, a reviewing authority "relies" on an increase or decrease when, after taking the increase or decrease into account, it concludes that the proposed project would not cause or contribute to a violation of an increment or ambient standard. The purpose of that rule is to "wipe the slate clean." Once the reviewing authority has evaluated a significant net increase in issuing an NSR permit the net increase should not be a factor in deciding whether subsequent events should undergo scrutiny, too.

Second, under the PSD definition of "net emissions increase," an increase or decrease in actual emissions of sulfur dioxide or particulate matter which occurs before the baseline date is creditable only if it would be considered in calculating how much of an increment remains available. In formulating that definition, EPA sought to establish as close a correspondence as possible between what consumed increment and what must undergo NSR for PSD. Without that rule, some changes that *would* consume increment could escape review because of a prior decrease that was subsumed in the baseline concentration. In addition, without that rule, some changes that *would not* consume increment could have to undergo review because of a prior increase that was also subsumed in the baseline concentration.

G. The Extent to Which Increases and Decreases are Creditable

Each of the definitions of "net emissions increase" in the PSD and nonattainment regulations contains provisions which govern the extent to which a creditable increase or decrease in "actual emissions" may be credited.

The rules in each of those definitions relating to increases are simple. An increase is creditable to the extent that the new level of "actual emissions" at the emissions unit in question exceeds the old level. The old level of "actual emissions" is that which prevailed just prior to the physical or operational change which caused the increase. The new level is that which prevails just after the change.

The rules relating to decreases that are common to each of the definitions are more complex. First, a decrease is creditable only to the extent that "the old level of actual emissions or the old

level of allowable emissions, whichever is lower, exceeds the new level of actual emissions." (Emphasis added.) Since "allowable emissions" encompasses any federally enforceable requirement, including any with a future compliance date, the underlined language prevents a company from taking credit for decreases that it has had to make or will have to make in the future. EPA concluded that to give credit for a decrease a company has had to make in order to bring an emissions unit into compliance was unwise, since together with the five-year "contemporaneous" period it would create an incentive to stay out of compliance. Furthermore, it would be contrary to the purposes of the Act and good sense to provide what is in essence a benefit for recalcitrance. Similarly, EPA concluded that to give credit for a decrease a company will ultimately have to make anyway in order to meet a requirement by a certain date would also be unwise, since it would encourage procrastination. Further, allowing decreases which fulfill preexisting requirements to be used to avoid review would undermine the purposes of the PSD and nonattainment programs by interfering with efforts to preserve or achieve attainment.

Second, a decrease is creditable only to the extent that it is "federally enforceable" from the moment that actual construction begins on the physical or operational change which causes the "actual emissions" increase in question. The purpose of that rule is to ensure that the decrease is real and that it remains in effect. The term "federally enforceable" is defined in the regulations as any limitation or conditions which EPA can enforce, such as any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved under 40 CFR 51.18 and 40 CFR 51.24.

Finally, a decrease is creditable only to the extent that it has the same health and welfare significance as the increases in question. By this provision, EPA seeks mainly to prevent an increase in emissions with considerable health and welfare significance from escaping review merely because of a contemporaneous decrease in less harmful emissions. The basic health and welfare protection purposes of the Act mandate this provision.

The definitions of "net emissions increase" in the nonattainment regulations contain a restriction on crediting decreases that the PSD regulations do not contain. Specifically, they provide that a permitting authority may not credit a decrease to the extent that any permitting authority has

already accepted the decrease in satisfaction of the offset requirements of the applicable nonattainment regulations and consequently has issued a preconstruction permit to any source or modification, including the source at which the decrease occurred. The purpose of that rule is to prevent any "double crediting" of decreases in "actual emissions." Double crediting would allow air quality to deteriorate without prior review.

EPA is considering whether to introduce a provision to prevent double crediting in the PSD context. A discussion of the problem appears in the section on Increment Consumption.

H. Accumulation

On September 5, 1979, EPA proposed to continue the current policy of requiring PSD and nonattainment NSR when aggregate new emissions from individually minor units at the same stationary source, which itself was minor as of a certain date, are sufficient to require the series of changes to be treated as a major stationary source. In addition, the Administrator proposed to make the current policy consistent with the *Alabama Power* decision by applying NSR when the aggregate *net* increase in potential to emit after the applicable date qualifies it as a major stationary source (the existing rules accumulate only emissions increases and do not take decreases in account). For PSD review, the date from which emissions increases were to be aggregated was August 7, 1977, the date found in the 1978 PSD regulations. The proposed December 21, 1978 date for each of the nonattainment regulations, including the construction moratorium, marks the time when sources constructing in nonattainment areas were placed on notice that accumulation could later subject them to review.

EPA also proposed that, once a series of individually minor changes or one major change at a minor stationary source had qualified for review, the control technology assessment would focus on the last changed unit triggering review while the air quality assessment would consider all aggregated emissions.

Finally, the Administrator proposed on September 5 that accumulation would also govern the review of individual *de minimis* changes at major stationary sources. Once a source had aggregated enough emissions to make it major, a subsequent emissions increase of any size at the source would have to undergo review, unless the increase together with any contemporaneous increases or decreases of any size would qualify as a *de minimis* increase.

Twenty of the twenty-three comments received did not favor retaining the accumulation concept, even with the addition of netting. Two other commenters endorsed accumulation, but with different starting dates. Two industrial commenters claimed that accumulation cannot be legally required, since section 111(a)(4) defines modification in terms of *any change* and not a *series of changes* at a stationary source. Most other commenters agreed that neither the court nor the Act takes a position on accumulation, but they requested that the Agency not adopt or maintain such a concept. These commenters claimed that both major and minor source accumulation complicates the regulations and could eventually subject the most minor of emissions changes to review. The increase in paperwork, and the administrative strain of trying to document and report *de minimis* emissions changes, were claimed to be overwhelming, costly, and counterproductive.

These concerns might have had merit if the proposed *de minimis* emission levels had not been raised in the final regulations and the accumulation of *de minimis* changes was to continue even after a preconstruction permit had been issued. It was suggested that the general NSR procedures found in all SIPs be relied upon to effect good control for the *de minimis* or minor emissions changes, instead of accumulation. Commenters stressed that, in any event, accumulation of *de minimis* increases should run over the same time period for crediting contemporaneous reductions.

The Administrator has reconsidered the need for an accumulation rule and has decided to retain accumulation to determine if a greater than *de minimis* increase would occur at a major stationary source and to delete accumulation for aggregating changes at minor stationary sources. The primary reason for proposing accumulation at minor sources was to prevent circumvention of the regulations by the systematic construction of carefully sized emissions units which only in the aggregate would trigger review. Even though all significant changes at a source would face review once the source became major, a significant loophole was thought to exist. For example, absent an accumulation rule, a company could construct a 498-ton source without having to get a PSD permit by constructing first one-half of it and then subsequently the other half. The Administrator, however, does not find adequate support in the Act for applying PSD review to the change at a minor

source which would make the source major. Section 165 applies only to major emitting facilities on which "construction" commences after a specified date, where the term "construction" includes "modification." Similarly, section 172(b)(6) requires permits for the construction of new or modified major stationary sources. EPA believes that, in general, PSD and nonattainment review cannot be applied to a modification unless it would occur at a source that is already major. The one exception to this rule is where a proposed addition to an existing minor stationary source would be major in its own right. Such construction is equivalent to a new major stationary source and should therefore be subject to PSD and nonattainment review. A new subsection in each of the PSD and nonattainment regulations embodies that view.

In general, under the promulgation announced here a series of minor changes at the same minor stationary source will not be accumulated. On the other hand, a series of individually *de minimis* changes at a major stationary source would be accumulated within a contemporaneous time frame to see if a review would be required. This is reflected in the definitions of "net emissions increase" in the PSD and nonattainment regulations. Plainly, a series of individually *de minimis* increases in emissions in the aggregate deteriorate air quality significantly.

I. Restrictions on Construction

EPA proposed that the netting of emissions changes would not be permitted in areas subject to construction restrictions under section 110(a)(2)(I) or 173(4). EPA based this proposal on an interpretation that Congress intended all forms of offsets to cease after June 30, 1979, in the absence of an approved Part D plan. This policy would also have promoted the timely submittal of attainment plans and prevented the nonattainment problem from growing worse while the plan was being developed. The Administrator believed that sources might convert reductions later needed for attainment into offsets before the plan requiring those reductions could be adopted and approved.

Thirty-two of thirty-five commenters said that the proposed "increase only" approach was unacceptable. No substantial support was given by the three that favored it. Several questioned the legality of the proposed interpretation and claimed that *Alabama Power* authorized only a netting approach, despite any programmatic sense that another

approach might have. Several asserted that EPA's proposal would discourage early cleanup and actually perpetuate the existing air quality problem.

The Administrator has reconsidered the interpretation that led to the proposal of the "increase only" approach for carrying out the growth restrictions and concluded that the *Alabama Power* decision does not support it. Thus, in the final rules promulgated today, a major stationary source can construct in a growth restricted area, if sufficient contemporaneous, creditable net reductions are found (subject to the limitations on reconstruction described below).

J. Reconstruction

In the September 5, 1979 proposal, a reconstruction (roughly, improvements at an existing source which equal 50% or more of the capital cost for replacing the source) was to be treated as if it were a new source for purposes of NSR under both PSD and nonattainment rules. Under the proposal, a reconstructed major stationary source would be subject to review regardless of any contemporaneous emissions reductions that would occur at the same source. The Administrator proposed this approach in accordance with Congressional intent to subject new construction in nonattainment areas to requirements such as meeting the lowest achievable emission rate (LAER), even though a replacement of an older unit would result in a net reduction from previous emission levels (see 123 CONG. REC. 13702, col. 2 [daily ed. August 4, 1977] (statement of Senator Muskie)). In the agency's view nonattainment areas require very stringent NSR Procedures to overcome the inertia of the nonattainment problem. Having a reconstruction provision would promote maximum air quality improvements from an area's limited reduction capability by requiring more construction projects to meet LAER and bring other sources in the State under common control into compliance with the SIP.

The reconstruction rule was also proposed for PSD in an effort to be consistent with nonattainment NSR. Although the Administrator recognized that the air quality rationale for having reconstruction in nonattainment areas was considerably stronger than that for PSD inclusion, it was believed that less confusion would result with a parallel application of the reconstruction rule.

All ten commenters on the reconstruction topic voiced general disapproval for the proposal. Eight of the ten favored dropping the concept

entirely from both sets of regulations, with the remaining two requesting that its applicability be restricted. They advised that EPA should rely instead on the reconstruction provisions of NSPS and NESHAP to ensure such construction would apply adequate control technology. Commenters complained that review criteria based solely on the replacement cost of equipment regardless of air quality improvements make little sense for NSR rules charged with safeguarding air quality. They further argued that the added regulatory complexity inherent to the inclusion of a reconstruction provision was not warranted and its addition to NSR would not be consistent with the "no net increase" exemption under *Alabama Power*.

The Administrator agrees that the reconstruction requirement makes only limited air quality sense for PSD and has reconsidered the need to retain this concept for the program. It is true that a reconstructed source not otherwise subjected to PSD review as a major modification (i.e., such source would not cause a significant net emissions increase) would not interfere with the PSD air quality objective of allowing only limited deterioration of existing air quality. On the other hand, the PSD objective of maximizing future use of the allowable increments through application of best available control technology (BACT) would not be strictly met. Nevertheless, the Administrator believes that the general PSD objective of safeguarding existing air quality from significant degradation will not be undermined by deleting the requirement for review of reconstructions.

The proposal would have implemented reconstruction for PSD only on a plant wide basis. Thus, an entire plant would have to be reconstructed in order for it to be subjected to PSD review as a reconstruction. Few instances of plantwide reconstruction are expected. The limited applicability under PSD brings further doubt as to the real need for the added complexity that a reconstruction provision would bring to determining the permit applicability of construction projects. Furthermore, the deletion of reconstruction from PSD would avoid some increment tracking problems; treating reconstruction as new PSD sources could lead to increment consumption unrelated to actual air quality changes.

The Administrator does not agree with the commenters who argued that applying "reconstruction" in nonattainment areas would bring unwarranted complexity and no air

quality benefits. As explained in the proposal, EPA believes that the reconstruction provision within nonattainment NSR rules is consistent with stated Congressional intent and programmatic goals to get reasonable air quality improvements from each major construction activity. Since *Alabama Power* did not strictly bind EPA in nonattainment concerns and since the reconstruction concept was not expressly precluded, the Administrator has determined that reconstruction is warranted in nonattainment areas and is today promulgating this concept as proposed for nonattainment NSR rules.

Commenters also asked that several exemptions be considered if a reconstruction rule were promulgated. Among the exemptions suggested were: (1) current NSPS exemptions for modifications, (2) Fuel-Use Act exemptions, (3) involuntary replacement of damaged equipment, and (4) voluntary fuel switches. The Administrator is not promulgating any of these exemptions into the reconstruction provision. First, the current NSPS exemptions and involuntary replacement of damaged equipment do not avoid applicability of NSPS under 40 CFR 60.15 when a unit would have been reconstructed. Therefore, it would be inconsistent to establish such a concept under nonattainment NSR. In addition, 40 CFR 60.15, which governs how the reconstruction rule will apply in the affected NSR programs (see e.g., 40 CFR Part 51 Appendix S, section II, A[12]), allows the Administrator, in paragraph (f), some case-by-case discretion in determining when a reconstruction would occur. Thus, no specific exemptions such as those suggested appear warranted at this time.

K. Exclusions

In September, EPA proposed to exclude "routine maintenance, repair and replacement" from the category "physical change" which appeared in the proposed PSD and nonattainment definitions of "major modification." At the same time EPA proposed to exclude the following events from the category "change in method of operation," unless previously limited by enforceable permit conditions: (1) a fuel switch due to an order under the Energy Supply and Environmental Coordination Act of 1974 (ESECA) (or any superseding legislation) or due to a natural gas curtailment plan under the Federal Power Act; (2) a voluntary switch to an alternative fuel or raw material that the source prior to January 6, 1975, was capable of accommodating; (3) a fuel switch due to an order or rule under section 125 of the

Clean Air Act; (4) a switch to "refuse derived fuel generated from municipal solid waste" (RDF), and (5) a change in the ownership of a source.

EPA received few comments on the proposed exclusions. Certain commenters expressed reservations about the legal and policy basis of the RDF exclusion. Another commenter urged EPA to expand the exclusion for voluntary switches to an alternative fuel or raw material. Specifically, the commenter urged the Agency to drop the provisions which limited the exclusion to switches that would not require a change in permit conditions and to sources that were capable of accommodating the fuel or material before January 6, 1975. The commenter agreed with the position EPA took in the preamble to the 1978 Part 52 PSD regulations that Congress in enacting section 169(2)(C) intended that voluntary switches to an alternative fuel or raw material should be treated in the same way that they were being treated under section 111. *See* 43 FR 26396 (June 19, 1978). At the time Congress enacted section 169(2)(e), the regulations promulgated under section 111 excluded any such switch if the source could accommodate the fuel or material before the relevant NSPS applied to the source type. Whether a permit condition would restrict the switch was immaterial. *See* 40 CFR 60.14(e)(4) (1979). In view of this, the commenter argued that Congress intended the exclusion in the PSD and nonattainment regulations to look only at whether the source was capable of accommodating the fuel or material before those regulations first applied to it.

After considering the comments on the RDF exclusion, EPA has decided to promulgate it. The Resource Conservation and Recovery Act of 1974, 42 U.S.C. 3251 *et seq.*, firmly supports the exclusion. In that statute, Congress expressed a strong interest in the development and use of RDF. In addition, the exclusion has a sound policy basis, in view of the importance of reducing the nation's dependence on foreign oil.

In promulgating the exclusion, however, EPA has drawn it, by way of clarification, somewhat more tightly. It now excludes only a switch to RDF by a "steam generating unit." EPA intends that term to have the same meaning for the purposes of PSD and nonattainment NSR as it does for the purposes of the new NSPS for certain electric utility "steam generating units." For the NSPS definition of that term, see 40 CFR 60.41a (1979).

In response to the comment on the voluntary fuel and raw material switch

provision, EPA has retained the language which limited it to sources which were capable of accommodating the fuel or material before January 6, 1975 (or December 21, 1976, for the Offset Ruling and 40 CFR 51.18; or July 1, 1979, for the construction moratorium) and the language which limited the exclusion to those not requiring a permit alteration. First, EPA disagrees that the cutoff date in the counterpart NSPS exclusion is analogous to the date the particular preconstruction permit regulations applied to a particular source. To the contrary, the NSPS counterpart is more broadly drawn; it focuses on the date the NSPS first applied to the *source type*. Second, EPA disagrees that the counterpart governs whether the NSR exclusions must ignore permit conditions. The NSPS program does not involve assessments of the impact of a source on air quality. In EPA's view, any switch to another fuel or raw material that would distort a prior assessment of a source's air quality impact should have to undergo scrutiny.

It should be noted that EPA has added a new clause to the exclusion for voluntary fuel switches. It provides that a switch which the relevant reviewing authority has already approved is not a "physical change" or "change in the method of operation" for NSR purposes. Obviously, a second evaluation of the air quality impact of the switch would be unnecessary.

The comment relating to voluntary switches has prompted EPA to add one more exclusion. It would exclude any increase in hours or rate of operation, as long as the increase would not require a change in any preconstruction permit condition established under the SIP (including PSD permits) after the relevant date of concern.

This exclusion stems largely from EPA's decision that the definitions of "major modification" should focus on changes in "actual emissions." While EPA has concluded that as a general rule Congress intended any significant net increase in such emissions to undergo PSD or nonattainment review, it is also convinced that Congress could not have intended a company to have to get a NSR permit before it could lawfully change hours or rate of operation. Plainly, such a requirement would severely and unduly hamper the ability of any company to take advantage of favorable market conditions. The emphasis of the relevant statutory provisions on "construction" strongly supports EPA's interpretation of Congress' intent. *See, e.g.*, section 165(a), 42 U.S.C. 7475. At the same time, any

change in hours or rate of operation that would disturb a prior assessment of a source's environmental impact should have to undergo scrutiny.

Because of the absence of any significant comments on the other four exclusions, EPA has promulgated them as proposed.

L. Example of How the Definitions Work

The way in which the definition of modification works is best illustrated by an example. The example also demonstrates the relationship among a source's potential to emit, its actual emissions, and its allowable emissions.

In December 1980, a new source (Source A) that will emit SO₂ and PM files a PSD application to locate in an area that is attainment for SO₂ and PM. At maximum operating capacity including application of best available control technology, and assuming year-round continuous operation, the source can emit 700 tons of SO₂ per year. Seven hundred tons per year (tpy) is the source's physical potential to emit SO₂. Its physical potential to emit PM is 15 tpy. Provided that the 15 tpy of PM emissions is made federally enforceable, PM emissions will not be significant (*i.e.*, less than 25 tpy) and are, therefore, not subject to PSD review.

In the course of review, modeling reveals the SO₂ increment will be violated in the source's area of impact if it emits 700 tons SO₂ per year. The source, therefore, decides to limit its operation so as to decrease its emissions to 600 tons SO₂ per year. This reduction proves sufficient to eliminate the predicted violation. The source is issued a PSD permit that sets an SO₂ emissions limitation of 600 tpy, which reflects the revised source operation (approximately 20 hours a day, seven days a week). This emissions rate is the source's legal potential to emit. It is also the source's allowable emissions, since it is the emissions rate specified as a federally enforceable permit condition. *See e.g.*, § 52.21(b)(15)(iii).

During the first three years of operation, from March 1982 to March 1985, the demand for the source's product is less than anticipated. As a result, the source's actual emissions are 250 tpy during the first year and 300 tpy during the next two years.

In April 1985, another new source of SO₂ (Source B) proposes to locate in the area of impact of Source A. Consequently, in calculating its impact on ambient standards and its increment consumption, Source B is required to model the emissions of Source A. Under EPA's increment consumption policy (*see Increment Consumption*), Source

A's actual emissions should be modeled. Because Source A has an individually-tailored PSD permit, the definition of actual emissions allows the reviewing authority to presume that the allowable emissions in Source A's PSD permit reflects its actual emissions, unless the reviewing authority or source applicant has reason to believe that allowable emissions are not representative of actual source emissions.

In the case of Source A, allowable emissions, in fact, differ from actual emissions. Assuming that the reviewing authority is aware of this difference as a result of its periodic assessment or because Source B has presented this information in its application, Source A is modeled at its actual emissions rate representative of normal source operation during a two-year period preceding the date of concern. In this case, the date of concern would be approximately the date Source B submits its application. The reviewing authority should, therefore, look to the two-year period preceding that date unless that period of time was atypical of normal source operation. For Source A, the two-year period preceding Source B's application can be considered representative of normal source operation. Source A's actual emissions during that period, on an average annual basis, are approximately 300 tpy. The modeling of increment consumption for Source B should assume that emissions rate for Source A.

Unless Source A's permit is revised at this point to reflect its actual emissions rate of 300 tpy, Source A could attempt to use the decrease in its actual emissions in the future to offset a future emissions increase of its own. This would result in a large net increase in actual emissions for the area which could violate the applicable PSD increment. The potential problem of double counting of emissions decreases is discussed in more detail in Increment Consumption.

Assume that in June 1987, Source A decides to modify its facility. Demand for its product has increased and Source A wants to add a new emissions unit that will emit 60 tpy SO₂. In addition, Source A plans to increase the hours of operation at the units which began production in March 1982, to result in an actual emissions increase of 75 tpy at those units. If no contemporaneous decreases have occurred, both changes will result in significant net increases in actual emissions. Both changes then qualify as modifications. The addition of a new unit is a physical change. The increase in hours of operation is a change in the method of operation,

assuming that the reviewing authority revised Source A's permit to reflect its actual emissions of 300 tpy at the time Source A's actual emissions were used by Source B in modeling increment consumption.

If Source A was able to decrease sufficiently its actual emissions at another unit at the source, it would be able to avoid PSD review for one or both modifications. Assume, for example, that in April 1986, Source A applied additional control equipment and decreased actual SO₂ emissions across the facility by 100 tpy. In June 1987, Source A can use those decreases to offset its proposed contemporaneous increases provided the decreases are made federally enforceable. If Source A's proposed increase in hours of operation for the units which began operation in March 1982 would result in an emissions increase of 75 tpy and the emissions from the proposed new unit are 60 tpy, Source A can use its 100 tpy decrease to avoid PSD review for both changes. Seventy-five tons of the decrease can be used to offset the increase in hours of operation and 25 tons of the decrease can offset 25 tons of the increase due to the new unit. Since the net emissions increase of 35 tons is not significant, it would not be a major modification requiring PSD review.¹²

Suppose Source A then plans to increase its emissions by 150 tpy in November 1990 and to decrease emissions by 80 tpy in February 1989. The increases and decreases since April 1986 are all contemporaneous because they occurred within the same five-year period. Now, assume Source A revises its permit to reflect only 50 tons of the 80-ton decrease in February 1989. Source A can receive credit for only 50 tons of the 80-ton decrease, since only this amount was made federally enforceable. However, Source A does receive credit for the April 1986 decrease of 100 tpy, assuming that decrease was made federally enforceable at the time of the June 1987 increase, or is made federally enforceable prior to commencement of construction on the November 1990 increase. Source A's total creditable decreases are then 150 tpy. Its increases are 135 tpy in June 1987 and 150 tpy in November 1990, for a total increase of 285 tpy. The net emissions increase is 135 tpy, which is significant for SO₂. Source A must get a PSD permit for the change leading to the 150 tpy increase in November 1990. However, it is not

required to get a PSD permit for the June 1987 increases.

If, from March 1982 to March 1985, Source A had exceeded its allowable rate of 700 tpy, Source A could not receive full credit for its April 1986 decrease. For example, assume Source A's actual emissions from March 1982 to March 1986 were 800 tpy, 100 tpy over its allowed rate. None of the 100 tpy reduction in April 1986 would then be creditable. The amount of Source A's creditable decrease could also be reduced if the designation of the area where Source A is located were changed from attainment to nonattainment in March 1985 and Source A became subject to a new, more stringent SIP requirement in March 1986. If, for example, the SIP required Source A to reduce emissions from 700 to 600 tpy by December 1988, none of the 100 tpy decrease in April 1986 would again be creditable.

XI. De Minimis Exemptions

In the *Alabama Power* decision, the court indicated that emissions from certain small modifications, and emissions of certain pollutants at new sources, could be exempted from some or all PSD review requirements on the grounds that such emissions would be *de minimis*. In other words, the Administrator may determine levels below which there is no practical value in conducting an extensive PSD review. The court also indicated that the Agency could establish exemptions based on administrative necessity (e.g., the inability of reviewing authorities to provide the necessary work force to properly review a very large number of permit applications). The September 5 proposal incorporated the *de minimis* concept and requested comments on the approach taken. At that time, the Administrator noted that because of the urgency associated with the proposal, the *de minimis* numbers published were not supported by extensive analysis, and that a more thorough analysis would be undertaken prior to promulgation.

The proposal included two tables, one for defining significant emissions changes (in tons per year) and one for defining significant air quality changes (in micrograms per cubic meter). Values lower than those in the proposed tables were recommended as being *de minimis*. These tables, with respect to criteria pollutants, were generally based on the "significance" levels published in the preamble to the June 19, 1978 PSD regulations (43 FR 26398) and in the Offset Ruling (44 FR 3283). These significance levels in turn were derived from the Class I increment values listed

¹² Under the provisions of 40 CFR Part 51 Appendix S, 40 CFR 51.18(j), and 40 CFR 52.24, the emissions increases at Source A would probably be subject to review as modifications, notwithstanding the contemporaneous decreases at the source.

in Part C of Title I of the Clean Air Act. For noncriteria pollutants, a similar approach was taken: the Agency extrapolated emissions rates from documented air quality guideline numbers, where available.

In the proposal, the tables were presented as preamble guidelines to be used in the following manner. For PSD, any new source subject to review was to be analyzed for the application of BACT for each pollutant whose emissions would exceed the value in Table 1. In addition, an air quality analysis to determine the impact of these pollutants was required. For modifications, any pollutant for which the source was major and for which there was a contemporaneous net increase equal to or greater than the applicable value(s) in Table 1 would trigger PSD review of the modification; as in the case of new sources, BACT and air quality impact analyses were required for each pollutant whose net emissions increased by greater than a *de minimis* amount. Table 2 was proposed to provide an exemption from air quality impact analysis (including monitoring) for those sources and modifications which could demonstrate that their maximum expected air quality impact would be less than the values listed. Sources, including modifications, claiming to be exempt from reviews on the basis of *de minimis* emissions would be required to so notify the Administrator. The *de minimis* requirements also would apply to nonattainment sources, but would be restricted to the pollutant(s) for which the area is nonattainment.

The Agency received extensive comments on the proposed *de minimis* approach. In all there were 121 comments addressing this issue. While there was almost universal endorsement of the concept, a large number of commenters (65) criticized the proposed values as being too low. Some of these commenters stated that there was a lack of support for the numbers presented and felt that the emissions table was more restrictive than the table of air quality concentrations; others claimed that the low *de minimis* levels made the applicability of the review process inequitable for modifications in comparison to new sources. A consistent theme was that the proposed values would necessitate unproductive review in terms of environmental benefit while consuming applicant and reviewing authority resources. Although there were suggestions concerning how big the emissions numbers should be (100 tons per year was a popular choice), little specific guidance was given on how to develop alternative

numbers. Suggestions generally were limited to using various percentages of the national ambient air quality standards or the amount of existing emissions. One commenter did suggest the use of an equation that accounted for variability in stack height.

Only one commenter criticized the *de minimis* levels for being too high. This commenter also believed that exemptions from review because of emissions less than the *de minimis* rate should not be automatic, but should be allowed only after a case-by-case review of source impact. In addition, the commenter stated that in areas where the increment is almost entirely consumed, sources should be subject to PSD review for any increase in emissions.

A frequently addressed aspect was the perceived need to incorporate any *de minimis* values in the regulations, as opposed to leaving them as guidelines in the preamble. Forty-eight of fifty-six commenters favored such a change. The general concern was that since the preamble is omitted from the Code of Federal Regulations, the regulations as written would appear to be ambiguous as to the term "significant." Those that favored leaving the tables as guidelines did so generally to provide more flexibility either for sources to demonstrate that they should be exempt or for states to develop alternative *de minimis* values.

There were several other meaningful comments. Sixteen commenters recommended that *de minimis* coverage be limited to criteria pollutants. Eighteen commenters contended that the need to accumulate *de minimis* changes was burdensome, environmentally unnecessary, and should be dropped; some questioned the legislative basis for this requirement. Several commenters cited the difficulty, if not impossibility, of monitoring for all regulated pollutants. These commenters were especially concerned regarding monitoring for noncriteria pollutants, indicating that the requisite technology was not available in some cases. Other commenters questioned how the term "no impact," which is used in the regulations to protect Class I areas, relates to the Table 2 *de minimis* values.

Mindful of the comments received, the Administrator has undertaken a reassessment of the *de minimis* issue. This reassessment is described in two documents. One is a report entitled "Impact of Proposed and Alternative *De Minimis* Levels for Criteria Pollutants," EPA-450/2-80-072, and the other is a staff paper entitled "Approach to Developing *De Minimis* Values for Noncriteria Air Pollutants." These are

available for examination in the rulemaking docket. In addition, copies may be obtained by writing to the Air Information Center, U.S. EPA Library Services, MD-35, Research Triangle Park, NC 27711.

Obviously, a significant part of the reassessment involved the use of reasonable judgment. The task requires consideration of an area in which not only is data limited, but criteria for decision making is almost non-existent. The first task of the reevaluation was to identify the basic objectives to be met in selecting *de minimis* values. The primary objectives identified were: (1) provide effective Class I area protection; (2) guard against excessive "unreviewed" consumption of the Class II or III increments; and (3) assure meaningful permit reviews. "Meaningful" in this context implies that there would be a possibility of obtaining useful air quality information or obtaining greater emission reductions as a result of BACT analysis than would be expected from normal state permit or NSPS/NESHAP processing.

The proposed *de minimis* air quality values, which stemmed from the legislated Class I increments, caused concern for two reasons. First, if a modification occurs near enough to a Class I area, almost any *de minimis* emissions level could impact the area. Thus, proximity rather than emissions level appears to be more important in Class I area protection. Second, the general imposition of Class I criteria on the review process for Class II and III areas may be overly stringent. These concerns were examined as part of the *de minimis* reassessment.

As a result of this examination, the Administrator has decided that higher *de minimis* emissions rates than those used in the proposal could apply to review of sources which would not construct within a specified distance of a Class I area. However, a proposed source or modification that would construct close to a Class I area must be prepared to demonstrate for each regulated pollutant that it would emit that it would not have a significant impact on such area (defined as one microgram per cubic meter ($\mu\text{g}/\text{m}^3$) or more, 24-hour average), even if the proposed emissions increases are below the applicable *de minimis* threshold. The effect of this change is to require less review for many sources through higher *de minimis* values (compared to the proposal), while adding a limited air quality analysis requirement for only a few sources. Such a change is consistent with the objectives of protecting Class I

areas while limiting PSD review to projects with significant impact.

There were three basic alternatives available for specifying *de minimis* cutoffs—one based solely on air quality impact, one based solely on emissions rate, and one based on a combination of these, such as was proposed on September 5. The Administrator has chosen to specify *de minimis* cutoffs in terms of emissions rate for applicability, BACT and air quality analysis purposes, with no provisions for case-by-case demonstration of a source's air quality impact. This is a departure from the proposal in that, as proposed, a source could avoid air quality analysis requirements for a given pollutant by demonstrating that it would produce a maximum impact less than the air quality concentrations listed for that pollutant. An air quality concentration *de minimis* level for each pollutant for which measurement methods are available is included in the regulations only for the purpose of providing a possible exemption from monitoring requirements.

This approach has been adopted for several reasons. First, the Congress specified emissions rates, not projected air quality impacts, in the Clean Air Act as the criteria for determining which sources are major and therefore subject to PSD review. Moreover, the court, in the *Alabama Power* decision, continually refers to emissions rate rather than air quality concentration in its discussion of the *de minimis* issue. Therefore, it would be inconsistent with the existing guidance to abandon the emissions rate concept.

Second, if applicability decisions depended on confirming a demonstration by the source that its impact would be less than a given air quality level, it is the Administrator's opinion that the review process would become excessively complex and greatly increase the resources needed by reviewing authorities to carry out the program. In addition, such an approval would create an atmosphere of uncertainty as to whether individual sources needed to apply for a permit or not, and could lead to uneven application of the regulations from state to state. Third, the task of establishing *de minimis* air quality levels for noncriteria pollutants, with proper consideration of threshold levels and factors of safety (if any), is very complex and could not be done in the time available.

Finally, given the inclusion of a *de minimis* exclusion for monitoring, it serves little purpose to have a separate table to permit an exclusion from the remaining air quality impact analysis

requirement. (A separate table would be required because monitoring capability and concern for potential effects are unlikely to be associated with the same air quality concentrations.) Besides making the regulations more complicated, this resultant demonstration necessary to earn an exemption from air quality impact analysis would in itself be an air quality impact analysis.

In analyzing the basis for *de minimis* emissions rates, it was apparent that two distinct classes of pollutants were involved. The first consists of the criteria pollutants for which extensive health and welfare information has been developed and documented in the respective criteria documents. The other class consists of the noncriteria pollutants for which, as the name implies, no criteria on ambient effects exist. Rather, these pollutants are covered by either New Source Performance Standards (NSPS) or National Emission Standards for Hazardous Air Pollutants (NESHAP), both of which are based on a national emissions standard, rather than an air quality management approach. That is, the regulations developed pursuant to both these legislative requirements generally specify emissions limitations and/or equipment performance standards as opposed to threshold air quality levels that must be achieved as for the criteria pollutants. Thus, it appeared reasonable to develop *de minimis* cutoffs from separate perspectives—to base criteria pollutant *de minimis* emissions cutoffs on air quality "design values" and to base the noncriteria pollutant *de minimis* values on the emissions rates embodied in the NSPS and NESHAP.

The first step in developing *de minimis* emissions rates for the criteria pollutants, therefore, was the establishment of air quality "design values." Such design values were then converted to emission rates in accordance with EPA modeling procedures,¹³ using data on sources permitted under the PSD program. The latter provided modeling parameters associated with sources of the type expected to be most affected by the *de minimis* requirements. Ambient concentrations representing percentages of the primary 24-hour air quality standard, as well as percentages of the Class II increment, were evaluated for particulate matter (PM) and sulfur dioxide (SO₂). Similarly, various

percentages of the primary standard for the other criteria pollutants were examined.

The primary standard was chosen as the basis for design values because, except for PM and SO₂, none of the criteria pollutants have a secondary standard that is different than the primary standard. The 24-hour standard instead of the annual standard was used for PM and SO₂ since short term rather than the long term impact tends to be the controlling factor in determining whether air quality increments are exceeded. In addition, levels higher than five percent of the primary standard were not seriously considered because that percentage equates to approximately 35 percent of the TSP Class II increment. The Administrator does not believe that a source which, due to its own emissions, could potentially consume more than that amount of increment should be exempt from review.

Two factors had an important influence on the choice of *de minimis* emissions levels within the resulting range of annual emissions rates. The primary one was the cumulative effect on increment consumption of multiple sources in an area each making the maximum *de minimis* emissions increase (thereby going unreviewed under PSD at the time of the change). The other, and secondary one, was the projected consequence of a given *de minimis* level on administrative burden. To determine the cumulative effect on increment consumption expected from several sources, all making maximum *de minimis* increases (a rather unlikely event) in the same area, actual source distributions in the Dayton, Ohio, area were used. Dayton was chosen because it is a fairly representative industrialized community, and source data suitable for modeling was readily available. To check the impact of the various *de minimis* levels on administrative burden, data from past permitting experience were again used, in this case to prepare curves showing the number of sources expected to require review at various *de minimis* emissions levels. A description of these analyses is found in the *de minimis* report on criteria pollutants cited earlier.

As a result of the reevaluation, the Administrator has decided to use four percent of the 24-hour primary standard as a design value for both PM and SO₂. These ambient levels correspond to emissions rates of 25 tons per year for PM and 40 tons per year for SO₂ (except for lead, all emissions rates predicted from the modeling for criteria pollutants were rounded to the nearest five tons).

¹³ Guidelines for Air Quality Maintenance Planning and Analysis, Volume 10 (Revised): Procedures for Evaluating Air Quality Impact of New Stationary Sources, OAQPS No. 1.2-029R, October 1977.

Four percent of the lead standard was also used, yielding an emissions rate of 0.8 tons per year. The emissions rate for carbon monoxide (CO) in all cases was greater than 100 tons per year, the limit set in the Clean Air Act to define major for many source categories. Therefore, as proposed, the *de minimis* emissions rate for CO is established at 100 tons per year.

Because the nitrogen dioxide standard is expressed only as an annual average, a factor of two percent was used to determine the design value. There were two reasons for this decision. First, for a given level of emissions, a predicted annual concentration will be smaller than a short-term value. Conversely, therefore, a lower percentage for the annual standard than for a shorter term standard is indicated if one is to maintain a reasonably consistent rationale for emissions rates. Second, the emissions rate corresponding to two percent of the standard is 40 tons per year, which is comparable to the rate established for SO₂. Both these pollutants are frequently emitted from the same source, in roughly equivalent amounts; for example, a typical power plant meeting the NSPS with low sulfur coal would emit about 1300 tons per year of nitrogen oxides and about 1500 tons per year of SO₂.

Finally, models for use in establishing a relationship between individual source hydrocarbon (VOC) emissions and ozone concentrations are not presently available. Thus, it was not possible to model an emissions rate from an air quality design value. However, in view of the link between VOC and NO_x emissions in the formation of ozone, the emissions rate for VOC was also set at 40 tons per year.

It should be recognized that several sources or modifications can be allowed in the same area even though each might consume up to four percent of the standard (about 16 percent of the Class II increment for SO₂, and about 28 percent for PM). This is because the source specific concentration occurs in only a limited area (often one point) and the temporal and spatial conditions which lead to maximum consumption by one source are seldom the same for other sources that may be making similar *de minimis* changes. To reinforce this understanding, a modeling analysis of 37 sources in the Dayton area was conducted. The maximum aggregate increment consumption projected to occur as a result of all major sources each making a *de minimis* emissions increase equal to 40 tons per year (e.g., that for SO₂) was less than 1.5 $\mu\text{g}/\text{m}^3$ on a 24-hour basis. While representative of

only one set of conditions, this result could probably be expected in most industrialized areas.

Excessive increment consumption is unlikely, given the safeguards existing in the regulations. Although such sources would not get PSD permits, they do not go unreviewed. Most, if not all, will be permitted under ongoing state NSR programs pursuant to 40 CFR 51.18. Moreover, their contribution to increment consumption will be evaluated either by the next major source undergoing PSD review, or during the periodic assessment of source growth. Nevertheless, in atypical situations there might still be concern with the *de minimis* levels causing accelerated increment consumption. This can be controlled by a state, upon taking the program, through the establishment of smaller *de minimis* levels.

To determine a proximity cutoff that gives assurance of protection of Class I areas, a modeling analysis was performed to identify the effect of the *de minimis* emissions levels on such areas using Volume 10 screening procedures. For the purpose of this analysis, the effect of varying stack height and meteorology, as well as the influence of terrain features, was considered. Significant impact was taken to be one $\mu\text{g}/\text{m}^3$ 24-hour average. The results indicate that sources locating more than 10 kilometers from a Class I area would not have such an impact as a result of making *de minimis* changes. Therefore, the regulations promulgated here require that any new or modified major stationary source within that distance from a Class I area will be subject to review if the source would have an impact on the area equal to or greater than one $\mu\text{g}/\text{m}^3$, 24-hour average. It must be pointed out that while the preceding responds to those commenters concerned about how to judge whether a source has "no impact" on a Class I area, the analysis of impact on such an area from major sources subject to PSD review must be done on a case-by-case basis. Further, such sources may be subject to an evaluation by the appropriate Federal Land Manager as described in the regulations.

Noncriteria pollutant emissions rates were developed from the existing emission standards (NSPS and NESHAP). In general, a fraction of the applicable standard was used. In the Administrator's judgment, since the NSPS represents the best adequately demonstrated control technology on a nationwide basis, and the NESHAPs are established with an ample margin of safety to prevent unreasonable risk to

the public health from hazardous pollutants, a small percentage of these standards would, for PSD purposes, prevent a significant change from escaping review.

Levels generally representing 20 percent of a NSPS emissions standard and, because of their greater impact on health, ten percent of a NESHAP emissions standard, were evaluated. The air quality impacts of the resulting NSPS emissions rates were then calculated in a manner similar to that used for the criteria pollutants. These concentrations were compared to available health and welfare data to assure that significant adverse effects were avoided. In the case of fluorides, this check resulted in a reduction of the emissions rate originally indicated. No adjustment based on resultant effect was made for the hazardous pollutants since the NESHAP emissions rate, as noted above, is itself intended to protect the public health with an ample margin of safety; therefore, ten percent of such a value is in the Administrator's judgment sufficiently stringent for use as a *de minimis* level.

A brief discussion of the rationale for each noncriteria pollutant emissions rate is given below. For more information, see the staff paper cited earlier.

Hazardous Pollutants (NESHAP): Asbestos—Reevaluation of existing data indicates that trying to establish a quantitative link between emissions and potential effects is not possible. No level of exposure can be presumed *de minimis*. Therefore, a theoretical *de minimis* emissions rate of zero was considered. Such a value is not practical, however, since changes of any kind at sources using materials containing even traces of asbestos could trigger review regardless of the amount of asbestos emitted. Therefore, an estimate was made of the emissions from well controlled sources from which asbestos can be emitted. Although data is very limited, rough estimates of emissions from four source categories were developed. Three categories are covered by the NESHAP regulations: asbestos milling, manufacturing using asbestos in the process (e.g., textiles, asbestos tile), and asbestos asphalt manufacture. Rock crushing, a fourth category not covered by the NESHAP, was also examined. Emissions rates from these four categories, using available data, were respectively 0.2 tons per year (TPY), 0.07 TPY, 0.04 TPY, and 0.06 TPY. Because asbestos is carcinogenic, a conservative approach to establishing the *de minimis* emissions rate has been taken. The *de minimis* level is based on a source category

which has relatively small asbestos emissions, and which includes the majority of asbestos emitting sources—manufacturing operations using asbestos. Therefore, the promulgated asbestos *de minimis* rate is 0.007 TPY, based on ten percent of the emissions estimated from asbestos manufacturing sources.

Beryllium—The NESHAP emissions rate is ten grams per day or 0.004 tons per year. Ten percent of this yields a *de minimis* emission rate of 0.0004 tons per year.

Mercury—The NESHAP emissions rate is 2300 grams per day which equates to approximately one ton per year. At ten percent, the promulgated *de minimis* emissions rate is 0.1 tons per year.

Vinyl chloride—The NESHAP standard is expressed in parts per million of the effluent stream. It was therefore necessary to assume model plant characteristics in order to develop expected emissions from a well controlled plant. As in the case of asbestos, the Administrator believes that it is prudent to base these calculations on a small model plant considering the suspected carcinogenicity of this pollutant. Such plants, well controlled, emit about 10 tons per year. Based on this value, the promulgated *de minimis* emissions rate is one ton per year.

NSPS Pollutants:

Fluorides—The proposed *de minimis* emissions rate for fluorides was extremely conservative, and was strongly criticized as being too low by several commenters. Upon reevaluation, the Administrator agrees with the comments. A *de minimis* emissions rate based on the NSPS for aluminum plants is 30 tons per year—a well controlled, moderate sized, plant emits about 150 tons per year of fluorides. At a rate of 30 tons per year, the predicted maximum 24-hour ambient concentration is approximately ten micrograms per cubic meter. That concentration is about ten times the level that has been observed to produce effects on vegetation (about one microgram). In order to limit the potential for such damage, a *de minimis* emissions rate of three tons per year, corresponding to a one microgram impact, is promulgated.

An alternative would have been to base the emissions rate on the NSPS for phosphate fertilizer plants. Fertilizer plants typically emit much less than aluminum plants (i.e., about two tons per year controlled). A 20 percent *de minimis* value would then be less than 0.5 tons, which is unrealistic in view of other sources such as aluminum plants. Moreover, changes at a fertilizer plant

that resulted in a fluoride emissions increase of 0.5 tons per year would probably get reviewed under state new source review and/or NSPS requirements.

Sulfuric Acid—A model plant of 1300 tons per day of production was used. The NSPS-emissions limit is 0.15 pounds of sulfuric acid per ton of product processed. Thus, the model plant would emit about 35 tons per year. This yielded a *de minimis* emissions rate of seven tons per year using the 20 percent factor.

Total Reduced Sulfur, Reduced Sulfur—These pollutant classes include hydrogen sulfide (H_2S) and are regulated primarily to avoid nuisance (odor) problems. Total reduced sulfur (TRS) emissions are based on a representative kraft pulp mill (900 tons of pulp per day) which at 20 percent yields a *de minimis* emissions rate of 10 tons per year. Similarly, using a model refinery of about 100 long tons per day, the reduced sulfur (RS) compound emissions rate is 10 tons per year.

(The emissions rates calculated on the above model plants were 8.3 tons per year for TRS and 9.4 tons per year for RS. Both values were rounded to 10 tons per year for administrative purposes.)

Hydrogen Sulfide—Regulated under the refinery NSPS only. Specified as one thirtieth of reduced sulfur emissions, in major part as a check on control efficiency. Since concern, at the NSPS emissions levels, for TRS, RS, and H_2S is the same (nuisance rather than health impact) the *de minimis* emissions rate for H_2S alone is set at ten tons per year.

Methyl Mercaptan, Dimethyl Sulfide, Dimethyl Disulfide, Carbon Disulfide, Carbonyl Sulfide—*De minimis* emissions rates were proposed for these compounds. However, none of them are individually regulated under the Act. Rather, they are described as constituents of either TRS or RS. Therefore, since *de minimis* emissions rates are promulgated for TRS and RS, individual *de minimis* for the five compounds have been dropped.

The complete list of the emissions levels promulgated today, and where applicable, the *de minimis* air quality design values from which they are derived, is given below in Table A:

Table A.—*De Minimis* Values

Pollutant	De Minimis emissions rate (TPY)	Design air quality value (average time)	
		($\mu g/m^3$)	($\mu g/m^3$)
Carbon monoxide	100		
Nitrogen oxides	40	2 (annual).	
Sulfur dioxide	40	14.6 (24-hour).	
Total suspended particulates	25	10.4 (24-hour).	
Ozone (volatile organic compounds)	40		

Table A.—*De Minimis* Values—Continued

Pollutant	De Minimis emissions rate (TPY)	Design air quality value (average time)
Lead	0.6	0.06 (3 month).
Asbestos	0.007	
Beryllium	0.0004	
Mercury	0.1	
Vinyl chloride	1.0	
Fluorides	3	
Sulfuric acid mist	7	
Total reduced sulfur (including H_2S)	10	
Reduced sulfur (including H_2S)	10	
Hydrogen sulfide	10	

The air quality design values are not included in the regulations. *De minimis* emissions levels are included for use in defining the term "significant." As in the proposal, these values determine the need to review modifications and determine which pollutants require BACT and air quality impact analyses for any new source or modification requiring review.

The Administrator does not believe that the promulgated *de minimis* levels will produce an extraordinary administrative burden on reviewing authorities. Based on the data available, it is estimated that approximately 700 more sources will be subject to PSD review annually, all for small modifications not heretofore reviewed.

The regulations also include a list of air quality concentrations for each pollutant as criteria for exempting sources from the monitoring requirements at the discretion of the reviewing authority. Table B summarizes the applicable air quality values by pollutant type.

Table B.—Monitoring Exemption

Pollutant	Air quality value (averaging time)
($\mu g/m^3$)	
Carbon monoxide	575 (8-hour).
Nitrogen dioxide	14 (24-hour).
Sulfur dioxide	13 (24-hour).
Total suspended particulates	10 (24-hour).
Ozone	(1)
Lead	0.1 (24-hour).
Asbestos	(1)
Beryllium	0.0005 (24-hour).
Mercury	0.25 (24-hour).
Vinyl chloride	15 (24-hour).
Fluorides	0.25 (24-hour).
Sulfuric acid mist	(1)
Total reduced sulfur (including H_2S)	10 (1-hour).
Reduced sulfur (including H_2S)	10 (1-hour).
Hydrogen sulfide	0.023 (1-hour).

¹All cases where emissions of VOC are less than 100 tons per year.

²No satisfactory monitoring technique available at this time.

Several Table B values are somewhat different from the design air quality numbers shown in Table A. This is because the Table B values are based on the current capability to provide a

meaningful measurement of the pollutants. The values promulgated represent five times the lowest detectable concentration in ambient air that can be measured by the instruments available for monitoring each pollutant. The factor of five was chosen after reviewing test data for the various methods considered reasonably available. The decision was based in part on considerations of instrument sensitivity, potential for sampling error, problems with instrument variability (e.g., zero drift) and the capability to read recorded data. For a more thorough discussion of this determination, see the memorandum from K. Rehme to W. Peters dated May 20, 1980, which is available in the rulemaking docket and from the address given for the other reports.

There also are several changes in the use of Table B from the Table 2 proposed on September 5. First, a source deemed subject to review may claim the *de minimis* air quality impact exemption from only the monitoring requirement for the reasons noted earlier. Next, under the proposal, a source had to demonstrate that its ambient impact would be *de minimis* to obtain an exemption from monitoring. As promulgated, the regulation allows a source to be exempted from the preapplication monitoring requirement if it shows either that existing air pollution in the source impact area or its projected impact in the affected area is *de minimis*. In most cases, little is to be gained from preconstruction monitoring in situations where either condition applies.

Finally, because there will be situations where monitoring will be necessary even if modeling predicts *de minimis* conditions, the exemption is not automatic but rather must be with the approval of the reviewing authority. For example, Table B values should not be used when (1) there is an apparent threat to an applicable PSD increment or NAAQS based on modeling alone or (2) when there is a question of adverse impact on a Class I area. Questions of adverse impact on a Class I area are to be decided on a case-by-case basis with the objectives of the affected Federal Land Manager in mind.

Some of the suggestions made in the comments have not been adopted. For the reasons stated earlier, many of the *de minimis* values have been increased. The automatic exemption on the basis of emissions rate is retained, although the exemption from monitoring has been made discretionary. The Administrator believes that a clear indication of applicability is necessary. It is not

reasonable to expect a potential applicant to have continuous knowledge of the status of increment consumption and thus know when an application is required and when it is not. Nor have the *de minimis* values been promulgated as a guide only, with a screening review of all sources made mandatory as suggested by one commenter. The Administrator does not believe that there is a substantial programmatic benefit to be derived from such a stringent requirement.

Accumulation of *de minimis* values has not been dropped, because for most pollutants the promulgated *de minimis* emissions levels are now substantially higher than those proposed. The suggestion to allow sources with greater than *de minimis* emissions to make a showing that their air quality impact was *de minimis* and escape review was considered and then rejected. The higher emissions levels promulgated will offer much of the requested relief. Moreover, such an approach would not streamline the review process (i.e., a detailed air quality analysis would still be necessary), and several sources with taller stacks might avoid review and the BACT requirement. Variations in actual impact because of stack height can be a factor in the BACT review. Similarly, an equation considering stack height to determine the *de minimis* emissions rate cutoff has not been promulgated. It is questionable whether such an equation could be developed for application nationwide that would be any less judgmental than the fixed *de minimis* emissions rates promulgated. Moreover, that approach would be little more than a case-by-case applicability assessment which the Administrator believes is inadvisable for reasons already described.

Other suggestions not accepted were to raise the *de minimis* emissions levels to 100/250 tons per year for the criteria pollutants, and to limit the *de minimis* concept to only the criteria pollutants. In developing an approach to defining *de minimis* for PSD purposes and consequently calculating the specific *de minimis* values under the guidance given within the Act and *Alabama Power*, emissions levels as high as 100 tons per year could not be justified for most criteria pollutants. Use of the *de minimis* concept with respect to only the criteria pollutants suggests that any increase (i.e., a zero *de minimis* value) would be significant for noncriteria pollutants and must be reviewed. As mentioned earlier, a zero *de minimis* is not practical for this program.

XII. Geographic and Pollutant Applicability

A. Background

Alabama Power held that in determining the applicability of PSD review, EPA must look to whether a source locates in an area to which Part C of the Act applies, rather than to the impact the source would have upon such an area. Accordingly, EPA proposed on September 5 to apply PSD review to a source if the source locates in an area designated attainment or unclassifiable for a pollutant which the source emits in major amounts. Each pollutant emitted by the source would be subject to PSD review, unless the pollutant was one for which an area is designated nonattainment and the source emitted that pollutant in major amounts. A modification to a source would be subject to PSD review under the September 5 proposal if it would result in a significant net increase in the emissions of any regulated pollutant for which the source is major and for which the area is designated attainment or unclassifiable. In addition, EPA proposed on September 5 to apply PSD review to a source or modification that would significantly affect an area in another state designated as attainment or unclassifiable for a pollutant for which the source or modification would be major. See 44 FR 5190-41, 51949 (§ 51.24(i)(2)), 5193-54 (§ 52.21(i)(8)).

On January 30, 1980, EPA stated that it intended not to apply PSD review based solely on interstate impact, because the court's final interpretation of the Act in *Alabama Power* suggested that PSD review was not appropriate in such circumstances. EPA also noted that under its September 5 proposal, a source or modification would be exempt from PSD review if it emitted in major amounts only pollutants for which an area had been designated nonattainment. EPA solicited comments on whether this exclusion should be retained, as well as on its proposal to delete PSD review based solely on interstate impacts. See 45 FR 6803 (January 30, 1980).

B. PSD Applicability

After further evaluation of its proposed approach, and consideration of the comments submitted in response to the September 5, 1979, and January 30, 1980, notices (see discussion below), EPA has decided to modify the September 5 proposal somewhat. Under today's action, except with respect to nonattainment pollutants, PSD review will apply to any source that emits any pollutant in major amounts, if the source would locate in an area designated

attainment or unclassifiable for *any* criteria pollutant. If the source is subject to PSD review, then PSD review will be applied to each pollutant the source emits in greater than *de minimis* amounts, unless the area is designated as nonattainment under section 107(d)(1) for the particular pollutant. It should be noted that in order for PSD review to apply to a source, the source need not be major for a pollutant for which an area is designated attainment or unclassifiable; the source need only emit *any* pollutant in major amounts (i.e., the amounts specified in section 169(1) of the Act) and be located in an area designated attainment or unclassifiable for that or any other pollutant.

Therefore, sources that are major only for pollutants for which an area is designated nonattainment will not be exempt from PSD review unless the source is located in an area which is designated nonattainment for all criteria pollutants or unless all of the regulated pollutants emitted by the source in greater than *de minimis* amounts are nonattainment pollutants.

The applicability of the PSD regulations to modifications mirrors that for new sources (*see Modification*). PSD review will apply to any modification to a source which emits any pollutant subject to regulation under the Act in major amounts, if the modification would result in a significant net increase in the emissions of *any* pollutant, and if the source is located in an area designated attainment or unclassifiable for any criteria pollutant. PSD review would not apply to any nonattainment pollutant. Unlike the approach proposed on September 5, in order for PSD review to apply, the modification need not increase emissions of a pollutant for which the source is major, nor need the source be major for a pollutant for which the area is designated attainment or unclassifiable.

EPA believes that this approach is required by *Alabama Power* and sections 165(a) and 169(1) of the Act. Section 165(a) states that "[n]o major emitting facility on which construction is commenced after the date of the enactment of [Part C of the Act], may be constructed in any area to which this part applies unless" the conditions set out in section 165(a) are met. *Alabama Power* held that this provision must be interpreted literally and that, in particular, EPA should focus on the *location* of the source, not its impact. *See* 13 ERC at 2012-2016. Today's action provides the necessary literal interpretation. A "major emitting facility" is defined in section 169(1) as a source which would emit at least 100 or

250 tons per year (tpy) (depending on the type of source) of "any" pollutant. This would cover both criteria pollutants, for which national ambient air quality standards have been promulgated, and non-criteria pollutants subject to regulation under the Act. Section 165 refers to an "area to which this part [part C] applies," which the Court in *Alabama Power* interpreted to mean "clean air areas," i.e. areas designated pursuant to section 107 as attainment or unclassifiable for a particular air pollutant 13 ERC at 2013. *See also* sections 161, 162, and 167 of the Clean Air Act. But neither section 165 nor section 169(1) links the pollutant for which the source is major and the pollutant for which an area is designated attainment or unclassifiable. Read literally, section 165(a) applies PSD preconstruction review to all sources that are major for any pollutant subject to regulation under the Act and locate in an area designated attainment or unclassified for any pollutant.

Section 165(a) also does not link review of a particular pollutant to the attainment status for that pollutant or limit review to pollutants for which a source is major. Rather, read literally, section 165(a) applies PSD review to *all* pollutants subject to regulation under the Act emitted by the source provided that the source is major for *some* pollutant and is located in a clean air area for some pollutant. However, implicit in *Alabama Power* and the structure of the Act is a recognition that where nonattainment pollutants are emitted in major amounts (i.e., where a source emits in major amounts a pollutant for which the area in which the source would locate is designated nonattainment), Part D NSR rather than Part C PSD review should apply to these pollutants (*see below*). PSD review does not apply to the nonattainment pollutants emitted by the source otherwise subject to review.

C. Nonattainment Applicability

On May 13, 1980, 45 FR 31307, EPA promulgated a final rule setting out the applicability of nonattainment review of new and modified sources. In brief, EPA clarified that the construction moratorium under section 110(a)(2)(I) and NSR under the Offset Ruling and section 173 apply to all major construction proposed in such areas. This applicability is unaffected by the particular air quality levels within the designated nonattainment area which would be caused or impacted by the proposed major source or major modification. States still are required under section 110(a)(2)(D) to review new or modified sources locating outside of

nonattainment areas, but causing or contributing to a violation of an ambient air quality standard; however, review need not meet all of the nonattainment requirements under section 173 and the offset policy.

The current regulations concerning pollutant applicability in nonattainment areas have not been changed. These rules are different from the PSD pollutant applicability rules. Major sources are subject to review under the Offset Ruling, section 173, and the construction moratorium only if they emit in major amounts the pollutant(s) for which the area is designated nonattainment. In addition, only those nonattainment pollutants which the source emits in major amounts are subject to review or the construction moratorium. Similarly, only if a modification increases emissions of a pollutant for which the source is major and for which the area is designated nonattainment do nonattainment requirements apply. The basic rationale for these restrictions is that section 110(a)(2)(I), which contains the construction moratorium, restricts the construction moratorium to pollutants for which the source is major and for which the area is designated nonattainment. Since there is no requirement similar to the one in section 165(a) that subjects a source to review for all regulated pollutants it emits once it is subject to review for one pollutant, preconstruction review under the Offset Ruling and section 173 is restricted in the same manner as the construction moratorium.

For example, construction of a new plant with potential emissions of 500 tpy PM and 50 tpy SO₂ in an area designated nonattainment for both PM and SO₂, would be subject to nonattainment requirements for PM only, since the source is minor for SO₂. Similarly, modification of this plant resulting in a net increase in emissions of 50 tpy in SO₂, would not be subject to nonattainment requirements. *See also examples (3), (4), and (7).*

D. Case Examples

The following additional examples illustrate how applicability of PSD requirements will work under today's final regulations:

(1) Construction of a new plant with potential emissions of 500 tpy PM and 50 tpy SO₂ in an area designated attainment for both PM and SO₂ would be subject to PSD review for both PM and SO₂.

(2) Construction of the same plant as in example (1), but in an area designated attainment for SO₂ and nonattainment for PM, would be subject to PSD review

for SO₂ and nonattainment requirements for PM.

(3) Construction of the same plant as in example (1), but in an area designated attainment for PM and nonattainment for SO₂, would be subject to PSD review for PM only. PSD review would not apply for SO₂, since SO₂ is a nonattainment pollutant.

(4) Construction of the same plant as in example (1), but in an area designated nonattainment for both PM and SO₂, would be subject to no PSD review and to nonattainment requirements for PM. This would be the case even if the SO₂ emissions would have an impact on a nearby Class I area for SO₂ or on an area located in another state which is designated attainment or unclassifiable for PM.

(5) Modification to the plant in example (1), where the plant is located in an area designated attainment for both PM and SO₂ resulting in a 30 tpy net increase in PM emissions, would be subject to PSD review for PM.

(6) Modification to the plant in example (1), where the plant is located in an area designated attainment for SO₂ and nonattainment for PM, resulting in increased emissions of 50 tpy in SO₂, would be subject to PSD review for SO₂. (It is a significant increase at a major source located in an attainment area.) But if the modification only were to increase the emissions of PM by 30 tpy, only nonattainment requirements would apply, since this is a modification of a major source for a nonattainment pollutant.

(7) Modification to the plant in example (1), where the plant is located in an area designated attainment for PM and nonattainment for SO₂, resulting in increased emissions of 50 tpy SO₂, would be subject to neither PSD review, nor the nonattainment NSR requirements. Nonattainment NSR would not apply since the 50 tpy increase in the nonattainment pollutant does not occur at an existing major stationary source for that pollutant. PSD does not apply since the only change is to a nonattainment pollutant. Instead, the general NSR under the SIP would typically apply to this pollutant, and the new emissions of SO₂ would be accommodated in the SIP's allowance for area and minor source growth.

(8) Construction of a new plant with potential emissions of 500 tpy hydrogen sulfide (H₂S) in an area designated attainment for PM would be subject to PSD review for H₂S. If, in addition, the plant had potential emissions of 50 tpy PM, PSD review would be applied to both H₂S and PM.

(9) Construction of a new plant with potential emissions of 500 tpy CO and 50

tpy H₂S in an area designated nonattainment for CO and attainment for SO₂ would be subject to PSD review for H₂S and to nonattainment requirements for CO. If this plant were later modified, resulting in a net increase in emissions of 30 tpy in H₂S, PSD review would apply for H₂S.

(10) Construction of a new plant with potential emissions of 500 tpy H₂S in an area designated nonattainment for all criteria pollutants would not be subject to either PSD review or nonattainment requirements. Part D applies only to criteria pollutants, and the area here is not subject to Part C, since it is not designated attainment or unclassifiable for any criteria pollutant.

E. Interstate Pollution

The September 5 proposal, in response to the *per curiam Alabama Power* decision issued on June 18, 1979, would have required PSD review for a major source locating or modifying in a designated nonattainment area only if such construction would substantially impact a clean air area in another state. In its final opinion issued on December 14, 1979, the court reversed its earlier position regarding the need for a PSD review of all interstate impacts to a neighboring state's clean air area. Under both rulings, PSD review would apply in all cases where the construction would take place in a clean area. Pursuant to the court's revised ruling in *Alabama Power*, EPA will not apply PSD review to a pollutant emitted by a source locating in an area designated nonattainment for that pollutant, even where the source would impact a PSD area in another state. Sixteen of the nineteen comments received by EPA supported this decision. Three commenters requested EPA to propose regulations to control interstate pollution pursuant to sections 110(a)(2)(E) and 161. EPA is now evaluating how best to control interstate pollution, and may propose regulations some time in the future.

F. Geographic Applicability for VOC Sources

On September 5, EPA proposed to delete the "36 hour rule," which subjected a source of volatile organic compounds (VOC) to review, if the source proposed construction within 36 hours pollutant travel time of an ozone nonattainment area. Pollutant travel time was to be calculated using wind conditions associated with concentrations exceeding the ambient standard for ozone. Most commenters agreed with the proposal to delete this requirement. One commenter who disagreed focused on the need for the

rule as a means of determining which sources locating outside a designated nonattainment area should be subject to nonattainment review. Another argued that without the rule EPA will end up unnecessarily reviewing sources in remote rural areas whose impact on the ozone nonattainment problem is insignificant, since ozone is a regional problem.

For the reasons expressed on September 5 (44 FR 51940), EPA has decided to delete the 36 hour rule. The commenters' concerns are taken care of by the rules on geographic applicability for nonattainment areas, as set out at 45 FR 31307 (May 13, 1980). Thus, all major VOC sources locating in a designated ozone nonattainment area will be subject to review under section 173. Major VOC sources locating outside a designated nonattainment area will be subject to PSD review and will be required to monitor for ozone. If the monitoring indicates that the area of source location is nonattainment, then the provisions of the Offset Ruling or State plans adopted pursuant to section 110(a)(2)(D) of the Act shall apply until the area is redesignated as nonattainment and a SIP revision has been approved. Of course, a source of VOC may choose to accept nonattainment review requirements immediately (i.e., LAER, offsets, statewide compliance of other sources under the same ownership) and conduct post-approval monitoring as presently permitted under the PSD regulations.

G. Response to Comments

Additional responses to comments regarding applicability of nonattainment requirements can be found at 45 FR 31307. Comments concerning interstate pollution and the geographic applicability of VOC sources, are responded to above.

With regard to PSD review, several commenters argued that EPA's approach would be overly complex and would impose great administrative burdens with few corresponding benefits to air quality. EPA does not agree. Applicability of PSD review as outlined above is required by the Act. Congress believed that such broad applicability was needed to adequately guard against significant deterioration in existing clean areas. EPA cannot restrict applicability and override Congressional intent simply because of an added administrative burden such applicability might impose. For similar reasons, EPA disagrees with the suggestion that it should restrict PSD review to only those pollutants that a source emits in major amounts.

Fourteen commenters argued that EPA should not apply PSD review to noncriteria pollutants, because the lack of NAAQS and increments for noncriteria pollutants indicates that Congress did not consider these pollutants to be able to cause significant deterioration and felt that the extent of harm by these pollutants has yet to be demonstrated. They claimed noncriteria pollutant sources are already subject to NSPS and NESHAP regulation. However, as other commenters have correctly noted, section 169(1) refers to sources with the potential to emit "any" pollutant above certain amounts. Moreover, section 165(a)(4) states that BACT must apply to "each pollutant subject to regulation under this Act" emitted by a source. Neither of these provisions is limited to criteria pollutants. *See also Alabama Power*, 13 ERC at 2045.

Two commenters urged that if EPA decides to regulate sources with minor but significant emissions of criteria pollutants and sources of noncriteria pollutants, it should do so only if there already exists a SIP emission limit for the "minor" pollutants or only if section 111 or 112 (NSPS and NESHAP, respectively) has been made applicable after appropriate rulemaking to such sources of noncriteria pollutants. The difficulty with this approach is that the Act requires PSD review, regardless of whether another rule already applies to the source except in the case of nonattainment pollutants (see above). Moreover, the suggested approach could allow an unacceptably large number of sources to escape review, since many sources may not have an applicable SIP emissions limit or NSPS or NESHAP limit.

While most commenters endorsed the September 5 proposal that PSD permitting should be limited to instances where greater than *de minimis* changes in a major pollutant would occur, one commenter argued that *Alabama Power* did not restrict PSD applicability to modifications involving the pollutant(s) which the source emits in major amounts. This commenter claimed that section 111(a)(4) of the Act defines "modification" as "any physical change in, or change in the method of operation of a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted." (Emphasis added.) As mentioned above in the Modification section, the Administrator agrees with this interpretation. Thus, today's final rule, with the exception of nonattainment pollutants, requires a

PSD preconstruction review for greater than *de minimis* net increases in the potential to emit of a major stationary source for any pollutant subject to regulation under the Act.

Twenty-three commenters supported exempting nonattainment pollutants from PSD review. However, three commenters argued that PSD review should apply to nonattainment pollutants emitted in minor amounts, claiming that review in nonattainment areas should be as broad as that in PSD areas. EPA agrees with the former comments. As noted earlier, sections 165(a) and 169(1) apply to "any" pollutant regulated under the Act. The only restraint on PSD review, then, is section 173 in Part D, which governs the specific review of sources emitting nonattainment pollutant(s) in major amounts. In addition, sources emitting the nonattainment pollutants in minor amounts are subject to the general NSR contained in SIPs, and the impacts of such sources are accounted for in demonstrations of reasonable further progress and within the growth allowance provisions of the SIP. Thus, there is no need to apply PSD review to either type of nonattainment pollutant which already faces adequate review.

Twenty-three commenters also supported exempting from PSD review sources which emit only nonattainment pollutants in major amounts, but PSD pollutants in minor amounts, citing *Alabama Power* for support. Neither *Alabama Power* nor the Act support such an exemption. *Alabama Power* held that, at a minimum, PSD review does not apply to major sources which locate in an area designated nonattainment for all criteria pollutants. But the court did not take into account the fact that the same source may emit both PSD and nonattainment pollutants. Since, as noted above, section 165(a) does not link the pollutant for which the source is major and the pollutant for which an area is designated attainment or unclassifiable, EPA interprets section 165(a) as requiring PSD review for each source that is major for some pollutant and locates in an area designated attainment or unclassifiable for that or any other pollutant and that this review encompasses PSD pollutants whether or not emitted in major amounts.

Finally, some commenters perceived an inconsistency in requiring broader pollutant applicability for PSD review than for nonattainment review, yet using a broader definition of "source" for nonattainment areas than for PSD areas. However, EPA's actions are consistent with the Act. The scope of PSD review applicability and the nonattainment

definition of source are separate issues and there is no basis for requiring that they be resolved in such a way as to in some manner equalize their effects.

XIII. Baseline Concentration, Baseline Area, and Baseline Date

EPA's June 1978 PSD regulations generally define baseline concentration as the ambient concentration level reflecting actual air quality as of August 7, 1977, including projected emissions of major sources commencing construction or modification before January 6, 1975, but not in operation by August 7, 1977, and excluding emissions from major sources commencing construction (including modification) after January 6, 1975. (40 CFR 51.24(b)(11), 52.21(b)(11) (1979).) Emissions from major source construction commencing after January 6, 1975, as well as most emissions increases occurring from existing sources after the baseline date are counted against the applicable PSD increments. (A more detailed discussion of the relationship between baseline concentration and increment consumption is provided in Increment Consumption.) Actual air quality includes emissions increases after the baseline date at existing sources whose emissions are counted in the baseline concentration, if the increases are due to increased hours of operation or capacity utilization authorized under the SIP and reasonably anticipated to occur on the baseline date. The baseline concentration also includes emissions increases allowed under a SIP relaxation pending final EPA approval on the baseline date, if the allowable emissions under the revision were higher than the source's actual emissions on the baseline date. The June 1978 regulations established a uniform baseline date of August 7, 1977 for all clean air areas. A definition of baseline area was unnecessary since all PSD areas were covered by the August 7, 1977 baseline date.

The *Alabama Power* decision held that a uniform baseline date was not authorized by section 169(4). It required the baseline date to be established at the time of the first application for a permit in an area subject to PSD requirements. EPA's regulations were consequently remanded for change.

The *Alabama Power* decision, however, supports EPA's definition of baseline concentration. In holding that monitoring data is required under section 165(e)(2), the court confirmed that actual air quality data should be used to determine baseline concentrations. *See* 13 ERC 2022. Since monitoring data provide information on actual air quality concentrations from

existing sources and since section 169(4) explicitly states that required monitoring data should be used in establishing baseline concentrations, the court's decision supports EPA's requirement that baseline concentrations reflect actual air quality. In addition, the court implicitly affirmed EPA's approach in ruling that EPA correctly excluded from baseline concentrations emissions increases due to voluntary fuel switches after the baseline date. Since actual air quality on the baseline date would not reflect these increases, their exclusion from baseline concentrations is consistent with EPA's actual air quality approach to baseline concentrations. Finally, the court noted Congress' rejection of a House bill that would have allowed certain source emissions to be included in baseline concentrations, even though the emissions have not occurred by the baseline date. *See 13 ERC 2026.* The court concluded that Congress considered and rejected an approach that would depart from actual air quality in calculating baseline concentrations, except in the limited circumstances set forth in section 169(4).

In its September 5, 1979 response to the court's decision, EPA proposed to delete the uniform August 7, 1977 baseline date and to define baseline date as the date of the first complete application, after August 7, 1977, for a PSD permit to construct or modify a major stationary source in an area subject to PSD requirements. As part of that definition, EPA proposed to define baseline area as all parts of an Air Quality Control Region (AQCR) designated as attainment or unclassifiable under section 107(d) of the Act. Under that definition, an application of a major stationary source to construct in any part of an AQCR designated as attainment or unclassifiable would trigger the baseline date for both SO₂ and PM in all portions of the AQCR.

EPA's proposed definition of baseline area was based in part on its consistency with the term "area" as used in section 107, which requires air quality designations for AQCRs or portions thereof. The definition was also intended to avoid implementation problems that might result from having different baseline areas and dates within the same AQCR. EPA proposed, however, to allow states some flexibility in defining baseline area. *See* discussion at 44 FR 51942.

EPA further proposed to retain its current definition of baseline concentration but asked for comment on a particular problem specific to the Gulf Coast areas (*see* 44 FR 57107, October 4,

1979 and discussion in Increment Consumption). EPA's September 5 proposal specifically asked for comment on two aspects of its proposal: (1) whether baseline area should be defined as clean portions of the AQCR in which a source applies for a permit, and (2) whether a permit application should trigger the baseline date only in the clean portions of the AQCR in which the source would locate or also in clean areas of any AQCR which would be impacted by the source.

After issuance of the court's full opinion in December, EPA proposed and asked for comment on three changes to its September 5 proposal (45 FR 6802, January 30, 1980). First, EPA stated it was considering defining baseline area as any area designated attainment or unclassifiable under section 107(d) in which a source subject to PSD requirements would locate or impact, rather than all clean portions of an AQCR in which a source would locate or impact. Second, EPA solicited comment on whether states should be allowed to redefine the boundaries of areas designated as attainment or unclassifiable. EPA suggested, however, that states should be limited to redesignations no smaller than the source's area of impact. Third, EPA indicated it was considering adoption of a pollutant-specific baseline date and area. Under that approach, a source would trigger the baseline only for the pollutants it emitted. Thus, if the source would emit neither SO₂ nor PM, it would not trigger any baseline. EPA also requested comment on whether a source which would be major for SO₂ and minor for PM would trigger a baseline date only for SO₂ or for both pollutants.

EPA's final action and response to comments on each of the issues is discussed below. For simplification, the discussion focuses on the four basic issues of baseline concentration, baseline area, baseline date, and pollutant-specific baseline. Issues related to increment consumption are discussed in the next section.

A. Baseline Concentration

As proposed, EPA is continuing its current definition of baseline concentration as the ambient concentration levels at the time of the first permit application in an area subject to PSD requirements. Baseline concentration generally includes actual source emissions from existing sources but excludes emissions from major sources commencing construction after January 6, 1975. Actual source emissions are generally estimated from source records and any other information reflecting actual source operation over

the two-year time period preceding the baseline date. The baseline concentration also includes projected emissions from major sources commencing construction (including modification) before January 6, 1975, but not in operation by August 7, 1977.

Unlike the June 1978 policy, baseline concentration will no longer routinely include those emissions increases after the baseline date from sources contributing to the baseline concentration, which are due to increased hours of operation or capacity utilization. Existing policy permitted this grandfathering, provided such increases were allowed under the SIP and reasonably anticipated to occur as of the baseline date. Today's policy which normally excludes such increases is consistent with using actual source emissions to calculate baseline concentrations. An actual emissions policy, however, does allow air quality impacts due to production rate increases to sometimes be considered as part of the baseline concentration. If a source can demonstrate that its operation after the baseline date is more representative of normal source operation than its operation preceding the baseline date, the definition of actual emissions allows the reviewing authority to use the more representative period to calculate the source's actual emissions contribution to the baseline concentration. EPA thus believes that sufficient flexibility exists within the definition of actual emissions to allow any reasonably anticipated increases or decreases genuinely reflecting normal source operation to be included in the baseline concentration.

EPA is also promulgating a change in its current policy on SIP relaxations. Under that policy, emissions allowed under SIP relaxations pending on August 7, 1977 are included in the baseline concentration if the allowed source emissions were higher than actual source emissions. EPA adopted that policy in June 1978 in recognition of the fact that some states with SIP revisions pending on August 7, 1977 had allowed sources to increase emissions prior to final EPA approval of the relaxations, while other states with pending relaxations had required sources to comply with the lower emissions limitations in the existing SIP until final approval occurred. *See* 43 FR 26401 col. 3. To avoid penalizing sources in states that did not allow increases prior to approval, EPA provided that baseline concentrations include the allowable emissions under revised SIPs, if the relaxation was pending on August 7, 1977 and the allowed emissions exceeded the source's actual emissions.

The effect was to allow sources to avoid increment consumption analyses for the emissions increase allowed in the revision. EPA considered the exemption justified because states and sources were unaware that EPA would establish a uniform baseline date of August 7, 1977, and those emissions increases after that date would consume increment.

EPA believes this exemption from increment consumption analyses is no longer necessary. States and sources have been on notice since June 1978 that emissions increases at existing sources due to SIP relaxations must be evaluated for possible increment consumption. No state or source has been uncertain as to the applicable baseline date, or been placed in an inequitable position as to other states or sources. Therefore, today's regulations do not exempt from increment consumption analyses those SIP relaxations not finally approved by EPA prior to the baseline date in the affected area.

One commenter suggested that EPA extend the transition provision within the June 1978 regulations for assessing increment consumption. 43 FR 28401 col. 2. This provided that increased emissions from plan relaxations received after the August 7, 1977 baseline date but before the June 19, 1978 promulgation would consume the applicable increment but could be reviewed as part of the periodic assessment rather than assessed individually for increment consumption prior to plan approval.

EPA does not believe that a similar exception is required under today's regulations. EPA considered the exception necessary in June 1978 due to uncertainty as to how the 1977 Amendments would affect pending SIP relaxations. Such uncertainty no longer exists, since sources have been on notice since June 1978 that SIP relaxations after that date must be individually reviewed for increment consumption. Therefore, emissions increases due to plan relaxations received after June 19, 1978 must be individually evaluated for increment consumption prior to EPA approval.

EPA is concerned, however, that the new definition of baseline concentration may work a hardship on states with SIP relaxations pending when a PSD application is filed in an area. A state may submit a SIP relaxation affecting a source, or group of sources, located in an area where the baseline date has not been set, and would not be required to provide an increment consumption analysis. If prior to final EPA approval, a source filed a PSD application in the

area, the application would establish a baseline date and the state would have to withdraw the revision until it has conducted the necessary increment analysis. To prevent such burdensome delays, EPA is exempting from individual increment analyses SIP relaxations pending at the time a baseline date is established in the area affected by the revision. However, increment consumption due to emissions from these relaxations must be evaluated as part of a state's periodic assessment. Exemptions from individual analyses is analogous to the previous relief provided for sources subject to SIP relaxations submitted after August 7, 1977, but before EPA's June 1978 promulgation. The exemption is therefore consistent with prior EPA policy.

B. Baseline Area.

In response to the September 5, 1979 proposal, fifty-three commenters felt that an AQCR definition of baseline area would not produce a great deal of administrative relief and would, simultaneously, limit an area's growth options. These commenters favored defining baseline area as the area of significant source impact, based on required modeling and monitoring analysis. Such an approach was claimed to provide just as much administrative relief, more growth options, and elimination of the problem of a small PSD source triggering the baseline date for a large area. Seventeen commenters favored a baseline area definition geared to areas designated as clean or unclassified under section 107. Those favoring this alternative strongly preferred a "redesignation" procedure to accompany this option. Other commenters objecting to the AQCR approach suggested: county boundary lines (three), and the entire state (one).

In response to EPA's January 30 notice, fourteen of sixteen commenters favored a source impact area definition of baseline area. One of the remaining two commenters favored retention of the AQCR approach while the other commenter desired a county or some other legal boundary approach. All eighteen comments received favored triggering a baseline only in the area in which a source would locate, and not in those other areas which it would impact. Nineteen of twenty-nine commenters favored permitting state redesignation but to areas no smaller than a source impact area. Seven other commenters favored no limitations on the redesignation procedure. The remaining three commenters opposed allowing states to redefine baseline areas through redesignation.

EPA has determined that baseline area should be defined as the area designated as attainment or unclassifiable under section 107(d) in which a source or modification subject to PSD review would construct or on which it would have an impact equal to or greater than $1 \mu\text{g}/\text{m}^3$ on an annual basis. EPA has concluded that "an area subject to this part," as used in section 169(4), refers to areas designated attainment or unclassifiable under section 107(d).

This view is strongly suggested by Judge Robinson's opinion on baseline concentration in the December 1979 *Alabama Power* ruling. Referring to Congress' intent to use actual air quality data to establish baseline concentrations, Judge Robinson states that "the task of monitoring existing ambient pollution levels in attainment areas is assigned to the first permit applicant, who will provide the information essential to calculation of the baseline." (Emphasis added) 13 ERC 1993, 2022. The footnote which follows that sentence discusses a state's obligation under section 107(d)(1) to submit area designations to EPA and the fact that section 107 lists submitted to date by the states indicate that many areas lack acceptable air quality information. *Id.* The references to attainment areas and section 107(d) designated areas indicate that the court interprets the statute as requiring that baseline concentrations be calculated for each clean area designated under section 107(d)(1).

EPA thus believes that neither the statute nor the court opinion support the proposed AQCR approach. The majority of comments also opposed defining baseline area as AQCR. Opposition was based on the view that it would do little to alleviate administrative problems, offered no flexibility in states, and would often limit an area's growth options by encompassing too large an area.

EPA has also determined that a PSD source should trigger the baseline in all intrastate clean areas that it impacts as well as the area it locates in. One objective of PSD is to track air quality changes in clean air areas. If a major source significantly affects any clean air area in the same state the purposes of PSD will be served if air quality deterioration from minor/area source growth and actual changes in baseline source emissions are tracked from the time significant SO₂ or PM emissions from a new or modified major source impact a clean area. Such a policy is also consistent with the language of section 165(e)(1) of the Act which

requires an air quality analysis of the affected area, not just the area of immediate location. The Administrator does not believe that such a policy should transcend state boundaries. Since triggering baseline dates is an important factor in managing growth, EPA has concluded that states should have jurisdiction over their own baseline dates. On the other hand, establishment of baseline dates does not affect increment consumption across state borders by major source construction commencing after January 6, 1975.

EPA has concluded that baseline areas may be redefined by the states through area redesignations. Section 107(d) specifically authorizes states to submit redesignations to the Administrator. Consequently, states may submit redefinitions of the boundaries of attainment or unclassifiable areas at any time. If EPA agrees that the available data support the change, it will redefine the areas as requested. As long as no PSD source has located in, or significantly impacted on a clean area being considered for redesignation, the area can be redesignated as a new attainment or unclassifiable area, even if the area were previously part of a larger clean area in which the baseline date had been set.

Area redesignations are subject to certain restrictions. The boundaries of any area redesigned by a state cannot intersect the area of impact of any major stationary source or major modification that established or would have established a baseline date for the area proposed for redesignation or that is otherwise required to obtain a PSD permit. In addition, area redesignations can be no smaller than the area of impact of such sources. These restrictions comport with the PSD objective of tracking air quality effects in an area once a major source or modification has affected an area. By setting the baseline date at the time a major source or modification impacts an area and preventing the date from being changed by subsequent area redesignations, the system ensures that future growth in the area will be assessed for its air quality effects from that date forward. Moreover, if states could define baseline areas as small as the immediate area in which a source is located and not include the source impact area, air quality could deteriorate or increments could be violated in a nearby area impacted by the source, but neither the state nor EPA would review the air quality impact. The source could therefore affect air quality

but the reviewing authority would be unaware of the deterioration. In addition to jeopardizing air quality, "postage stamp" baseline areas would be difficult to administer.

A source will be considered to impact an area if it has an impact of $1 \mu\text{g}/\text{m}^3$ or more of SO₂ or PM on an annual basis. This figure has been selected because it corresponds to levels of significance used in previous Agency determinations for SO₂ and PM. The annual average was selected over the short term value due to its ease of implementation. That is, the shape of source impact areas is less complex and the $1 \mu\text{g}/\text{m}^3$ annual average provides ample area coverage of the source impact area.

The Administrator believes that defining baseline area as section 107 areas and allowing state redesignation will satisfy most of the commenters who objected to the proposed AQCR definition and favored state flexibility in redesignations. The redesignation process partially meets the concerns of commenters who preferred defining baseline area as source impact area. Where a baseline date is established for an area that is large relative to the impact area of the triggering source, the state has the option of redefining the area to reflect more accurately the area affected by the source.

C. Baseline Date

Consistent with the Agency's proposal, today's promulgation defines baseline date as the date after August 7, 1977 on which the first complete application for a PSD permit is filed with the appropriate reviewing authority. Section 51.24(b)(14), 52.21(b)(14). As discussed in the September 5 notice, EPA has determined that this definition is mandated by the court's interpretation of section 169(4), which requires a baseline concentration to be set on the date, after August 7, 1977, "of the first application for a permit in an area subject to this part." See 44 FR 51941 col. 3. Consequently, the first complete PSD permit application by a major source to construct in a baseline area, as that term is defined in § 51.24(b)(15) and 52.21(b)(15), and explained above, will trigger a baseline date.

As discussed below, under *Pollutant-Specific Baseline*, the regulation further requires that a baseline date be set for each pollutant emitted by the applicant source in greater than *de minimis* amounts, if increments or other equivalent measures under section 166 have been established for the pollutant. At present, increments are established only for SO₂ and PM, and no increments or equivalent measures for other pollutants have been established.

Section 166 requires EPA to adopt regulations establishing increments or other equivalent measures for other criteria pollutants. Section 166 does not by its terms require EPA to apply section 169(4) in determining baseline dates for criteria pollutants other than SO₂ and PM. EPA is now conducting rulemaking under section 166 to develop increments or equivalent measures for the other criteria pollutants. As part of that rulemaking, EPA is considering how to establish baseline dates for those pollutants.

While comments supported EPA's proposal to establish the time of the first complete application in an area as the baseline date, eight commenters suggested that the date be set at the time of the first application after August 7, 1978, rather than August 7, 1977. This review is consistent with other comments noting that section 165(e)(2) requires permit applicants after August 7, 1978 to provide one year's monitoring or other equivalent air quality analysis to determine a baseline concentration for the area. These commenters claimed that since baseline concentration is to be established through actual ambient air quality data and no applicant can gather the necessary monitoring data before one year after the effective date of the part, the baseline date should not be triggered by applications filed before that date.

EPA understands the commenter's concerns. However, EPA believes Congress was aware that prior to August 7, 1978, applicants could not provide a full year of monitoring data, as evidenced by the fact that the monitoring requirement in section 165(e)(2) is not effective until August 7, 1978. Congress nonetheless provided that baseline concentrations be established by the first permit application, an event which could occur at any time after August 7, 1977. Congress therefore considered that baseline concentrations and increment consumption could be determined with less than a full year's monitoring data. The need to accept less data is reflected in the provision of section 169(4) that baseline concentrations be based on available air quality data and on such monitoring data as the applicant is required to submit. The provision suggests that calculations of baseline and increment use may have to be made with limited data, if available data, such as that from the state agencies, is not appropriate. EPA interprets the requirements for monitoring data after August 7, 1978, and not August 7, 1977, as intended to provide a grace period for sources, rather than evidencing intent to

postpone the establishment of baseline dates.

One commenter questioned whether baseline dates would be triggered by permit applications previously filed by sources that were major under the June 1978 PSD regulations, but no longer major under the regulations promulgated today, even if the permit applicant failed to apply for a permit rescission. EPA concurs in the commenter's suggestion that a subsequent permit applicant in any area may inform the permitting authority that the baseline date was not triggered on the date that a source which no longer qualifies as major applied for a PSD permit. As the commenter points out, this eliminates the need for an immediate rescission of all past permits affecting sources no longer subject to PSD review. It also avoids penalizing permit applicants if a source that is no longer major fails to apply for a permit rescission.

The Administration wishes to clarify another point related to a change in review status for the source which has triggered the baseline date. If the applicant that established the baseline date is later denied a PSD permit or voluntarily withdraws its PSD application, a question arises as to whether the baseline date has been triggered. In the Administrator's judgment the applicable baseline date remains in place, since no change in date is authorized under the Act. Section 169(4) establishes source application as the baseline triggering mechanism and does not qualify this by the later issuance of a permit. This policy is consistent with the establishment of a baseline concentration which is based on the available monitoring data, typically that gathered by the source applicant. The data to establish the baseline concentration would be available regardless of the eventual permit status of the baseline triggering application. Using source application also stabilizes the NSR permitting process. Later applicants can determine whether a baseline date has been set in an area by looking to whether a previous application has been filed, rather than needing to determine if the permit has been or will be issued.

Finally, the Administrator wishes to point out that it is the first PSD application submitted under either 40 CFR 52.21 or state PSD regulations developed pursuant to 40 CFR 51.24 which triggers a baseline date. When states assume responsibility for implementing the PSD program, several PSD baseline dates may well have been triggered. However, as mentioned above, states can minimize the impact of

early baseline dates by redesignating the size of the baseline area which is affected by a previously established baseline date.

D. Pollutant-Specific Baseline

The Agency has concluded that a pollutant-specific baseline is consistent with section 169(4) and the statutory structure. Section 169(4) requires that a baseline concentration be established "with respect to a pollutant *** in an area subject to [Part C]." Therefore, by the terms of the statute, a baseline concentration is established for individual pollutants. Moreover, such concentrations are established for areas subject to PSD. Section 107(d), which provides that areas designated attainment or unclassifiable are subject to PSD, requires designations to be made on a pollutant-specific basis. Section 107(d)(1)(D) and (E). To be consistent, both baseline date and baseline area (and any subsequent redesignations under section 107 of the Act) must also be pollutant-specific.

The comments that favored a pollutant-specific baseline generally did so on two grounds: the reference to "pollutant" in section 169(4) and the statutory requirement to use monitoring data to establish baseline concentration. Since monitoring and increment consumption are pollutant-specific, baseline concentrations must be as well. The Administrator agrees that the monitoring requirement supports pollutant-specific baselines. Four of the thirty-eight commenters that opposed pollutant-specific baselines did so primarily for implementation reasons. Although pollutant-specific baselines may add some complexity to the PSD program, EPA has concluded that the statutory structure contemplates pollutant-specific area designations.

The following example illustrates the concept of pollutant-specific baseline dates. If a major source of NO_x that would also emit SO₂ in significant amounts and PM in less than significant amounts submits a complete application for a permit to construct in an area designated under section 107(d)(1) as attainment for all pollutants, and no previous source has triggered any baseline dates, the source would establish the baseline date for SO₂ but not PM. If a later modification to the source results in a significant net increase in PM emissions and no other application previously triggered the PM baseline date, the proposed PSD application for the modification would then establish the PM baseline date.

XIV. Increment Consumption

There are two basic issues in the area of increment consumption: (1) which source emissions consume increment and (2) how to calculate the amount of increment consumed by those emissions. The *Alabama Power* decision addressed neither question. EPA, therefore, proposed in September to continue its current approach. Under the approach, four categories of source emissions affect increment: (1) as provided by section 169(4), emissions from major source construction (including modification) commencing after January 6, 1975. This group includes emissions from sources issued PSD permits and state new source review (NSR) permits (including those issued in accordance with section 51.18(j) and the Offset Ruling) as well as emissions from non-permitted sources; (2) emissions changes occurring after the baseline date at sources whose previous emissions on the baseline date are included in the baseline concentration; (3) emissions changes due to SIP revisions that are approved after the baseline date; and (4) minor and area source growth occurring after the baseline date. EPA's current regulations provide that the first and third category of sources affect increment on the basis of emissions allowed under the permit and emissions allowed under the SIP as revised, respectively. The second and fourth categories affect increment on the basis of actual emissions changes from the emissions included in the baseline concentration.

Since its proposal, EPA has reevaluated its current policy in light of both the December opinion of the court and the Gulf Coast problem (discussed below). EPA has concluded that increment consumption and expansion should be based primarily on actual emissions increases and decreases, which can be presumed to be allowable emissions for sources subject to source-specific emissions limitations. This change principally affects increment calculations for major source construction not subject to source-specific permits or SIP requirements and for sources whose allowable limits are demonstrated not to reflect actual emissions. PSD applications pending today before EPA or a state agency authorized to review or issue PSD permits will be reviewed for increment consumption on the basis of the revised policy.

A. Use of Actual Emissions

1. Rationale for Use of Actual Emissions.

As discussed in the *Baseline Concentration* section, the *Alabama Power* decision supported EPA's requirements that baseline concentrations reflect actual air quality in an area. Increment consumption or expansion is directly related to baseline concentration. Any emissions not included in the baseline are counted against the increment. The complementary relationship between the concepts supports using the same approach for calculating emissions contributions to each. Since the *Alabama Power* decision and the statute both provide that actual air quality be used to determine baseline concentrations, but provide no guidance on increment consumption calculations, EPA has concluded that the most reasonable approach, consistent with the statute, is to use actual source emissions, to the extent possible, to calculate increment consumption or expansion.

EPA's decision is also based on concerns raised by the Gulf Coast problem, discussed below. In that area, and possibly others, source emissions allowed under permits and SIP provisions in many cases are higher than actual source emissions. Sources could therefore increase their emissions without being subject to PSD review or the SIP revision process. However, if increment calculations were based on allowable emissions, EPA believes increment violations would be inappropriately predicted and proposed source construction would be delayed or halted. In practice, EPA expects that few, if any, sources will increase their emissions to allowable levels.

EPA believes it is unwise to restrict source growth based only on emissions a source is permitted to emit but which, in many instances, have not been and are not likely to ever be emitted.

Increment calculations based on the best prediction of actual emissions links PSD permitting more closely to actual air quality deterioration than calculations based on allowable "paper" emissions. In addition, use of actual emissions for increment consumption is consistent with using an actual emissions baseline for defining a major modification and for calculating emissions offset baselines.

2. Calculation of Increment Consumption Using Actual Emissions.

To determine how much increment remains available to a proposed major source or modification, the source owner or operator must analyze several types of emissions changes as of its application date. These changes generally include: (1) emissions changes that have occurred at baseline sources

and emissions from new minor and area sources since the baseline date; (2) emissions that have occurred or will occur at sources which have submitted complete PSD applications as of thirty days prior to the date that the proposed source files its application; and (3) emissions changes reflected in SIP relaxations submitted after August 7, 1977, and pending as of thirty days prior to the date the source files its application, or emissions changes reflected in SIP relaxations which have been approved since August 7, 1977, but which have not yet occurred. (See, discussion below on calculation of increment consumption for SIP relaxations.) The thirty-day cutoffs are specified to stabilize the review process by preventing new applications and SIP relaxation proposals from invalidating otherwise adequate increment consumption analyses without warning.

Increment calculations will generally be based on actual emissions as reflected by normal source operation for a period of two years. EPA has selected two years based on its recent experience in reviewing state-NSR programs for nonattainment areas. The state submittals use periods of between one and three years to evaluate source emissions. In EPA's judgment, two years represents a reasonable period for assessing actual source operation. Since the framework for nonattainment NSR programs will generally form the basis for a state's PSD plan, EPA believes it is appropriate to use the same time period for evaluating actual source emissions in the PSD program. Two years is also being used to calculate the emissions offset baseline for modifications in nonattainment areas.

The two-year period of concern should generally be the two years preceding the date as of which increment consumption is being calculated, provided that the two-year period is representative of normal source operation. The reviewing authority has discretion to use another two-year period, if the authority determines that some other period of time is more typical of normal source operation than the two years immediately preceding the date of concern. In general, actual emissions estimates will be derived from source records. Actual emissions may also be determined by source tests or other methods approved by the reviewing authority. Best engineering judgments may be used in the absence of acceptable test data.

EPA believes that, in calculating actual emissions, emissions allowed under federally enforceable source-

specific requirements should be presumed to represent actual emission levels. Source-specific requirements include permits that specify operating conditions for an individual source, such as PSD permits, state NSR permits issued in accordance with § 51.18(j) and other § 51.18 programs, including Appendix S (the Offset Ruling), and SIP emissions limitations established for individual sources. The presumption that federally enforceable source-specific requirements correctly reflect actual operating conditions should be rejected by EPA or a state, if reliable evidence is available which shows that actual emissions differ from the level established in the SIP or the permit.

EPA believes two factors support the presumption that source-specific requirements represent actual source emissions. First, since the requirements are tailored to the design and operation of the source which are agreed on by the source and the reviewing authority, EPA believes it is generally appropriate to presume the source will operate and emit at the allowed levels. Second, the presumption maintains the integrity of the PSD and NSR systems and the SIP process. When EPA or a state devotes the resources necessary to develop source-specific emissions limitations, EPA believes it is reasonable to presume those limitations closely reflect actual source operation. EPA, states, and sources should then be able to rely on those emissions limitations when modeling increment consumption. In addition, the reviewing authority must at least initially rely on the allowed levels contained in source-specific permits for new or modified units, since these units are not yet operational at a normal level of operation. EPA, a state, or source remains free to rebut the presumption by demonstrating that the source-specific requirement is not representative of actual emissions. If this occurs, however, EPA would encourage states to revise the permits or the SIP to reflect actual source emissions. Such revisions will reduce uncertainty and complexity in the increment tracking system, since it will allow reviewing authorities and sources to rely on permits and SIP emissions limitations to model increment consumption.

Review of increment usage due to SIP relaxations will also be based initially on emissions allowed under the SIP as revised (provided this allowed level is higher than the source emissions contributing to the baseline concentration). Calculations will generally be made on the difference between the source emissions included in the baseline concentration and the

emissions allowed under the revised SIP. Initial use of allowable emissions is necessary because the increment calculation generally occurs before the source has actually increased its emissions. Therefore, at the time the revision is reviewed, increment consumption must be based on the predicted source operation under the revision. In addition, since SIP revisions are commonly based on source requests, it is reasonable to assume such sources will actually emit at levels permitted by the relaxation.

Subsequent to the initial review process, increment calculations for SIP relaxations may depart from allowable emissions under the SIP, if the source has not actually increased its emissions. For example, three years after approval of a SIP relaxation, if it is found that the source has not increased its emissions to levels allowed in the SIP, estimates of increment usage should be revised to reflect actual source emissions. If this occurs, EPA would also encourage states to revise the emissions levels allowed in the SIP to represent the source's actual emissions.

Finally, the required increment consumption analysis can be amended by the applicant after the PSD review process has begun. For example, an applicant would normally revise its analysis to reflect increment made available by the withdrawal of PSD applications previously considered in the applicant's calculation of increment consumption. In no event, however, will the source be required to take account of emissions changes or changes due to pending PSD applications or SIP relaxations that could increase the amount of increment consumed by other sources.

B. Exclusions From Increment Consumption

1. Exclusions Requested by Governors.

Section 163(c) authorizes four exclusions from increment consumption upon the request of a governor. Exemptions are available for federally-ordered fuel switches under the Energy Supply and Environmental Coordination Act of 1974 or superseding legislation, fuel switches due to natural gas curtailment plans under the Federal Power Act, temporary emissions of particulate matter due to construction and related activities, and new sources constructing outside the United States. In the cases of the federally-ordered switches and natural gas curtailment plans, the exclusion is limited to a maximum of five years after the effective date of the order or plan.

The statute provides that these exclusions are available only if the state has an EPA-approved PSD plan. Section 163(c). In its June 1978 regulations, however, EPA permitted governors to use the exclusions during the nine-month period between promulgation of the regulations and the date plan revisions were required to be submitted. See § 52.21(f)(3) (1979). As discussed in the preamble to the June 1978 regulations, EPA concluded that prohibiting use of the exclusions after the nine-month period would be an adequate incentive to states to submit PSD plans. See 43 FR 26402 (Col. 1).

EPA has decided to extend this policy to today's regulations. In view of the many changes in the regulations resulting from the court's decision, states which have already submitted plans will have to submit revised provisions and states which have not yet submitted plans will have to develop plans based on the new regulations. As with the June 1978 requirements, EPA believes that disallowing the exclusions nine months from today will provide sufficient encouragement to states to submit plans, and will offer states more flexibility for growth in this interim period. Therefore, governors may request the exclusions until nine months from today's promulgation, even if no PSD plan has been submitted to or approved by EPA. Thereafter, the exclusions will be unavailable unless the state has submitted an approvable PSD plan to EPA.

2. Temporary Emissions

EPA's June 1978 regulations and the September 1979 proposal provided that temporary emissions from new sources or modifications would be exempt from impact analysis requirements §§ 51.24(k)(iii), 52.21(k)(iii) (1979); 51.24(k)(1), 52.21(k)(1) (proposed).

Temporary emissions typically include, but are not limited to, emissions from a pilot plant, a portable facility, construction or exploration activities. Similarly, EPA proposed to exempt from increment analyses the impacts on the PSD increments from the temporary emissions associated with the development of an approved innovative control technology system, provided the applicable ambient standards were not jeopardized. The regulations, however, did not provide a comparable exemption for temporary emissions resulting from short-term SIP relaxations.

Only three commenters addressed the concern of temporary emissions and increment consumption. These commenters offered suggestions in light of the proposed position on innovative control systems. These commenters

supported the existing policy of exempting temporary emissions from increment air quality analyses when no Class I areas or areas with known increment violations would be impacted.

Temporary SIP relaxations are comparable to temporary emissions from new and modified major stationary sources since both affect air quality for a limited period of time. Therefore, the Administrator has decided that the existing policy of exempting temporary emissions should be extended to those associated with certain SIP relaxations. A SIP relaxation will be eligible for such relief if it meets the following five conditions. These conditions are intended to ensure that the emissions increase associated with the SIP relaxation will be limited in duration and that no residual harm will occur to the environment as a result of the relaxation. (1) The SIP revision allows an emissions increase for a temporary period only. As stated in the preamble to the June 1978 regulations, temporary emissions generally would last no more than two years at one location, although emissions for a longer period of time may be considered temporary if an appropriate demonstration is made. See 43 FR 26394 col. 2. (2) The revision is nonrenewable. This condition is intended to prevent sources from indefinitely postponing compliance with emissions limitations necessary to prevent PSD increment violations. (3) The temporary emissions will not cause or contribute to the violation of any applicable NAAQS. (4) At the expiration of the temporary SIP relaxation, the source must be required to comply with an emissions limitation that ensures the post-exemption emissions will be equal to or less than the emissions existing before the exemption was granted. (5) The temporary emissions from the revision do not impact any Class I area and any area where an increment is known to be violated. Restricting the exemption to sources impacting Class II or III areas conforms to Congress' intent to provide maximum protection of air quality values in Class I areas and meets the commenter's concerns.

In addition to SIP relaxations for individual sources, the exemption will be available for temporary emissions due to SIP relaxations that apply to several sources, if the state provides adequate assurances that no standards will be violated.

C. Increment Expansion Due to Emissions Reductions Prior to the Baseline Date

EPA's policy under the June 1978 regulations is unclear as to whether emissions reductions prior to the

baseline date increase the amount of available increments. The policy allows decreases after January 6, 1975, and prior to the baseline date, to be used by sources to offset subsequent increases and exempt the increases from the requirement for an ambient air quality assessment. In effect, EPA treats such decrease as expanding available increments, since the decreases permit later emissions increases at the same source to avoid the otherwise required air quality assessment. The policy did not state, however, whether isolated decreases not made in conjunction with intrasource increases were considered to expand available increments. In contrast, the policy is clear that emissions reductions after the baseline date increase available increments.

As a result of the revised definition of modification which permits offset credit for emissions reductions occurring within a moving five-year period, EPA has decided to clarify its existing policy. All emissions reductions prior to the baseline date at major stationary sources will now be considered to expand available increments. Since contemporaneous emissions reductions accomplished before the baseline date can be used by a source to offset a contemporaneous post-baseline emissions increase, and thereby avoid PSD review, it is also reasonable to allow these contemporaneous pre-baseline date reductions to expand the increment. Without this change, source owners that reduce emissions by retiring or controlling old equipment before the baseline date will be penalized by having increases after the baseline date count against increments even though the pre-baseline decrease might offset the later increase and eliminate the need for PSD review. In contrast, source owners that postpone the reductions and increases until after the baseline date is set would both secure contemporaneous offsets and avoid increment consumption.

EPA believes that this inequity should be eliminated to encourage early retirement of old equipment. Section 169(4) provides that emissions from major emitting facilities that commenced construction after January 6, 1975, shall be counted against available increments. The provision implies that both emissions increases and decreases should be considered for their impact on available increments. In view of the statutory language and policy considerations, EPA has determined that decreases made prior to a baseline date can expand available increments in the same manner as decreases made after a baseline date. However, to ensure that

the emissions reductions remain effective, reductions will add to available increments only if the lower emissions limitations are federally enforceable.

The changed policy is reflected in a new definition of "construction" which is any physical change or change in the method of operation of a stationary source resulting in a change in the actual emissions of the source (including fabrication, erection, installation, demolition, or modification). Any construction commencing at a major source since January 6, 1975, may result in an increase or decrease in actual source emissions. If an actual decrease involving construction at a major stationary source occurs before the baseline date, the reduction will expand the available increment if it is included in a federally enforceable permit or SIP provision. An actual increase associated with construction activities at a major stationary source will consume increment.

The Administrator would also like to clarify that changes in fugitive emissions levels (to the extent quantifiable) at major stationary sources, resulting from construction commenced since January 6, 1975, will consume or expand the available increment. This is true even if such changes occurred prior to the baseline date.

D. Gulf Coast Problem.

In the September 5 proposal, and in an October 4, 1979 correction notice, EPA solicited comments on how to calculate increment consumption by gas-fired boilers in the Gulf Coast area that had received state approval to burn oil in the event of a future natural gas shortage. See 44 FR 51942 (September 5, 1979), and 44 FR 57107 (October 4, 1979). The affected units include both boilers that could accommodate such a fuel-switch before January 6, 1975 and boilers that were altered to accommodate the fuel-switch after that date. All affected units were permitted to switch fuel before August 7, 1977, the earliest possible baseline date. Assuming the baseline date is set in the area where these sources are located, which EPA believes is the case for most of the sources, each group of sources may cause increment violations.

For sources that could burn alternative fuels prior to January 6, 1975, the problem is posed by the fact that if all sources made the switch to oil allowed under their permits, SO₂ increment violations would occur. Since neither a SIP revision nor a PSD Permit would be required for the sources to make the fuel switches, EPA and the state could be unaware of the violations

until another source applied for a PSD permit or until a periodic assessment was made. If actual increment violations were discovered during the PSD review process for the proposed source, the source would not be permitted to build or modify until the violations were corrected. If violations were found during a periodic assessment, the state would have to suspend further growth until its plan was revised to correct the violations. Consequently, the inadequacy of the exiting permits to prevent increment violations could result in increment violations which would delay, and possibly prevent, additional growth in the area.

A similar problem is posed by sources that could not accommodate oil before January 6, 1975. Since these sources increased their potential to emit after January 6, 1975, under EPA's June 1978 policy, this change would have constituted "construction" at a major stationary source after January 6, 1975. Therefore, under section 169(4), any emissions increases caused by the "construction" would have consumed increment. As noted above, EPA's June 1978 policy required increment calculations to be based on emissions allowed under a permit or SIP and not on actual source emissions. If a PSD source applied to locate in an area and these Gulf Coast sources were modeled based on emissions increases due to fuel switches allowed by their permits, EPA believes several SO₂ increment violations would be predicted. Under existing policy, the proposed PSD source would then be required to correct the violations prior to receiving construction approval. Future growth in the area could, therefore, be delayed or prevented.

The problem posed by the second group of sources is reduced to some extent by the increment consumption policy promulgated today. Since increment usage will now be based on changes in actual source emissions, increment violations will not occur in the area unless the sources actually switch to oil from natural gas. Because natural gas is expected to remain less expensive and more available than oil, EPA believes few, if any, switches are likely. Therefore, while the increments may still be jeopardized due to inadequate permit conditions, PSD review can proceed as long as actual emissions increases at existing sources and actual emissions from sources with PSD or NSR permits are not predicted to cause increment violations.

If an actual increment violation has occurred, EPA's June 1978 policy imposes a PSD permit moratorium until

the violation is corrected. 43 FR 28401 (col. 1), June 19, 1978. This policy is continued in today's regulations. Therefore, if an increment violation is predicted to occur within the significant impact area of a proposed source ($1 \mu\text{g}/\text{m}^3$ on an annual average), a PSD permit cannot be issued to the source, unless the state or source obtains sufficient emissions reductions to restore the increment. The issue of how to deal with potential increment violations due to inadequate permit conditions is addressed in the next discussion.

Several comments were received in response to EPA's request for comments on the Gulf Coast problem. Although EPA believes its revised policy of using actual emissions to calculate increment consumption resolves the immediate Gulf Coast dilemma, and similar potential problems in other states, EPA is responding below to suggestions made by commenters.

EPA's notices questioned whether the Agency should or may include in the baseline concentration emissions increases due to fuel switches. Twelve of thirteen commenters on the issue supported including increases due to fuel switches in the baseline concentration and the majority of the commenters favored including in the baseline concentration other emissions increases approved prior to the baseline date but not occurring by that date. Commenters also proposed using allowable emissions in all cases to calculate baseline concentrations.

As discussed above and in Baseline Concentration, EPA has determined that both baseline concentrations and increment consumption should be based on actual air quality impacts. This decision is consistent with the suggestion of some commenters that EPA consider increment consumption to occur only when actual emissions increase and not when the permit or SIP allowing the increase is approved. As a result of EPA's revised policy, emissions increases due to fuel switches cannot be included in the baseline concentration unless the increase occurred prior to the baseline date and at a source which could accommodate this switch prior to January 6, 1975 without physical change or received approval under a PSD permit to make the switch.

One commenter was particularly concerned that unless allowable emissions were included in the baseline concentration, utilities with SIP relaxations approved shortly before the baseline date would be penalized if the utilities were unable to make the allowed increase by the baseline date. The commenter argued that some

utilities would be unable to make the technical changes necessary to accommodate the fuel switch prior to the baseline date. Such utilities would, therefore, be required to do an increment consumption analysis, in contrast to other sources that made the switch before the baseline date. The commenter suggested that accounting for the allowed emissions increase in the baseline concentration would resolve this inequity and would be consistent with EPA's June 1978 policy of including in the baseline concentration emissions allowed under SIP relaxations pending before EPA on the baseline date.

While appreciating the commenter's concerns, EPA has concluded that no exemption from increment consumption analyses is appropriate in these cases. First, as discussed in Baseline Concentration, EPA has changed its June 1978 policy to provide that increment is consumed by emissions increases due to SIP relaxations pending EPA approval on the baseline date. Therefore, the exemption cited by the commenter no longer applies. Second, the June 1978 exemption was provided for sources whose emissions increases were delayed by the administrative process and not by physical limitations at the source. Therefore, the June 1978 exemption would not have applied to these utilities. Third, under the regulations promulgated today, if significant construction is necessary to make the allowed emissions increase, the change is a modification and would be subject to PSD review, including increment consumption analysis, in any case.

Other commenters suggested that prospective application of the definitions of major emitting facility and modification promulgated today would resolve the Gulf Coast problem. Under this approach, emissions increases that occurred after January 6, 1975, and would otherwise be considered modifications that consume increment under today's regulations, would not be evaluated under the new definitions. These commenters argued that the Gulf Coast problem is due to increment consumption from emissions increases not subject to the PSD permitting process at the time the increases were approved. The commenters stated that EPA has flexibility in deciding the effective date of the definitions.

EPA believes that section 169(4) requires emissions from all major emitting facilities (as defined in the Act and not as defined in the old PSD regulations) commencing construction after January 6, 1975 to count against

increment. The statute provides no discretion to exempt these emissions from increment consumption. EPA also notes that under the PSD regulations effective from January 6, 1975 to August 7, 1977, emissions increases at such sources would have consumed increment to the extent the fuel switches occurred. [See 39 FR 42510].

E. Potential Increment Violations

1. Inadequate SIP and Permit Provisions. While the use of actual emissions to calculate increment consumption partially resolves the Gulf Coast problem, the potential for increment violations remains, due to inadequate SIP and permit provisions. As stated in the preceding discussion, many sources in the Gulf Coast area, and in other states as well, have permits or SIP requirements that allow actual emissions increases without subjecting the source to PSD review or the SIP revision process. For example, sources may be allowed to burn fuels with higher sulfur contents, as in the Gulf Coast area, or may have high allowable limits that would permit sources to relax existing pollution controls. If all sources in an area increased actual emissions to levels allowed under the SIP or permits, EPA believes increment violations would occur. Because no PSD review or SIP revision would be required, neither the state nor EPA would know of the violations until a PSD application was filed or a periodic assessment occurred. Growth would be halted until the violation was corrected.

At present, increment violations due to allowed but unreviewed emissions increases, and consequent construction delays, are only potential problems. EPA has therefore concluded that it is premature to promulgate remedial regulations to prevent such theoretical violations. EPA, however, encourages states to be alert to emissions increases that affect the increment. EPA urges states to closely monitor emissions increases from baseline sources and from new or modified sources not subject to PSD review which affect the available increment. States should consider requiring sources to report any emissions increases after the baseline date, including increases reflecting changed operating conditions that will continue for an extended period of time, perhaps six months. States would then learn of increases that consume increments and could take those increases into account in PSD permit reviews and periodic increment assessments. In addition, states are encouraged to revise SIPs and/or issue operating permits so that SIP requirements and permits reflect actual

source operating conditions. This will protect against large unreviewed emissions increases. While EPA is not promulgating a reporting requirement today, it will reconsider the need for a notification system if it finds that unreviewed emissions increases are causing or contributing to increment violations.

2. Double Counting of Emissions Decreases.

EPA is concerned about another potential problem: double counting of emissions decreases. The problem could arise if an existing source (Source A) reduces its actual emissions and a new source (Source B) seeking to locate in the area proposes to use the decrease when modeling increment consumption. Source B would do this by including the emissions decrease in its modeling of actual emissions from Source A. If the reviewing authority does not require Source B to ensure that the decrease at Source A is federally enforceable and does not record Source B's use of the decrease at the time Source B conducts its modeling, Source A may well use the same decrease to offset a future contemporaneous increase at Source A and thereby avoid PSD review for the increase. The use of one emissions decrease to offset two emissions increases could lead to air quality deterioration, and possible increment violations that would require correction before more PSD permits could be issued.

While EPA believes double counting of decreases should not be permitted, it is not promulgating regulations today to address the problem. EPA is uncertain how often, if ever, the problem will arise. Certainly it will be difficult for a new source to prove to the satisfaction of the reviewing authority the value of an emissions decrease accomplished at another source. Moreover, while EPA believes double counting of decreases should not occur, it is uncertain what solution is equitable for affected sources. In the absence of a formal increment banking system, or other provisions regulating increment allocation, the reviewing authority would have no basis for denying Source B use of any available increment. This could result in hardship to Source A if it deprives Source A of use of its decrease as an offset for future increases.

The issue of double counting is part of the broader question of increment management and allocation of air quality rights. EPA intends to develop banking regulations, which will include guidance to states on methods of increment allocation and regulating use of emissions decreases. To this end, EPA solicits suggestions on how to

prevent double counting of decreases and on methods of increment allocation and management.

XV. Best Available Control Technology

Section 165 of the Act provides in part that any "major emitting facility" constructed in a PSD area must apply best available control technology (BACT) "for each pollutant subject to regulation under this Act emitted from, or which results from, such facility." Section 169(3) of the Act defines BACT and specifically requires that it not be applied in a manner so as to result in emissions in excess of those that are allowed by standards established pursuant to sections 111 or 112 of the Act. 42 U.S.C. 7479(3). The Agency's existing regulations required BACT only for each pollutant for which a source or modification would be "major." 40 CFR 51.24(i)(1), 52.21(i)(1)(1978).

The *Alabama Power* decision held that the Act requires that BACT be applied to all pollutants subject to regulation under the Act, not only those for which the source is major, and that EPA is without authority to circumscribe the requirement in this manner. 13 ERC 1993, 2046. The court did conclude, however, that EPA has authority to set *de minimis* thresholds for BACT applicability, in order to alleviate economic and administrative burdens. *Id.*

In response to the court's decision, EPA proposed and is now promulgating regulations regarding application of BACT. 40 CFR 51.24(k)(1), 52.21(k)(1). With respect to new major stationary sources, BACT will be required for each regulated pollutant emitted in excess of specified *de minimis* amounts. Application of BACT is also required, in the case of major modifications, for each regulated pollutant emitted for which there is a significant net emission increase (greater than *de minimis* amounts) at the source. The BACT requirement applies to only the modified units and added units at the source whose construction results in a source-wide significant net increase in the emissions of the regulated pollutant. The new BACT requirements apply only to the owner or operator of a PSD source or modification whose application for a PSD permit was not complete before today's promulgation. (*See Transition.*)

The *de minimis* emissions rates promulgated by the Administrator (*see De Minimis Exemption*) will apply to both BACT and LAER requirements. The Agency specifically solicited comments on the need to specify *de minimis* levels for BACT, since the case-by-case BACT determinations would presumably take *de minimis* levels and such related

issues as cost into account. Twenty-six commenters addressed this issue. Seventeen agreed in principle but generally considered the proposed levels too low and requested special consideration for pollutants emitted in less than major amounts. Eight of nine dissenters preferred case-by-case BACT determinations, with no *de minimis* values.

The Administrator is implementing the proposed *de minimis* approach for determining BACT applicability, although several values have been increased. (*See De Minimis Exemptions.*) This action should alleviate the concerns of those commenting about the need for BACT review of those pollutants emitted in small amounts. The Agency also solicited comments on the potential problem of a source obtaining lenient BACT determinations and later applying better controls to offset additional expansion plans. Twelve of thirteen commenters addressing this issue concluded that no such problem would arise. They claimed that it would be implausible to suppose that state programs and EPA regional offices would evade such responsibility, especially since loose BACT determinations would result in accelerated consumption of increment. The Administrator agrees that there appears to be adequate protection against loose BACT determinations.

Each of the three comments that addressed a need to phase in the BACT requirement favored a six month to one year grace period because of the complexity of the program. However, the Administrator believes that the case-by-case flexibility of BACT determinations is sufficient to phase in these regulations. Moreover, sources have effectively had a one year notice, in that the original *Alabama Power* decision, published June 18, 1979, informed them of the new BACT requirements. (*See Transition.*)

An additional issue, regarding the pollutant applicability of the BACT requirement, arose during the comment period. The proposal required BACT for the new or modified emissions units which were associated with the modification and not for those unchanged emissions units at the same source. Thus, if an existing boiler at a source were modified or a new boiler added in such a way as to significantly increase particulate emissions, only that boiler would be subject to BACT, not the other emissions units at the source. However, the proposal could be interpreted as requiring BACT for certain pollutants where the

Administrator did not intend to require BACT. For example, the proposal could be interpreted as requiring BACT review for any pollutant emitted from a source that was modified, regardless of whether the emissions of the pollutant increased. However, that was not the Agency's intent.

If a new unit were added or if a modification were made to a unit at a source, but there are contemporaneous decreases in emissions elsewhere at the source, BACT is required only for the pollutants for which there is a net significant plant-wide increase. For example, consider the addition of a boiler whose emissions of PM, SO₂, and NO_x each exceed *de minimis* levels. If, at the same time, an emission unit of SO₂ elsewhere at the source were shut down, such that plant-wide emissions of SO₂ either do not increase or increase by less than a *de minimis* amount, BACT is required for the new boiler only for PM and NO_x. Of course, BACT will not be required if there is no significant plant-wide increase in emissions of any pollutant. Similarly, if an existing emissions unit of a source were modified such that there is an emissions increase for one or more pollutants, but not all, BACT is required only for the pollutants for which there is both a net increase at the unit and a net significant plant-wide increase.

The above final policy governing the applicability of BACT to modifications is also consistent with existing policy under section 111, which the court said should govern modification concerns. The applicable regulation, 40 CFR 60.14(a), states that "any physical or operational change to an existing facility which results in an increase in the emissions rate to the atmosphere of any pollutant to which a standard applies shall be considered a modification within the meaning of section 111 of the Act. Upon modification, an existing facility shall become an affected facility for each pollutant to which a standard applies and for which there is an increase in the emissions rate to the atmosphere." (Emphasis added.)

The regulation cited above makes two important statements about the applicability requirements. First, the BACT requirements apply only with regard to those pollutants for which there has been a net significant increase. This was emphasized by the Alabama Power decision: "Congress wished to apply the permit process, then only where industrial changes might increase pollution in an area, not where an existing plant changed its operations in ways that produced no pollution increase * * * . The interpretation of

'modification' as requiring a net increase is thus consistent with the purpose of the Act * * *. The EPA has properly exempted from best available control technology (BACT) and ambient air quality review those 'modifications' of a source that do not produce a net increase in any pollutant." 13 ERC at 2043.

Second, BACT is required for net significant increases of *any* pollutant regulated under the Act, regardless of the category of source involved or the emissions standards generally applicable to it. Section 165(a)(4) of the Act requires application of BACT "for each pollutant subject to regulation under this Act" emitted from a subject facility. 42 U.S.C. 7475(a)(4). This includes not only criteria pollutants but also all pollutants regulated under NSPS or NESHAP. In this manner, BACT can complement the NSPS process by extending coverage to additional source types and units and perhaps identifying candidates for future NSPS and NESHAP regulations.

XVI. Monitoring

In *Alabama Power*, the court held that section 165(e)(1) of the Act requires an ambient air quality analysis for each pollutant subject to regulation under the Act that a proposed source or modification would emit, prior to applying for a PSD permit. Since existing PSD regulations require monitoring only for criteria pollutants emitted in major amounts, EPA responded to the June 18, 1979 *per curiam* opinion by proposing to require, for criteria and noncriteria pollutants, an air quality analysis that would generally include monitoring data. In order to gather and analyze the appropriate data necessary to apply for a PSD permit, a proposed source would have to establish an appropriate monitoring network or would have to gather and analyze representative air monitoring data resulting from ongoing monitoring activities.

As proposed, preconstruction monitoring data was required as part of the air quality analysis when: (1) the estimated ambient impact of any new pollutant emissions from the stationary source or modification would be larger than the pollutant specific *de minimis* air quality concentration (Table B); or (2) the new emissions or net emissions increases for the pollutant would be major (100/250 tons per year). In addition to this rule, EPA proposed that a case-by-case analysis of the proposed stationary source or modification which would impact on a Class I area be conducted even though the anticipated impact would fall below the *de minimis* level. Later, in October 1979, EPA

provided further guidance for applying these requirements in the draft revision of the *Ambient Monitoring Guidelines for Prevention of Significant Deterioration (PSD)*, OAQPS 1.2-096, U.S. EPA, Office of Air Quality Planning and Standards and Office of Research and Development, RTP, NC 27711.

The proposal stated that certain noncriteria pollutants (sulfuric acid mist, carbon disulfide, carbonyl sulfide, methyl mercaptan, dimethyl disulfide, and dimethyl sulfide) were lacking measurement methods approved by EPA. Until such time as approved techniques would become available, the Agency proposed to use mathematical modeling to estimate the air quality resulting from the emissions of these pollutants. Considering these limitations and the general lack of experience in monitoring on a routine basis, the Administrator proposed to implement noncriteria pollutant monitoring requirements on a case-by-case basis.

In addition to the pre-application monitoring requirements already described, EPA's proposal included discretionary authority for requiring post-construction monitoring to determine the effects of the new emissions on existing air quality. For cases in which larger pollutant emission impacts are anticipated, post-construction monitoring can be a particularly useful aid in adjusting modeling results used to predict concentrations resulting from the source's operation. The approach was thought to be responsive to the *Alabama Power* decision which required EPA to use monitors to help refine modeling techniques. Accordingly, EPA proposed to generally require post-construction monitoring from large sources of particulate matter and sulfur dioxide. Other sources whose emissions are estimated to result in air quality levels approaching an allowable increment or a NAAQS could also be required to submit post-construction monitoring data. The rule promulgated today is consistent with the proposal.

The Administrator believed that the required monitoring data would be most productive in checking the accuracy of models and, in some cases, could be used to calculate increment consumption. If an applicant or other party believes that a model required by EPA had either overpredicted or underpredicted the air quality impact of a source, EPA stated that monitoring data would be evaluated to the extent possible to determine whether adjustments would be necessary. EPA anticipated that the future development of more sophisticated monitoring

techniques may permit increased use of monitoring data to track increment consumption and establish ambient baselines, as well as improve the level of confidence in modeling.

Lastly, EPA considered the approach needed to smoothly usher in the new monitoring requirements. The September 5 *Federal Register* indicated that EPA intended to require any additional monitoring requirements, as now necessary under *Alabama Power*, to be phased in. Later, in October 1979, the draft ambient monitoring guidelines specified that a three-month allowance would be subtracted from the time interval over which the owner must monitor to allow for procuring and setting up the necessary monitoring equipment. (*See Transition*).

There was a large response to EPA's proposal and draft monitoring guidelines—nearly 100 public comments and over 800 requests for the guidance document were received. The comments indicated general agreement with EPA's interpretation of the court's preliminary opinion. But some concern was expressed over certain specific portions of the proposal: (1) the limited technology available to monitor the noncriteria pollutants in the ambient air; (2) the large cost associated with gathering all the required air quality data for all regulated pollutants; (3) the identification process for "representative" data; and (4) the need for post-construction monitoring.

Subsequent to the publication of the September 5, 1979 proposal and the receipt of the public comment, the court issued its final decision on December 14, 1979. One important change the court made upon reconsideration of the June 18 opinion was "that section 165(e)(1) requires that *an analysis* be conducted, and that it be conducted for each pollutant regulated under the Act. But *** that section 165(e)(1), standing alone does not require monitoring as *the method of analysis* to be employed in the fulfillment of its requirements." 13 ERC 1993, 2019. This ruling gave EPA more flexibility in defining the minimum requirements for a proper analysis of the noncriteria pollutants. "EPA might *** choose either monitoring or modeling as the method of analysis ***" *Id.* In other monitoring issues the court essentially affirmed its preliminary opinions.

Today, the Administrator is promulgating the proposed monitoring requirements with the noted exceptions. (*See* 40 CFR 51.24(m), 52.21(m)). EPA will generally require one year's worth of monitoring data as part of the air quality analysis for only the criteria pollutants. For the noncriteria and

hazardous pollutants, modeling, not monitoring, will be the mechanism used to perform most detailed air quality analyses. However, there may be certain circumstances where monitoring may be the only option available to perform an adequate analysis for the noncriteria pollutants (e.g., when little or no data on emission inventories for the area of concern exist). In that case, EPA will require ambient monitoring for the noncriteria pollutants if there is an acceptable method for the monitoring of that pollutant. Presently, the Administrator has acceptable methods for measuring ambient concentrations of: (1) all the criteria pollutants; (2) mercury; (3) beryllium; (4) vinyl chloride; (5) fluorides; and (6) hydrogen sulfide. A list of acceptable methods and copies of the method description are available by writing to: U.S. EPA, Environmental Monitoring Systems Laboratory, Quality Assurance Division (MD-77), Research Triangle Park, N.C. 27711. Also, techniques to measure ambient total reduced sulfur and reduced sulfur compounds have been chosen and will be added to the list within the next several months. At this time there are no acceptable methods for measuring ambient levels of asbestos and sulfuric acid mist.

As EPA gains more experience from the PSD program with respect to noncriteria pollutant analysis and as the technology develops, the Administrator will consider an increased role for ambient monitoring within the required air quality analysis.

In addition to the exemptions given in the *de minimis* section of this *Federal Register* publication, EPA may not always require a source owner to establish a monitoring network when the data would not validate or improve the estimates made by the mathematical models. When the existing air pollution levels are conservatively estimated to be quite small and a monitoring network could not reliably measure the predicted background concentrations, EPA will generally not require the source owner to generate preconstruction monitoring data. Also, if the source owner has submitted preconstruction data for the source site, and the post-construction monitoring network could not measure a predicted degradation in the air quality, then EPA will generally not require the source owner to collect further monitoring data. More guidance for meeting all the monitoring requirements is given in the *Ambient Monitoring Guidelines for Prevention of Significant Deterioration* (PSD), EPA-450/4-80-012, July 1980, available from the Monitoring and Data Analysis Division, OAQPS,

(MD-14), U.S. EPA, Research Triangle Park, N.C. 27711.

In the September 5, 1979 proposed regulations and the October 1979 draft of *Ambient Monitoring Guidelines for Prevention of Significant Deterioration* (PSD), EPA solicited comments on the use of representative air quality data to satisfy PSD monitoring requirements. Thirty-nine comments were received on the various aspects of the use of representative air quality data. The major responses were as follows: twenty-four commenters supported the use of existing representative air quality data, especially for remote areas. Five commenters wanted EPA to allow the use of bubbler data in lieu of continuous monitoring data, seven respondents believed that data older than two years should be allowed, and three objected to the quality assurance requirements for the representative data.

EPA has considered all of the comments and has taken the following actions:

(1) The use of existing representative air quality data will be permitted in lieu of monitoring, provided that the data meet the criteria in the above reference guideline.

(2) No bubbler data will be permitted because the data should be of the same quality as that obtained if the applicant monitored according to the requirements in the above referenced guideline. This guideline specifies monitoring must be done with continuous instruments to eliminate measurement biases associated with bubbler data.

Continuous measurements are also more suitable for routine monitoring purposes in checking for compliance with short-term standards.

(3) EPA will allow the use of data, for preconstruction purposes only, collected in the three-year period preceding the permit application provided reference/equivalent quality assurance procedures were followed during the measurement period. The draft guideline has previously specified a two-year requirement.

(4) EPA reaffirms the intent that all monitoring data collected must have been collected in accordance with acceptable quality assurance procedures. The specifics of the minimum quality assurance program needed for collecting air quality data are contained in the referenced guideline.

Finally, the court held that EPA had failed to provide concrete guidance to the states for designating when less than one year of monitoring data would meet the required air quality analysis, as specifically allowed under section 165(e)(2). Such guidance is given under

PSD SIP Revisions located elsewhere in today's Federal Register publication.

XVII. Notification

The proposal contained a requirement that certain construction projects exempt from PSD permit rules file a report at least 90 days in advance of the time that the exempted construction would commence. Notification requirements similar to those in the PSD proposal were also included in the proposed nonattainment rules, under 40 CFR 51.18(j) and 52.24, and Appendix S of Part 51 (the Emission Offset Interpretative Ruling). These notice requirements would apply to source construction which would not be subject to NSR solely because (1) the increase in emissions was offset by a contemporaneous decrease so as not to cause a significant net increase at the source (*see Modification*), or (2) the application of air pollution controls not generally required by the applicable SIP or 40 CFR 60 or 61, would lower the "potential to emit" of the source below the applicable threshold for permitting. The proposal would have required the submittal of comprehensive data for both new and existing emissions units at the stationary source and all other information needed by the reviewing authority to determine if the exemption reported by the source was proper. No formal applicability determination, however, was to be made and no major delays in the construction program of any such source were intended.

The Administrator believed such reporting was necessary because of the additional complexity of such determinations and the decreased number of sources subject to PSD due to changes in applicability rules. A need was apparent to record unreviewed emission increases and reductions occurring years apart at the same plant, in order to assess their impacts on air quality as well as to simply register in advance claims for reduction credits. For these reasons the Administrator proposed to use his authority under section 114 to monitor these determinations of offsetting emissions reductions and increased control efficiency. Section 114 authorizes the Administrator to require a source owner to provide such information as he may reasonably require in order to carry out Part C of the Act or to determine if a source owner is in violation of a SIP requirement.

Fifty-nine comments were received on the notification requirements. Only two comments completely supported the Agency proposal. Thirty-eight of the commenters felt that the requirements were unnecessary and not authorized by

the Clean Air Act. Many stated that the requirements were burdensome and equivalent to a preconstruction permit process. Twenty-four commenters specifically stated that section 114 does not allow such a comprehensive data gathering requirement, although reasonable data gathering is allowed.

Those who thought the requirements unnecessary cited the adequacy of existing state permitting programs to deal with these problems and the possibility of post-construction recordkeeping to accomplish the same objectives. EPA was advised to take enforcement action against the few source owners who would incorrectly exempt a source from review and then construct the source without obtaining a permit, rather than risk pervasive construction delays of properly exempted sources. Many commenters felt that the administrative burden to both the reviewing agency and the source outweighed its benefits. Seventeen commenters specifically stated that the extra cost to source owners would remove the real incentives for early cleanup and would act to perpetuate the operation of older units with high air pollutant emissions.

The Administrator maintains that reporting similar to the preconstruction notice is needed and can be required under section 114. However, the comments, particularly those concerning the potential of existing state programs to accomplish this function, have caused EPA to reconsider the need at this time for a preconstruction notification requirement. State comments and meetings with several state representatives in Atlanta (*see Docket account of III-D-4*) indicate that all states currently learn of all proposed emission units and changes before such would commence construction. Most states acquire such knowledge through their existing general NSR procedures, approved under 40 CFR 51.18, even if a net decrease would occur at the source. Other states learn of proposed emission increases through notification letters filed by the source pursuant to a formal applicability determination.

Many states do not routinely require sources to record emission decreases, especially when such would occur well in advance of related emission increases. While a preconstruction notice would be desirable to document these decreases, the requirements for contemporaneous emission reduction credit (*see Modification*) are sufficient to fulfill this need. That is, emission reductions, in order to be creditable in offsetting any contemporaneous increase at the same stationary source,

must be enforceable before the associated unit(s) with the emissions increase(s) commence construction. Such reductions, to be enforceable, must generally be made part of an enforceable operating or construction permit or be processed as a formal SIP revision. Although the Administrator is still concerned that sufficient information may not be available when a source owner wishes to document previous emissions reductions, he is opting for a "wait-and-see" approach in order to alleviate the concerns of the majority of the commenters who felt the notification requirements were unjustified and burdensome.

Also, since states will soon be administering the PSD program, it is best to allow them the flexibility to integrate notification requirements into their existing permit programs. The notification requirements in each state will be different, depending upon whether the state has an emission banking system and how it operates, the type of emission inventory system, and the information available from operating and construction permits. PSD increment tracking systems will also be set up by states, which can tailor informational requirements to their own tracking systems.

While today's regulations do not contain a formal preconstruction notice requirement, owners and operators are hereby put on notice for the following: (1) Sufficient records regarding the details of contemporaneous emission increases and decreases or applicable source determinations of "potential to emit" should be maintained so as to verify that no permit was required should the Administrator so require under section 114; (2) If experience in implementing the "no net increase" provisions of PSD applicability indicates that a more comprehensive notification system is required, the Administrator will promulgate an amendment to PSD and nonattainment regulations similar to the deleted provisions of the September 5 proposal; and (3) Any source which improperly avoids review and commences construction will be considered in violation of the applicable SIP and will be retroactively reviewed under the applicable NSR regulation.

XVIII. PSD SIP Revisions

Comments have been solicited on three aspects of the development of acceptable PSD plans by states. The issues are: (1) the authority of states to submit different but equally effective PSD programs, (2) state flexibility in defining baseline areas, and (3) state flexibility in allowing monitoring exemptions.

A. Equivalent State Programs. Under existing regulations, the Administrator cannot approve proposed state PSD regulations unless the state requirements are identical to or individually more stringent than the corresponding 40 CFR 51.24 regulations. While the Act does contain specific requirements for several major aspects of PSD programs, it does not prohibit states from using, in other areas, approaches equivalent to those of the federal regulations in order to meet the statutory objectives. Accordingly, the Administrator proposed on September 5, 1979 that states be given some flexibility in preparing PSD plans. The Administrator requested comment on such an approach and suggested portions of the PSD requirements for which equivalent approaches might be acceptable, and others for which alternative regulations would not be approvable. Where SIPs were allowed to differ, a test of overall equivalence was to be used based on the ability of the state system to capture as many emissions as would the 40 CFR 51.24 regulations.

All forty-nine comments on this topic strongly endorsed the general approach of giving states flexibility in developing PSD programs, although several commenters expressed the desire for a more extended area for SIP flexibility. Among those areas are: (1) the entire PSD program, (2) fugitive dust applicability, (3) modeling techniques, and (4) treatment of minor modifications and exempted sources. Another commenter asserted that EPA could hold the states responsible only for plans that addressed minimal requirements, such as maximum increment consumption.

After consideration of the comments, the Administrator has decided to treat PSD SIP revisions generally in the manner proposed. This means that states will be permitted to meet the following requirements of 40 CFR 51.24 with different but equivalent regulations, or implement the federal regulations with considerable discretion:

- a. Baseline area.
- b. Type and amount of data needed for monitoring purposes.
- c. Temporary exclusions from increment consumption.
- d. Defining "contemporaneous" as a reasonable period that may be greater or shorter than 5 years.
- e. Banking of emissions reductions for future offsets.
- f. Source information and analysis required of the applicant.
- g. Public participation after providing the opportunity for public hearing.
- h. Alternatives to first-come-first-served permit processing.

State PSD programs must follow the federal regulations in other matters. This includes, but is not limited to the following:

- a. Maximum allowable increments.
- b. Modeling techniques.
- c. Class I area protection.
- d. Notice to the Administrator or the applicable Federal Land Manager for prospective permit actions.
- e. New (grass roots) major stationary source applicability.
- f. NSPS, NESHAP minimum requirements for BACT determinations.
- g. Definitions generally as contained in 40 CFR 51.24(b). (State definitions need not be verbatim translations, but must have the same effect).

The Agency is not expanding the area of state program flexibility to those four areas, noted earlier, that were suggested by the commenters. First, the Administrator does not believe that complete program flexibility is allowable under the Act, nor does he find a basis for the comment that EPA is without authority to require that SIPs include more than skeletal program components. The second suggestion, regarding fugitive dust, is not feasible at this time for reasons detailed elsewhere (*see Fugitive Dust Exemption*). With regard to the third comment, the Act specifically directs the Administrator to specify air quality models. Section 105(e)(3), 42 U.S.C. 7475(e)(3). In addition, national consistency is important for such air quality impact analysis in order to standardize how increment would be consumed or enhanced across the country.

With regard to the degree of state flexibility in exempting additional types of new and modified sources, EPA believes that adequate exemptions have been provided in today's regulations and no further ones are authorized under the Act. The Administrator wishes to note that today's rules allow a state the opportunity to change the time period defining contemporaneous emissions increases. This change affects the definition of major modification and thereby affects the number of PSD reviews.

The opportunity for states to change the time period within which emissions changes would be considered contemporaneous is not constrained by a test of equivalency. Rather, it should be considered by states in developing PSD SIPs in conjunction with their deliberations on alternatives to first-come-first-served permitting and emission offset banking. The Administrator believes these issues are related to the state's inherent flexibility under the Act to manage increment consumption.

B. Baseline Area

This aspect of the equivalent state program issue deals with the definition of the area for which the baseline data is triggered by a PSD permit application and, specifically, with whether this definition must be the same under a PSD SIP as it is in 40 CFR 52.21. The proposal defined baseline area for both 40 CFR 51 and 52 as every part of an affected AQCR designated attainment or unclassified on the baseline date. Comments were solicited concerning the desirability of allowing states to define "area" as any portion of an AQCR that had been designated as attainment or unclassifiable, or, conversely, to allow states to define "area" as the entire state.

All commenters specifically addressing the issue of allowing states to have flexibility in defining baseline area were in favor of that approach. Many were more specific, suggesting that 107 designated areas or source impact areas be used.

The Administrator has decided to allow flexibility to states, not by accepting alternative definitions in SIPs, but by defining baseline area in such manner as to allow flexibility. This change in definition arises from a revised legal interpretation of what meaning "area" may be given under the Act. (*see Baseline Concentration*). Baseline area is now defined as all areas (and every part therein) within the state that are designated attainment or unclassified under section 107(d)(1) (D) or (E) of the Act in which the source establishing the baseline date would locate or would have an air quality impact equal to or greater than $1 \mu\text{g}/\text{m}^3$ (annual average) for the pollutant (SO_2 , and/or TSP) for which the baseline date is established. Flexibility is inherent in state authority to redesignate areas under section 107. Thus, large tracts of land belonging to one clean or unclassified PSD area can later be divided into several smaller PSD baseline areas with potentially different baseline dates. Other than the limitations associated with processing 107 area redesignations as SIP revisions, EPA requires that area redesignations under section 107 cannot intersect or be smaller than the area of impact of any major stationary source or major modification which establishes a baseline date or is subject to PSD and would be constructed in the same state as the state proposing the redesignation. A baseline date will, therefore, be triggered for the entire designated section 107 area unless nonimpacted portions are redesignated to smaller areas.

This approach allows the flexibility requested by the commenters, but precludes "postage-stamp" designations designed to trigger baseline only in the immediate vicinity of the source. It also avoids the difficult area boundary problems which would arise from defining area as the PSD source impact area. States are cautioned to carefully weigh any inclination to postpone baseline dates through area redesignations against increased difficulties associated with tracking increment consumption.

C. State Monitoring Exemption

Alabama Power remanded to EPA that portion of the monitoring requirements which allowed states to accept less than one year of preconstruction monitoring data for cases in which a shorter period would be sufficient to perform a complete and adequate analysis. The court ruled that EPA had not provided adequate guidance to the states for making this determination, 13 ERC 1993, 2020.

The proposal contained concrete guidance for use by states in determining if less than one year of monitoring data is sufficient. That guidance provided that as little as four months of monitoring data for the criteria pollutants was acceptable if the applicant demonstrated that the maximum pollutant concentrations would occur within that time.

Fourteen comments were received on various aspects of this proposal. Thirteen commenters supported the flexibility of requiring less than one year of monitoring data under specified circumstances. Two commenters addressed ozone monitoring requirements where there were more than four months with average daily maximum temperatures greater than 20°C (68°F).

The Administrator has decided to promulgate the proposed regulations except for the following:

(1) Less than one year of monitoring data will be permitted for all regulated pollutants, rather than for just the criteria pollutants. However, it must be demonstrated through historical data or dispersion models that the data for such shorter periods of time, but not less than four months, will be obtained during a time period when maximum air quality levels can be expected.

(2) Guidance for monitoring ozone during the warmest four months of the year has been deleted. Monitoring for ozone, as well as other pollutants, will still be required during the time period when maximum air quality levels can be expected. Ozone concentrations will generally be higher during the warmest four months of the year. However, ozone

monitoring must also be conducted when the yearly maximum ozone concentrations are likely to occur during months other than the warmest four months of the year. This will ensure that ozone monitoring will cover the expected maximum concentrations.

XIX. Additional Issues

A. Innovative Technology

In the September 5, 1979, Federal Register the Agency proposed a new paragraph (u) which sets out specific requirements for reviewing sources that wish to utilize innovative control technologies. The new paragraph sets out criteria to be used by the Administrator in determining whether a proposed control technology is innovative, in addition to establishing specific provisions for implementing the BACT and modeling requirements.

All of the commenters recognized the need to encourage the development of technology and generally approved of EPA's approach. One large environmental group commented that while it approved of the added flexibility in specifying BACT for innovative technologies, it was concerned that Class I areas might be compromised if increment violations were allowed to occur during the period of testing. We share this concern of the environmental group and are today promulgating a regulation which ensures full protection of Class I areas.

Today's amendments provide that, for a source whose technology has been designated as "innovative" by the Administrator, the BACT requirement should insure the installation of the innovative system and the adoption of a compliance schedule for meeting a final emission limitation. This final emission limitation must at least represent the BACT level that would have been initially defined under § 52.21(j).

assuming the use of proven state-of-the-art technology. The compliance schedule may extend no more than 7 years after permit issuance or 4 years after startup of the source. The regulations also provide that the Administrator may withdraw his approval if a source: (1) fails to meet the final emissions limitation by the specified date, (2) fails to protect the public health, welfare, or safety, or (3) shows an indication that the innovative control system will not be successful. The source will then be given a period of no more than 3 years to come into compliance with the BACT level determined with the use of the demonstrated system of control.

The September 5 Federal Register proposed that with the consent of the governor an "innovative technology"

source could conduct the increment impact analysis using the final emission limitation specified in the permit, provided that no interference with applicable NAAQS would result during the interim period. EPA reasoned that any increased level of emissions which might occur during the interim period would be temporary and would not significantly impact the increments. However, one of the commenters pointed out that Class I areas require protection even from temporary violations. We agree with the concerns of this commenter and cite § 52.21(i)(7) in their support. That section exempts temporary sources from the modeling requirements except when they impact Class I areas or areas where the increment is known to be violated. Today's regulations allow an "innovative" source to use its final emission limitation for increment modeling purposes, but only if there is no impact on any Class I area or any area with a known increment violation. As in the proposal, the final rules requiring modeling for the purpose of evaluating the impact on NAAQS must take into account interim emission projections. Under no condition may a source be approved if it would cause a violation of the NAAQS, even a temporary violation.

B. Modified Permits

In the September 5, 1979 Federal Register, EPA proposed to add a new paragraph (t) entitled "Modified Permits." The new paragraph provided a simplified approval procedure for sources that make minor changes in design capacity or in the nature of process equipment between the time they obtain a PSD permit and the time they complete construction. It also required prior approval, through permit modifications, of increases in hours of operation.

The comments on this section were mixed. Some commenters felt that the new paragraph was redundant and superfluous, while others generally approved of it but asked for clarification. Upon further consideration, the Agency believes that there is a need to distinguish between situations in which permits would be changed for primarily administrative reasons, such as a change to reflect a revised construction schedule, and situations in which the permit change involves a significant increase in emissions. In the latter case a new permit must be issued; in the former, however, an abbreviated procedure involving modification of the permit might be preferable. There are numerous issues to be considered in implementing

such an approach. These include the means to differentiate between significant and nonsignificant changes, and the specific procedural requirements for modifying a permit. Those issues were not adequately addressed in the proposal and for that reason the Agency has decided that it does not have a sufficient basis for completing rulemaking at this time. However, further rulemaking is being considered for future proposal and comment will be requested on the issues at that time.

C. Nonprofit Institutions

EPA proposed on September 5 to exempt modifications of nonprofit institutions from PSD review requirements as is already done for new construction of this type. This would mean that, upon written request by the governor of the state, a PSD permit would not be required of a major stationary source or major modification that qualifies as a nonprofit health or educational institution. Today the Administrator promulgates this exemption as proposed since no significant public comment was received. It should be noted that although such major new or modified sources would not require a PSD permit, the emissions from these sources would consume the applicable PSD increment(s) after January 6, 1975.

D. Portable Sources

With regard to portable sources, EPA proposed to change the 30 day notice to a 10 day notice for previously permitted PSD sources wishing to relocate. Based on experience in implementing the PSD regulations, and having received no adverse public comments on this proposal, the Administrator is adopting this proposal with one exception. Sources with PSD permits must provide a notice to the reviewing authority not less than ten days before relocation activities would commence, unless the Administrator has previously approved a different minimum time for relocation notice.

The Administrator would also like to clarify that a source is portable only if it would have temporary location and temporary emissions. Existing EPA policy defines temporary emissions as emissions from a stationary source that would be less than two years in duration, unless the Administrator determines that a longer time period would be appropriate. Thus, for a portable source to qualify for the above exemption, it must typically be located at the new location less than two years.

E. Secondary Emissions

Desiring to make the PSD review requirements similar to nonattainment requirements wherever possible, the Administrator proposed to add the definition of secondary emissions found in the offset ruling (44 FR 3274) to the PSD regulations. See 43 FR 28403. Secondary emissions would mean emissions from new or existing sources which occur as a result of the construction and/or operation of a major source or major modification, but do not necessarily come from the source itself. Secondary emissions would include:

- (a) emissions from ships or trains coming to or from a source or modification; or
- (b) emissions from offsite support sources which would otherwise increase emissions as a result of construction or operation of a major source. Although reasonably quantifiable secondary emissions would be reviewed in the air quality analysis, such emissions would not be included in determining "potential" emissions.

Public reaction to the September 5, 1979 proposal and the final *Alabama Power* opinion regarding EPA's treatment of secondary emissions was small. Generally the commenters favored the exclusion of secondary emissions from the PSD permit process altogether. Their objections centered on the availability and reliability of the emission factor data to "reasonably" quantify secondary emissions. Also the possibility of redundant reviews was highlighted by several commenters. The Administrator, in weighing these comments, has decided to promulgate the regulations addressing secondary emissions as proposed on September 5, 1979. See 40 CFR 51.24(b)(3), 52.21(b)(3), 51.24(b)(20), and 52.21(b)(20).

The Clean Air Act clearly calls for a detailed and extensive air quality impact assessment. For instance, each permit application must include impacts from the growth projected in the area that would occur as a result of the proposed source's construction. See section 165(a)(6). Also, once the baseline date is set, such emissions would consume the maximum allowable increments, so each permit decision must give consideration to all the possible ramifications of allowing a source or modification to construct. See section 165(a)(3) ("cause or contribute"). Secondary emissions must be considered when those emissions are specific, well defined, reasonably quantifiable, and impact the same general area.

F. Baseline for Calculating Offsets Under Section 173(1)(A)

The Offset Ruling sets out rules and guidance for determining the baseline for calculating emissions offset credit, as well as guidance on the location of offsetting emissions. See 40 CFR Part 51, Appendix S, Sections IV.C. and D. To aid the states in developing their NSR regulations for nonattainment areas, or in revising those regulations, EPA has decided to promulgate those rules and guidance in § 51.18(j)(3).¹⁴ The language promulgated today is identical to that used in the Offset Ruling, except as explained below.

On January 18, 1979, EPA modified the Offset Ruling to conform to section 129(a)(1) of the Act by setting the baseline for determining emissions offset credit at the emissions level specified for the source in the applicable SIP. EPA is retaining this baseline level for the Offset Ruling. However, the approach for NSR programs adopted pursuant to section 173 is slightly different. Section 173(1)(A) sets the baseline as the "allowable" emissions of the source, but it further specifies that the offsets obtained by the source must be sufficient to represent reasonable further progress (RFP). Some Part D SIP revisions approved by EPA have demonstrated attainment and RFP based on the allowable emissions of sources in a nonattainment area. However, many Part D SIP revisions have based their demonstrations on the *actual* emissions of the sources in a nonattainment area, rather than the sources' allowable emissions. This means that to be consistent with RFP, sources must reduce their actual, rather than their allowable, emissions. Otherwise, sources could claim credit for offsets in situations where the offset would actually interfere with RFP.¹⁵

To accommodate the different approaches to RFP, EPA has provided that the baseline for determining emissions offset credit shall be the

¹⁴On January 18, 1979, EPA solicited comments on certain aspects of the Offset Ruling, none of which directly concerned the matters published today. EPA will respond to those comments after today's promulgation.

¹⁵For example, suppose a source's allowable emissions are 1,000 tpy, and its actual emissions are 500 tpy. Now suppose it wants to add a new emissions unit, thereby adding 100 tpy, and the SIP requires a 100 tpy reduction for RFP. The source might achieve both objectives by decreasing its total allowable emissions to 900 tpy, i.e., it adds the 100 tpy for the new facility, but makes other reductions in allowable emissions of 200 tpy. This is adequate if the RFP demonstration relies upon allowable emissions, since the source started at 1,000 tpy and now is at 900 tpy. But if RFP is based on actual emissions, then there is a loss of 100 tpy, because RFP assumed 500 tpy and now the source emits 600 tpy.

allowable emissions of the source, where the SIP relies upon allowable emissions to demonstrate RFP; but the baseline must be actual emissions where the demonstration is based on reductions in actual emissions. EPA believes for the reasons discussed above that this approach is necessary to assure RFP towards attainment of ambient air quality standards.

G. Economic Impact Assessment

In the September 5 proposal, it was stated that the Agency would prepare an economic impact assessment of the proposed changes after the final court opinion was issued, which took place on December 14, 1979. The Agency further indicated that it would make the report available for public comment prior to promulgation, and that any resulting comments would be taken into account in the promulgated regulations.

Although the results of the impact assessment released today have been considered in developing the regulations, primarily for understanding *de minimis* effects, it has not been possible to complete the assessment in time to get comments prior to promulgation. In fact, because of the inherent complexity of the program, it has not been possible to do a true economic impact assessment (*i.e.*, one which considers impacts on market positions, prices, closures, etc.).

The document made available today presents as assessment of the overall impact of the proposed regulations with respect to several of the major issues or changes in the proposed regulations. The assessment does not attempt to quantify the impact of every issue nor does it attempt to assess the overall impact associated with the implementation of the PSD regulations in general. It is designed to provide a relative assessment of the impact of the September 5 proposal versus the June 1978 regulations in terms of the sources to be affected, their associated emissions, major requirements which must be met (or which are no longer required to be met), and estimated cost savings for sources no longer subject to PSD review as a result of the proposed regulations. In short, the analysis provides an estimate of differential cost impact of the 1978 versus the proposed PSD regulations and an assessment of the major issues associated with the proposed PSD regulations.

As noted, the assessment focused on the difference between the June 1978 regulations and those proposed on September 5. However, there are significant changes in the promulgated regulations compared to those proposed, especially with regard to the *de minimis*

values. Since these values have a major impact on expected cost, a projection of the impact of the final regulations was also made.

It is estimated that there will be a savings as a result of the promulgation for sources which would have been subject to the old regulations but which would not be subject to the new. This would represent an annual savings of \$2.2 to 6.1 million assuming the sources which have received permits from April 1978 to November 1979 are representative of those which will receive permits in the future.

Although there is an overall savings for sources which would no longer be subject to PSD review, the new regulations require more extensive review for some sources, as well as review of sources which were not previously covered; that is, modified sources with uncontrolled emissions of less than 100 or 250 tons per year but which have controlled emissions greater than *de minimis*. Since these sources are not now subject to PSD review, they would be required to prepare a PSD permit, conduct the necessary air quality impact assessments, incur some delays in construction as a result of undergoing PSD review in addition to state NSR review, and install BACT instead of just meeting the emissions limits required by the State Implementation Plan or New Source Performance Standards as applicable. As a result of the additional cost incurred because of more extensive review and by the sources not currently subject to PSD, the overall effect of the promulgated regulations (including the savings described above) is an increase of approximately \$12.4 to 24.5 million per year.

The complete analysis is contained in the document entitled *Regulatory Impact Assessment for the September 5, 1979 Proposed Prevention of Significant Deterioration Regulations*, EPA-450/2-80-073. This document is available for inspection in the rulemaking docket. Copies may be obtained by writing to the Air Information Center, U.S. EPA Library Services, (MD-35), Research Triangle Park, NC 27711.

H. Consolidated Permit Regulations

As mentioned in the section on TRANSITION, EPA recently promulgated regulations, known as the Consolidated Permit Regulations, which now generally govern the processing of applications for permits under Part 52 PSD regulations. Among the regulatory amendments announced here are three minor changes to the Consolidated Permit Regulation. First, EPA has deleted the substantive language of 40 CFR 124.3(b) and put "Reserved" in its

place. Section 124.3(b) related primarily to the 50-ton exemptions of the 1978 Part 52 regulations. With the deletion of those exemptions, § 124.3(b) would have become superfluous. Second, EPA has conformed 40 CFR 124.5(g)(2) to the numbering in the new Part 52 regulations. Finally, the agency has corrected 40 CFR 124.42(b) by substituting "submitted" for "requested."

Final Action

The following regulatory amendments are nationally applicable, and this action is based upon determinations of nationwide scope and effect. Therefore, under section 307(b)(1) of the Act, judicial review may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for judicial review must be filed on or before October 6, 1980.

(Sections 101(b)(1), 110, 160-169, 171-178, and 301(a) of the Clean Air Act as amended [42 U.S.C. 7401(b)(1), 7410, 7470-7479, 7501-7508, and 7601(a)]; Section 129(a) of the Clean Air Act Amendments of 1977 (Pub. L. No. 95-95, 91 Stat. 685 (August, 7, 1977)))

Dated: July 31, 1980.

Douglas M. Costle,
Administrator.

State Plans For New Source Review For PSD Purposes

1. Section 51.24 of Title 40 of the Code of Federal Regulations is amended by deleting paragraph (k) and redesignating paragraphs (l) through (s) as (k) through (r) and then by revising paragraphs (a)(2), (b), (f), (i)-(k), (m) and (r) and adding new paragraphs (a)(6) and (s) to read as follows:

§ 51.24 Prevention of significant deterioration of air quality.

(a)(1) Plan Requirements

(2) *Plan Revisions.* If a State Implementation Plan revision would result in increased air quality deterioration over any baseline concentration, the plan revision shall include a demonstration that it will not cause or contribute to a violation of the applicable increment(s). If a plan revision proposing less restrictive requirements was submitted after August 7, 1977 but on or before any applicable baseline date and was pending action by the Administrator on that date, no such demonstration is necessary with respect to the area for which a baseline date would be established before final action is taken on the plan revision. Instead, the assessment described in paragraph

(a)(4) shall review the expected impact to the applicable increment(s).

* * * * *

(b) *Amendments.* (i) Any state required to revise its implementation plan by reason of an amendment to this section, including any amendment adopted simultaneously with this paragraph, shall adopt and submit such plan revision to the Administrator for approval before May 7, 1981.

(ii) Any revision to an implementation plan that would amend the provisions for the prevention of significant air quality deterioration in the plan shall specify when and as to what sources and modifications the revision is to take effect.

(iii) Any revision to an implementation plan that an amendment to this section required shall take effect no later than the date of its approval and may operate prospectively.

(b) *Definitions.* All state plans shall use the following definitions for the purposes of this section. Deviations from the following wording will be approved only if the state specifically demonstrates that the submitted definition is more stringent, or at least as stringent, in all respects as the corresponding definitions below:

(1)(i) "Major stationary source" means:

(a) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Act: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries; lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process); primary lead smelters, fuel conversion plants, sintering plants; secondary metal production plants, chemical process plants, fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

(b) Notwithstanding the stationary source size specified in paragraph

(b)(1)(i)(a) of this section, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the Act; or

(c) Any physical change that would occur at a stationary source not otherwise qualifying under paragraph (b)(1) as a major stationary source if the change would constitute a major stationary source by itself.

(ii) A major source that is major for volatile organic compounds shall be considered major for ozone.

(2)(i) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.

(ii) Any net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone.

(iii) A physical change or change in the method of operation shall not include:

(a) Routine maintenance, repair, and replacement;

(b) Use of an alternative fuel or raw material by reason of any order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(c) Use of an alternative fuel by reason of an order or rule under section 125 of the Act;

(d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) Use of an alternative fuel or raw material by a stationary source which:

(1) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24; or

(2) The source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.24;

(f) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24.

(g) Any change in ownership at a stationary source;

(3)(i) "Net emissions increase" means the amount by which the sum of the following exceeds zero:

(a) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(ii) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within a reasonable period (to be specified by the state) before the date that the increase from the particular change occurs.

(iii) An increase or decrease in actual emissions is creditable only if the reviewing authority has not relied on it in issuing a permit for the source under regulations approved pursuant to this section, which permit is in effect when the increase in actual emissions from the particular change occurs.

(iv) An increase or decrease in actual emissions of sulfur dioxide or particulate matter which occurs before the applicable baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(v) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(vi) A decrease in actual emissions is creditable only to the extent that:

(a) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) It is federally enforceable at and after the time that actual construction on the particular change begins; and

(c) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(vii) 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 that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(4) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant 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 federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(5) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Act.

(6) "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" (i.e., which have the same two-digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

(7) "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Act.

(8) "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 actual emissions.

(9) "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(i) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(ii) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(10) "Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State Implementation Plan.

(11) "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

(12) "Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each pollutant subject to regulation under the Act which would be emitted from any proposed major stationary source or major modification which the reviewing authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combination techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60 and 61.

If the reviewing authority 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 best available control technology. 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.

(13)(i) "Baseline concentration" means that ambient concentration level which exists in the baseline area at the time of the applicable baseline date. A baseline concentration is determined for each pollutant for which a baseline date is established and shall include:

(a) The actual emissions representative of sources in existence on the applicable baseline date, except as provided in paragraph (b)(13)(ii);
 (b) The allowable emissions of major stationary sources which commenced

construction before January 6, 1975, but were not in operation by the applicable baseline date.

(ii) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(a) Actual emission from any major stationary source on which construction commenced after January 6, 1975; and

(b) Actual emissions increases and decreases at any stationary source occurring after the baseline date.

(14)(i) "Baseline date" means the earliest date after August 7, 1977, that:

(a) A major stationary source or major modification subject to 40 CFR 52.21 submits a complete application under that section; or

(b) A major stationary source or major modification subject to regulations approved pursuant to 40 CFR 51.24 submits a complete application under such regulations.

(ii) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(a) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.24; and

(b) In the case of a major stationary source, 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.

(15)(i) "Baseline area" means any intrastate area (and every part thereof) designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the Act in which the major source or major modification establishing the baseline date would construct or would have an air quality impact equal to or greater than $1 \mu\text{g}/\text{m}^3$ (annual average) of the pollutant for which the baseline date is established.

(ii) Area redesignations under section 107(d)(1)(D) or (E) of the Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

(a) Establishes a baseline date; or

(b) Is subject to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.24, and would be constructed in the same state as the state proposing the redesignation.

(16) "Allowable emissions" means the emissions rate of a stationary source calculated using 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, or both) and the most stringent of the following:

(i) The applicable standards as set forth in 40 CFR Parts 60 and 61;

(ii) The applicable State Implementation Plan emissions limitation, including those with a future compliance date; or

(iii) The emissions rate specified as a federally enforceable permit condition.

(17) "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24.

(18) "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purposes of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general areas the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

(i) Emissions from ships or trains coming to or from the new or modified stationary source; and

(ii) Emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

(19) "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.

(20) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(21)(i) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with subparagraphs (ii)-(iv) below.

(ii) 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

two-year period which precedes the particular date and which is representative of normal source operation. The reviewing authority 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.

(iii) The reviewing authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(iv) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(22) "Complete" means, in reference to an application for a permit, 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 reviewing authority from requesting or accepting any additional information.

(23)(i) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)
Nitrogen oxides: 40 tpy
Sulfur dioxide: 40 tpy
Particulate matter: 25 tpy
Ozone: 40 tpy of volatile organic compounds
Lead: 0.6 tpy
Asbestos: 0.007 tpy
Beryllium: 0.0004 tpy
Mercury: 0.1 tpy
Vinyl chloride: 1 tpy
Fluorides: 3 tpy
Sulfuric acid mist: 7 tpy
Hydrogen sulfide (H_2S): 10 tpy
Total reduced sulfur (including H_2S): 10 tpy
Reduced sulfur compounds (including H_2S): 10 tpy

(ii) "Significant" means, in reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the Act that paragraph (b)(23)(i) does not list, any emissions rate.

(iii) Notwithstanding paragraph (b)(23)(i), "significant" means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than $1 \mu g/m^3$ (24-hour average).

(24) "Federal Land Manager" means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

(25) "High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

(26) "Low terrain" means any area other than high terrain.

(27) "Indian Reservation" means any federally recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

(28) "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.

* * * * *

(f) *Exclusions from increment consumption.* (1) The plan may provide that the following concentrations shall be excluded in determining compliance with a maximum allowable increase:

(i) Concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) over the emissions from such sources before the effective date of such an order;

(ii) Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan;

(iii) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

(iv) 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

(v) Concentrations attributable to the temporary increase in emissions of sulfur dioxide or particulate matter from stationary sources which are affected by plan revisions approved by the Administrator as meeting the criteria specified in paragraph (f)(4).

(2) If the plan provides that the concentrations to which paragraph (f)(1) (i) or (ii) refers shall be excluded, it shall also provide that no exclusion of such concentrations shall apply more than five years after the effective date of the

order to which paragraph (f)(1)(i) refers or the plan to which paragraph (f)(1)(ii) refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five years after the later of such effective dates.

(3) No exclusion under paragraph (f) of this section shall occur later than 9 months after August 7, 1980, unless a State Implementation Plan revision meeting the requirements of 40 CFR 51.24 has been submitted to the Administrator.

(4) For purposes of excluding concentrations pursuant to paragraph (f)(1)(v), the Administrator may approve a plan revision that:

(i) Specifies the time over which the temporary emissions increase of sulfur dioxide or particulate matter would occur. Such time is not to exceed two years in duration unless a longer time is approved by the Administrator;

(ii) Specifies that the time period for excluding certain contributions in accordance with paragraph (f)(4)(i) is not renewable;

(iii) Allows no emissions increase from a stationary source which would:

(a) Impact a Class I area or an area where an applicable increment is known to be violated; or

(b) Cause or contribute to the violation of a national ambient air quality standard;

(iv) Requires limitations to be in effect the end of the time period specified in accordance with paragraph (f)(4)(i), which would ensure that the emissions levels from stationary sources affected by the plan revision would not exceed those levels occurring from such sources before the plan revision was approved.

* * * * *

(i) Review of Major Stationary Sources and Major Modifications—Source Applicability and Exemptions.

(1) The plan shall provide that no major stationary source or major modification shall begin actual construction unless, as a minimum, requirements equivalent to those contained in paragraphs (j) through (r) of this section have been met.

(2) The plan shall provide that the requirements equivalent to those contained in paragraphs (j) through (r) of this section shall apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under the Act that it would emit, except as this section would otherwise allow.

(3) The plan shall provide that requirements equivalent to those contained in paragraphs (j) through (r) of this section apply only to any major

stationary source or major modification that would be constructed in an area which is designated as attainment or unclassifiable under section 107(a)(1) (D) or (E) of the Act; and

(4) The plan may provide that requirements equivalent to those contained in paragraphs (j) through (r) of this section do not apply to a particular major stationary source or major modification if:

(i) The major stationary source would be a nonprofit health or nonprofit educational institution or a major modification that would occur at such an institution; or

(ii) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and such source does not belong to any following categories:

(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 (furnace process);

(p) Primary lead smelters;

(q) Fuel conversion plants;

(r) Sintering plants;

(s) Secondary metal production plants;

(t) Chemical process plants;

(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) Taconite ore processing plants;

(x) Glass fiber processing plants;

(y) Charcoal production plants;

(z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act; or

(iii) The source or modification is a portable stationary source which has

previously received a permit under requirements equivalent to those contained in paragraphs (j) through (r) of this section, if:

(a) The source proposes to relocate and emissions of the source at the new location would be temporary; and

(b) The emissions from the source would not exceed its allowable emissions; and

(c) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

(d) Reasonable notice is given to the reviewing authority prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the reviewing authority not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the reviewing authority.

(5) The plan may provide that requirements equivalent to those contained in paragraphs (j) through (r) of this section do 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 nonattainment under section 107 of the Act.

(6) The plan may provide that requirements equivalent to those contained in paragraphs (k), (m), and (o) of this section do not apply to a proposed major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from a new source, or the net emissions increase of that pollutant from a modification, would be temporary and impact no Class I area and no area where an applicable increment is known to be violated.

(7) The plan may provide that requirements equivalent to those contained in paragraphs (k), (m), and (o) of this section as they relate to any maximum allowable increase for a Class II area do 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 pollutant subject to regulation under the Act from the modification after the application of best available control technology would be less than 50 tons per year.

(8) The plan may provide that the reviewing authority may exempt a proposed major stationary source or major modification from the requirements of paragraph (m) with

respect to monitoring for a particular pollutant, if:

(i) The emissions increase of the pollutant from a new stationary source or the net emissions increase of the pollutant from a modification would cause, in any area, air quality impacts less than the following amounts:

(a) Carbon monoxide—575 ug/m³, 8-hour average;

(b) Nitrogen dioxide—14 ug/m³, annual average;

(c) Total suspended particulates—10 ug/m³, 24-hour average;

(d) Sulfur dioxide—13 ug/m³, 24-hour average;

(e) Ozone¹

(f) Lead—0.1 ug/m³, 24-hour average;

(g) Mercury—0.25 ug/m³, 24-hour average;

(h) Beryllium—0.0005 ug/m³, 24-hour average;

(i) Fluorides—0.25 ug/m³, 24-hour average;

(j) Vinyl chloride—15 ug/m³, 24-hour average;

(k) Total reduced sulfur—10 ug/m³, 1-hour average;

(l) Hydrogen sulfide—0.04 ug/m³, 1-hour average;

(m) Reduced sulfur compounds—10 ug/m³, 1-hour average; or

(ii) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in (i)(8)(i); or

(iii) The pollutants is not listed in paragraph (i)(8)(i).

(9) If EPA approves a plan revision under 40 CFR 51.24 as in effect before August 7, 1980, any subsequent revision which meets the requirements of this section may contain transition provisions which parallel the transition provisions of 40 CFR 52.21(i)(9), (i)(10) and (m)(1)(v) as in effect on that date, which provisions relate to requirements for best available control technology and air quality analyses. Any such subsequent revision may not contain any transition provision which in the context of the revision would operate any less stringently than would its counterpart in 40 CFR 52.21.

(j) *Control Technology Review.* The plan shall provide that:

(1) A major stationary source or major modification shall meet each applicable emissions limitation under the State Implementation Plan and each applicable emission standards and standard of performance under 40 CFR Parts 60 and 61.

¹No *de minimis* air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to PSD would be required to perform and ambient impact analysis, including the gathering of ambient air quality data.

(2) A new major stationary source shall apply best available control technology for each pollutant subject to regulation under the Act that it would have the potential to emit in significant amounts.

(3) A major modification shall apply best available control technology for each pollutant subject to regulation under the Act for which it would be 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.

(4) For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the least 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 best available control technology for the source.

(k) *Source Impact Analysis.* The plan shall provide that the owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reduction (including secondary emissions) would not cause or contribute to air pollution in violation of:

(1) Any national ambient air quality standard in any air quality control region; or

(2) Any applicable maximum allowable increase over the baseline concentration in any area.

(1) *Air Quality Models.*

(m) *Air Quality Analysis.* (1) Preapplication analysis.

(i) The plan shall provide that any application for a permit under regulations approved pursuant to this section shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

(a) For the source, each pollutant that it would have the potential to emit in a significant amount;

(b) For the modification, each pollutant for which it would result in a significant net emissions increase.

(ii) The plan shall provide that, with respect to any such pollutant for which no National Ambient Air Quality

Standard exists, the analysis shall contain such air quality monitoring data as the reviewing authority determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

(iii) The plan shall provide that 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.

(iv) The plan shall provide that, in general, the continuous air monitoring data that is required shall have been gathered over a period of one year and shall represent the year preceding receipt of the application, except that, if the reviewing authority 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.

(v) The plan may provide that the owner or operator of a proposed major stationary source or major modification of volatile organic compounds who satisfies all conditions of 40 CFR Part 51 Appendix S, section IV may provide postapproval monitoring data for ozone in lieu of providing preconstruction data as required under paragraph (m)(1).

(2) *Post-construction monitoring.* The plan shall provide that the owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the reviewing authority determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

(3) *Operation of monitoring stations.* The plan shall provide that the owner or operator of a major stationary source or major modification shall meet the requirements of Appendix B to Part 58 of this chapter during the operation of monitoring stations for purposes of satisfying paragraph (m) of this section.

(n) *Source Information.*

(o) *Additional Impact Analyses.*

(p) *Sources Impacting Federal Class I Areas—Additional Requirements.*

(q) *Public Participation.*

(r) *Source Obligation.* (1) The plan shall include enforceable procedures to provide that approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the plan and any other requirements under local, state or federal law.

(2) The plan shall provide that at such time that a particular source or modification becomes a major stationary 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 paragraphs (j) through (s) of this section shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(s) *Innovative Control Technology.* (1) The plan may provide that an owner or operator of a proposed major stationary source or major modification may request the reviewing authority to approve a system of innovative control technology.

(2) The plan may provide that the reviewing authority may, with the consent of the governor(s) of other affected state(s), determine that the source or modification may employ a system of innovative control technology, if:

(i) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

(ii) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under paragraph (j)(2) by a date specified by the reviewing authority. Such date shall not be later than 4 years from the time of startup or 7 years from permit issuance;

(iii) The source or modification would meet the requirements equivalent to those in paragraphs (j) and (k) 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 by the reviewing authority;

(iv) The source or modification would not before the date specified by the reviewing authority:

(a) Cause or contribute to any violation of an applicable national ambient air quality standard; or

(b) Impact any Class I area; or

(c) Impact any area where an applicable increment is known to be violated;

(v) All other applicable requirements including those for public participation have been met.

(3) The plan shall provide that the reviewing authority shall withdraw any approval to employ a system of innovative control technology made under this section, if:

(i) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

(ii) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

(iii) The reviewing authority 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.

(4) The plan may provide that if a source or 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 paragraph (s)(3), the reviewing authority may allow the source or modification up to an additional 3 years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

New Source Review For PSD Purposes

2. (a) Section 52.21 of Title 40 of the Code of Federal Regulations is amended by deleting paragraph (k) and redesignating paragraphs (l) through (v) as (k) through (u) and then by revising paragraphs (b), (f), (i), (j), (k) and (g) and adding new paragraphs (r)(4), (v) and (w) as follows:

§ 52.21. Prevention of significant deterioration of air quality.

(b) *Definitions.* For the purposes of this section:

(1)(i) "Major stationary source" means:

(a) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Act: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants,

carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

(b) Notwithstanding the stationary source size specified in paragraph (b)(1)(i) of this section, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the Act; or

(c) Any physical change that would occur at a stationary source not otherwise qualifying under paragraph (b)(1) as a major stationary source, if the changes would constitute a major stationary source by itself.

(d) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(2)(i) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.

(ii) Any net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone.

(iii) A physical change or change in the method of operation shall not include:

(a) Routine maintenance, repair and replacement;

(b) 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 (or any superseding legislation) or by reason of a natural gas curtailment plant pursuant to the Federal Power Act;

(c) Use of an alternative fuel by reason of an order or rule under section 125 of the Act;

(d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) Use of an alternative fuel or raw material by a stationary source which:

(1) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21

or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24; or

(2) The source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.24;

(f) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24.

(g) Any change in ownership at a stationary source.

(3)(i) "Net emissions increase" means the amount by which the sum of the following exceeds zero:

(a) Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and

(b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(ii) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(a) The date five years before construction on the particular change commences; and

(b) The date that the increase from the particular change occurs.

(iii) An increase or decrease in actual emissions is creditable only if the Administrator has not relied on it in issuing a permit for the source under this section, which permit is in effect when the increase in actual emissions from the particular change occurs.

(iv) An increase or decrease in actual emissions of sulfur dioxide or particulate matter which occurs before the applicable baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(v) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(vi) A decrease in actual emissions is creditable only to the extent that:

(a) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) It is federally enforceable at and after the time that actual construction on the particular change begins; and

(c) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(viii) 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 that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(4) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant 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 federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(5) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Act.

(6) "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" (i.e., which have the same first two digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended by the 1977 Supplement (U. S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

(7) "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Act.

(8) "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 actual emissions.

(9) "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(i) Begun, or caused to begin, a continuous program of actual on-site

construction of the source, to be completed within a reasonable time; or

(ii) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(10) "Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State Implementation Plan.

(11) "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(12) "Best available control technology" means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under Act which would be emitted from any proposed major stationary source or major modification which the Administrator, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60 and 61. If the Administrator 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 best available control technology. 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.

(13)(i) "Baseline concentration" means that ambient concentration level which exists in the baseline area at the time of the applicable baseline date. A baseline concentration is determined for each pollutant for which a baseline date is established and shall include:

(a) The actual emissions representative of sources in existence on the applicable baseline date, except as provided in paragraph (b)(13)(ii);

(b) The allowable emissions of major stationary sources which commenced construction before January 6, 1975, but were not in operation by the applicable baseline date.

(ii) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(a) Actual emissions from any major stationary source on which construction commenced after January 6, 1975; and

(b) Actual emissions increases and decreases at any stationary source occurring after the baseline date.

(14)(i) "Baseline date" means the earliest date after August 7, 1977, on which the first complete application under 40 CFR 52.21 is submitted by a major stationary source or major modification subject to the requirements of 40 CFR 52.21.

(ii) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(a) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(i) (D) or (E) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21; and

(b) In the case of a major stationary source, 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.

(15)(i) "Baseline area" means any intrastate area (and every part thereof) designated as attainment or unclassifiable under section 107(d)(1) (D) or (E) of the Act in which the major source or major modification establishing the baseline date would construct or would have an air quality impact equal to or greater than 1 $\mu\text{g}/\text{m}^3$ (annual average) of the pollutant for which the baseline date is established.

(ii) Area redesignations under section 107(d)(1) (D) or (E) of the Act cannot intersect or be smaller than the area of

impact of any major stationary source or major modification which:

(a) Establishes a baseline date; or

(b) Is subject to 40 CFR 52.21 and would be constructed in the same state as the state proposing the redesignation.

(16) "Allowable emissions" means the emissions rate of a stationary source calculated using 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, or both) and the most stringent of the following:

(i) The applicable standards as set forth in 40 CFR Parts 60 and 61;

(ii) The applicable State Implementation Plan emissions limitation, including those with a future compliance date; or

(iii) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(17) "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 and 40 CFR 51.24.

(18) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

(i) Emissions from ships or trains coming to or from the new or modified stationary source; and

(ii) Emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

(19) "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.

(20) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(21)(i) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with subparagraphs (ii)-(iv) below.

(ii) 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 two-year period which precedes the particular date and which is representative of normal source operation. The Administrator shall 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.

(iii) The Administrator may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(iv) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(22) "Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application.

(23)(i) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Sulfur dioxide: 40 tpy

Particulate matter: 25 tpy

Ozone: 40 tpy of volatile organic compounds

Lead: 0.8 tpy

Asbestos: 0.007 tpy

Beryllium: 0.0004 tpy

Mercury: 0.1 tpy

Vinyl chloride: 1 tpy

Fluorides: 3 tpy

Sulfuric acid mist: 7 tpy

Hydrogen sulfide (H_2S): 10 tpy

Total reduced sulfur (including H_2S): 10 tpy

Reduced sulfur compounds (including H_2S): 10 tpy

(ii) "Significant" means, in reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the Act that paragraph (b)(23)(i) does not list, any emissions rate.

(iii) Notwithstanding paragraph (b)(23)(i), "significant" means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 $\mu\text{g}/\text{m}^3$, (24-hour average).

(24) "Federal Land Manager" means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

(25) "High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

(26) "Low terrain" means any area other than high terrain.

(27) "Indian Reservation" means any federally recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

(28) "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 selfgovernment.

* * * * *

(f) Exclusions from increment consumption. (1) Upon written request of the governor, made after notice and opportunity for at least one public hearing to be held in accordance with procedures established in 40 CFR 51.4, the Administrator shall exclude the following concentrations in determining compliance with a maximum allowable increase:

(i) Concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) over the emissions from such sources before the effective date of such an order;

(ii) Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan;

(iii) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

(iv) 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

(v) Concentrations attributable to the temporary increase in emissions of sulfur dioxide or particulate matter from stationary sources which are affected by plan revisions approved by the Administrator as meeting the criteria specified in paragraph (f)(4).

(2) No exclusion of such concentrations shall apply more than five years after the effective date of the order to which paragraph (f)(1)(i) refers or the plan to which paragraph (f)(1)(ii) refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five years after the later of such effective dates.

(3) No exclusion under paragraph (f) of this section shall occur later than 9 months after August 7, 1980, unless a State Implementation Plan revision meeting the requirements of 40 CFR 51.24 has been submitted to the Administrator.

(4) For purposes of excluding concentrations pursuant to paragraph (f)(1)(v), the proposed plan revision shall:

(i) Specify the time over which the temporary emissions increase of sulfur dioxide or particulate matter would occur. Such time is not to exceed two years in duration unless a longer time is approved by the Administrator;

(ii) Specify that the time period for excluding certain contributions in accordance with paragraph (f)(4)(i) is not renewable;

(iii) Allow no emissions increase from a stationary source which would:

(a) Impact a Class I area or an area where an applicable increment is known to be violated; or

(b) Cause or contribute to the violation of a national ambient air quality standard;

(iv) Require limitations to be in effect at the end of the time period specified in accordance with paragraph (f)(4)(i) which would ensure that the emissions levels from stationary sources affected by the plan revision would not exceed those levels occurring from such sources before the plan revision was approved.

* * * * *

(i) Review of Major Stationary Sources and Major Modifications—Source Applicability and Exemptions.

(1) No stationary source or modification to which the requirements of paragraphs (j) through (r) of this section apply shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements. The Administrator has authority to issue any such permit.

(2) The requirements of paragraphs (j) through (r) of this section shall apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under the Act that it would emit, except as this section otherwise provides.

(3) The requirements of paragraphs (j) through (r) of this section apply only to any major stationary source or major modification that would be constructed in an area designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the Act.

(4) The requirements of paragraphs (j) through (r) of this section shall not apply to a particular major stationary source or major modification, if:

(i) Construction commenced on the source or modification before August 7, 1977. The regulations at 40 CFR 52.21 as in effect before August 7, 1977, shall govern the review and permitting of any such source or modification; or

(ii) The source or modification was subject to the review requirements of 40 CFR 52.21(d)(i) as in effect before March 1, 1978, and the owner or operator:

(a) Obtained under 40 CFR 52.21 a final approval effective before March 1, 1978;

(b) Commenced construction before March 19, 1979; and

(c) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or

(iii) The source or modification was subject to 40 CFR 52.21 as in effect before March 1, 1978, and the review of an application for approval for the stationary source or modification under 40 CFR 52.21 would have been completed by March 1, 1978, but for an extension of the public comment period pursuant to a request for such an extension. In such a case, the application shall continue to be processed, and granted or denied, under 40 CFR 52.21 as in effect prior to March 1, 1978; or

(iv) The source or modification was not subject to 40 CFR 52.21 as in effect before March 1, 1978, and the owner or operator:

(a) Obtained all final federal, state and local preconstruction approvals or permits necessary under the applicable State Implementation Plan before March 1, 1978;

(b) Commenced construction before March 19, 1979; and

(c) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or

(v) The source or modification was not subject to 40 CFR 52.21 as in effect on June 19, 1978 or under the partial stay

of regulations published on February 5, 1980 (45 FR 7800), and the owner or operator:

(a) Obtained all final federal, state and local preconstruction approvals or permits necessary under the applicable State Implementation Plan before August 7, 1980;

(b) Commenced construction within 18 months from August 7, 1980, or any earlier time required under the applicable State Implementation Plan; and

(c) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time; or

(vi) The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution, and the governor of the state in which the source or modification would be located requests that it be exempt from those requirements; or

(vii) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(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 (furnace process);

(p) Primary lead smelters;

(q) Fuel conversion plants;

(r) Sintering plants;

(s) Secondary metal production plants;

(t) Chemical process plants;

(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) Taconite ore processing plants;

(x) Glass fiber processing plants;

(y) Charcoal production plants;

(z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act; or

(viii) The source is a portable stationary source which has previously received a permit under this section, and

(a) The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary; and

(b) The emissions from the source would not exceed its allowable emissions; and

(c) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

(d) Reasonable notice is given to the Administrator prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the Administrator not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the Administrator.

(5) The requirements of paragraphs (j) through (r) of this section 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 nonattainment under section 107 of the Act.

(6) The requirements of paragraphs (k), (m) and (o) of this section shall not apply to a major stationary 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:

(i) Would impact no Class I area and no area where an applicable increment is known to be violated, and

(ii) Would be temporary.

(7) The requirements of paragraphs (k), (m) and (o) of this section as they relate to any maximum allowable increase for a Class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each pollutant subject to regulation under the Act from the modification after the application of best available control technology would be less than 50 tons per year.

(8) The Administrator may exempt a stationary source or modification from the requirements of paragraph (m) with

respect to monitoring for a particular pollutant if:

(i) 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:

Carbon monoxide—575 $\mu\text{g}/\text{m}^3$, 8-hour average;

Nitrogen dioxide—14 $\mu\text{g}/\text{m}^3$, annual average;

Total suspended particulate—10 $\mu\text{g}/\text{m}^3$, 24-hour average;

Sulfur dioxide—13 $\mu\text{g}/\text{m}^3$, 24-hour average;

Ozone;²

Lead—0.1 $\mu\text{g}/\text{m}^3$, 24-hour average;

Mercury—0.25 $\mu\text{g}/\text{m}^3$, 24-hour average;

Beryllium—0.0005 $\mu\text{g}/\text{m}^3$, 24-hour average;

Fluorides—0.25 $\mu\text{g}/\text{m}^3$, 24-hour average;

Vinyl chloride—15 $\mu\text{g}/\text{m}^3$, 24-hour average;

Total reduced sulfur—10 $\mu\text{g}/\text{m}^3$, 1-hour average;

Hydrogen sulfide—0.04 $\mu\text{g}/\text{m}^3$, 1-hour average;

Reduced sulfur compounds—10 $\mu\text{g}/\text{m}^3$, 1-hour average; or

(ii) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in paragraph (i)(8)(i), or the pollutant is not listed in paragraph (i)(8)(i).

(9) The requirements for best available control technology in paragraph (j) of this section and the requirements for air quality analyses in paragraph (m)(1) shall not apply to a particular stationary source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submitted an application for a permit under those regulations before August 7, 1980, and the Administrator subsequently determines that the application as submitted before that date was complete. Instead, the requirements at 40 CFR 52.21(j) and (n) as in effect on June 19, 1978 apply to any such source or modification.

(10)(i) The requirements for air quality monitoring in paragraphs (m)(1)(ii)-(iv) of this section shall not apply to a particular source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submits an

²No *d_{minimus}* air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to PSD would be required to perform an ambient impact analysis including the gathering of ambient air quality data.

application for a permit under this section on or before June 8, 1981, and the Administrator subsequently determines that the application as submitted before that date was complete with respect to the requirements of this section other than those in paragraphs (m)(1)(ii)-(iv) and with respect to the requirements for such analyses at 40 CFR 52.21(m)(2) as in effect on June 19, 1978. Instead, the latter requirements shall apply to any such source or modification.

(ii) The requirements for air quality monitoring in paragraphs (m)(1)(ii)-(iv) of this section shall not apply to a particular source or modification that was not subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submits an application for a permit under this section on or before June 8, 1981, and the Administrator subsequently determines that the application as submitted before that date was complete, except with respect to the requirements in paragraphs (m)(1)(ii)-(iv).

(j) *Control Technology Review.* (1) A major stationary source or major modification shall meet each applicable emissions limitation under the State Implementation Plan and each applicable emissions standard and standard of performance under 40 CFR Parts 60 and 61.

(2) A new major stationary source shall apply best available control technology for each pollutant subject to regulation under the Act that it would have the potential to emit in significant amounts.

(3) A major modification shall apply best available control technology for each pollutant subject to regulation under the Act for which it 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.

(4) For phased construction projects, the determination of best available control technology 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 best available control technology for the source.

(k) *Source Impact Analysis.* The owner or operator of the proposed source or modification shall demonstrate that allowable emission

increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

(1) Any national ambient air quality standard in any air quality control region; or

(2) Any applicable maximum allowable increase over the baseline concentration in any area.

(1) *Air Quality Models.*

* * * *

(m) *Air Quality Analysis.* (1) Preapplication analysis.

(i) Any application for a permit under this section shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

(a) For the source, each pollutant that it would have the potential to omit in a significant amount;

(b) For the modification, each pollutant for which it would result in a significant net emissions increase.

(ii) With respect to any such pollutant for which no National Ambient Air Quality Standard exists, the analysis shall contain such air quality monitoring data as the Administrator determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

(iii) 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.

(iv) 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 Administrator 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.

(v) For any application which becomes complete, except as to the requirements of paragraph (m)(1) (iii) and (iv), between June 8, 1981, and February 9, 1982, the data that paragraph (m)(1)(iii) requires shall have been gathered over at least the period from February 9, 1981, to the date the

application becomes otherwise complete, except that:

(a) If the source or modification would have been major for that pollutant under 40 CFR 52.21 as in effect on June 19, 1978, any monitoring data shall have been gathered over at least the period required by those regulations.

(b) If the Administrator determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four months), the data that paragraph (m)(1)(iii) requires shall have been gathered over at least that shorter period.

(c) If the monitoring data would relate exclusively to ozone and would not have been required under 40 CFR 52.21 as in effect on June 19, 1978, the Administrator may waive the otherwise applicable requirements of this paragraph (v) to the extent that the applicant shows that the monitoring data would be unrepresentative of air quality over a full year.

(vi) The owner or operator of a proposed stationary source or modification of volatile organic compounds who satisfies all conditions of 40 CFR Part 51 Appendix S, section IV may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under paragraph (m)(1).

(2) Post-construction monitoring. The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the Administrator determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

(3) Operations of monitoring stations. The owner or operator of a major stationary source or major modification shall meet the requirements of Appendix B to Part 58 of this chapter during the operation of monitoring stations for purposes of satisfying paragraph (m) of this section.

(n) *Source Information.*

* * * *

(o) *Additional Impact Analyses.*

* * * *

(p) *Sources Impacting Federal Class I Areas—Additional Requirements.*

* * * *

(q) *Public Participation.* The Administrator shall follow the applicable procedures of 40 CFR Part 124 in processing applications under this section. The Administrator shall follow the procedures at 40 CFR 52.21(r) as in effect on June 19, 1979, to the extent that

the procedures of 40 CFR Part 124 do not apply.

(r) *Source Obligation.*

* * * * *

(4) At such time that a particular source or modification becomes a major stationary 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 or paragraphs (j) through (s) of this section shall apply to the source or modification as though construction had not yet commenced on the source or modification.

* * * * *

(s) *Environmental Impact Statements.*

* * * * *

(t) *Disputed Permits or Redesignations.*

* * * * *

(u) *Delegation of Authority.*

(v) *Innovative Control Technology.* (1) An owner or operator of a proposed major stationary source or major modification may request the Administrator in writing no later than the close of the comment period under 40 CFR 124.10 to approve a system of innovative control technology.

(2) The Administrator shall, with the consent of the governor(s) of the affected state(s), determine that the source or modification may employ a system of innovative control technology, if:

(i) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

(ii) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under paragraph (j)(2) by a date specified by the Administrator. Such date shall not be later than 4 years from the time of startup or 7 years from permit issuance;

(iii) The source or modification would meet the requirements of paragraphs (j) and (k) 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 by the Administrator;

(iv) The source or modification would not before the date specified by the Administrator:

(a) Cause or contribute to a violation of an applicable national ambient air quality standard; or

(b) Impact any Class I area; or

(c) Impact any area where an applicable increment is known to be violated; and

(v) All other applicable requirements including those for public participation have been met.

(3) The Administrator shall withdraw any approval to employ a system of innovative control technology made under this section, if:

(i) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

(ii) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

(iii) The Administrator 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.

(4) If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with paragraph (v)(3), the Administrator may allow the source or modification up to an additional 3 years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

(w) *Permit rescission.* (1) Any permit issued under this section or a prior version of this section shall remain in effect, unless and until it expires under paragraph (s) of this section or is rescinded.

(2) Any owner or operator of a stationary source or modification who holds a permit for the source or modification which was issued under 40 CFR 52.21 as in effect on June 19, 1978, may request that the Administrator rescind the permit or a particular portion of the permit.

(3) The Administrator shall grant an application for rescission if the application shows that this section would not apply to the source or modification.

(4) If the Administrator rescinds a permit under this paragraph, the public shall be given adequate notice of the rescission. Publication of an announcement of rescission in a newspaper of general circulation in the affected region within 60 days of the rescission shall be considered adequate notice.

2. (b) In § 52.60 (AL), § 52.96 (AK), § 52.144 (AZ), § 52.131 (AR), § 52.270 (CA), § 52.343 (CO), § 52.383 (CT), § 52.432 (DE), § 52.499 (DC), § 52.530 (FL), § 52.632 (HI), § 52.683 (ID), § 52.738 (IL), § 52.793 (IN), § 52.833 (IA), § 52.884 (KS), § 52.931 (KY), § 52.986 (LA),

§ 52.1116 (MD), § 52.1180 (MI), § 52.1234 (MN), § 52.1280 (MS), § 52.1339 (MO), § 52.1382 (MT), § 52.1436 (NB), § 52.1485 (NV), § 52.1529 (NH), § 52.1603 (NJ), § 52.1634 (NM), § 52.1689 (NY), § 52.1778 (NC), § 52.1884 (OH), § 52.1929 (OK), § 52.1987 (OR), § 52.2058 (PA), § 52.2083 (RI), § 52.2131 (SC), § 52.2178 (SD), § 52.2303 (TX), § 52.2346 (UT), § 52.2451 (VA), § 52.2497 (WA), § 52.2528 (WV), § 52.2581 (WI), § 52.2676 (GU), § 52.2729 (PR), § 52.2779 (VI), and § 52.2827 (AmS), paragraphs (a) and (b) are revised to read as follows:

* * * * *

(a) The requirements of sections 160 through 165 of the Clean Air Act are not met, since the plan does not include approvable procedures for preventing the significant deterioration of air quality.

(b) *Regulations for preventing significant deterioration of air quality.* The provisions of 52.21(b) through (w) are hereby incorporated and made a part of the applicable state plan for the State of _____.

Emission Offset Interpretative Ruling

3. Sections I, II, III and IV of the Emission Offset Interpretative Ruling, 40 CFR Part 51 Appendix S, as revised 44 FR 3274 (January 16, 1979) and 45 FR 31307 (May 13, 1980), are amended as follows:

A. By adding a new third paragraph to Section I, to read as follows:

I Introduction

* * * * *

The requirement of this Ruling shall not apply to any major stationary source or major modification that was not subject to the Ruling as in effect on January 16, 1979, if the owner or operator:

A. Obtained all final federal, state, and local preconstruction approvals or permits necessary under the applicable State Implementation Plan before August 7, 1980;

B. Commenced construction within 18 months from August 7, 1980, or any earlier time required under the applicable State Implementation Plan; and

C. Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time.

B. By revising Section II, subsection A, to read as follows:

II Initial Screening Analyses and Determination of Applicable Requirements

A. Definitions—For the purposes of this Ruling:

1. "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Act.

2. "Building, structure, or facility" 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" (i.e., which have the same two digit code) as described in the *Standard Industrial Classification Manual*, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0088 and 003-005-00178-0, respectively).

3. "Installation" means an identifiable piece of process equipment.

4. "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant 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 only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

5.(l) "Major stationary source" means:

(a) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Act; or

(b) Any physical change that would occur at a stationary source not qualifying under paragraph 5.(l)(a) as a major stationary source, if the change would constitute a major stationary source by itself.

(ii) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

6.(i) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.

(ii) Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.

(iii) A physical change or change in the method of operation shall not include:

(a) Routine maintenance, repair, and replacement;

(b) 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 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(c) Use of an alternative fuel by reason of an order or rule under section 125 of the Act;

(d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) Use of an alternative fuel or raw material by a stationary source which:

(1) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24; or

(2) The source is approved to use under any permit issued under this ruling;

(f) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24;

(g) Any change in ownership at a stationary source.

7.(i) "Net emissions increase" means the amount by which the sum of the following exceeds zero:

(a) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(ii) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(a) The date five years before construction on the particular change commences and

(b) The date that the increase from the particular change occurs.

(iii) An increase or decrease in actual emissions is creditable only if the Administrator has not relied on it in issuing a permit for the source under this Ruling which permit is in effect when the increase in actual emissions from the particular change occurs.

(iv) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(v) A decrease in actual emissions is creditable only to the extent that:

(a) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) It is federally enforceable at and after the time that actual construction on the particular change begins;

(c) The reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR 51.18; and

(d) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(vi) 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 that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

8. "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Act.

9. "Reconstruction" will be presumed to have taken place where the fixed capital cost of the new components exceeds 50 per cent of the fixed capital cost of a comparable entirely new stationary source. Any final decision as to whether reconstruction has occurred shall be made in accordance with the provisions of 40 CFR 60.15(f) (1)-(3). A reconstructed stationary source will be treated as a new stationary source for

purposes of this Ruling. In determining lowest achievable emission rate for a reconstructed stationary source, the provisions of 40 CFR 60.15(f)(4) shall be taken into account in assessing whether a new source performance standard is applicable to such stationary source.

10. "Fixed capital cost" means the capital needed to provide all the depreciable components.

11. "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this Ruling, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

(i) Emissions from ships or trains coming to or from the new or modified stationary source and

(ii) Emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

12. "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

13.(l) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Sulfur dioxide: 40 tpy

Particulate matter: 25 tpy

Ozone: 40 tpy of volatile organic compounds

Lead: 0.6 tpy

14. "Allowable emissions" means the emissions rate calculated using 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, or both) and the most stringent of the following:

(i) Applicable standards as set forth in 40 CFR Parts 60 and 61;

(ii) Any applicable State Implementation Plan emissions limitation, including those with a future compliance date; or

(iii) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

15. "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State Implementation Plan, and any permit requirements established pursuant to this Ruling, 40 CFR 52.21, or under regulations approved pursuant to 40 CFR 51.18 or 51.24.

16.(i) "Actual emissions" means the actual rate of emissions of a pollutant from an

emissions unit as determined in accordance with subparagraphs (ii)-(iv) below.

(ii) 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 two-year period which precedes the particular date and which is representative of normal source operation. The reviewing authority shall 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.

(iii) The reviewing authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(iv) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

17. "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 actual emissions.

18. "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(i) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(ii) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

19. "Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State Implementation Plan.

20. "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

21. "Lowest achievable emission rate" means, for any source, the more stringent rate of emissions based on the following:

(i) The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(ii) The most stringent emissions limitation which is achieved in practice by such 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. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

22. "Resource recovery facility" 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. Energy conversion facilities must utilize solid waste to provide more than 50 percent of the heat input to be considered a resource recovery facility under this Ruling.

C. By amending Section II, subsection C by deleting footnote 2 and the second paragraph. The first paragraph is revised to read as follows:

C. Review of specified sources of air quality impact.

In addition, the reviewing authority must determine whether the major stationary source or major modification would be constructed in an area designated in 40 CFR 81.300 *et seq.* as nonattainment for a pollutant for which the stationary source or modification is major.

D. By revising Section II, subsection F to read as follows:

F. *Fugitive emissions sources.* Section IV. A. of this Ruling shall not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

- (1) Coal cleaning plants (with thermal dryers);
- (2) Kraft pulp mills;
- (3) Portland cement plants;
- (4) Primary zinc smelters;
- (5) Iron and steel mills;
- (6) Primary aluminum ore reduction plants;
- (7) Primary copper smelters;
- (8) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (9) Hydrofluoric, sulfuric, or nitric acid plants;
- (10) Petroleum refineries;
- (11) Lime plants;
- (12) Phosphate rock processing plants;
- (13) Coke oven batteries;
- (14) Sulfur recovery plants;
- (15) Carbon black plants (furnace process);
- (16) Primary lead smelters;
- (17) Fuel conversion plants;
- (18) Sintering plants;
- (19) Secondary metal production plants;
- (20) Chemical process plants;
- (21) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (23) Taconite ore processing plants;

(24) Glass fiber processing plants;

(25) Charcoal production plants;

(26) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(27) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

E. By deleting Footnote 3 of subsection C of Section III and revising the third paragraph as follows:

C. Review of specified sources of air quality impact.

For ozone, sources of volatile organic compounds, locating outside a designated ozone nonattainment area, will be presumed to have no significant impact on the designated nonattainment area. If ambient monitoring indicates that the area of source location is in fact nonattainment, then the source may be permitted under the provisions of any state plan adopted pursuant to section 110(a)(2)(D) of the Act until the area is designated nonattainment and a State Implementation Plan revision is approved. If no state plan pursuant to section 110(a)(2)(D) has been adopted and approved, then this Ruling shall apply.

F. By adding a new subsection F. to IV., to read as follows:

IV. Sources That Would Locate in a Designated Nonattainment Area

F. Source Obligation.

At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, or 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 Ruling shall apply to the source or modification as though construction had not yet commenced on the source or modification.

State Plans For New Source Review For Nonattainment Purposes.

4. Section 40 CFR 51.18(j) is amended to read as follows:

§ 51.18 Review of new stationary sources modifications.

(j) State Implementation Plan provisions satisfying sections 172(b)(6) and 173 of the Act shall meet the following conditions:

(1) All such plans shall use the specific definitions. Deviations from the following wording will be approved only if the state specifically demonstrates that the submitted definition is more stringent, or at least as stringent, in all respects as the corresponding definition below:

(i) "Stationary source" means any building, structure, facility, or installation which emits or may emit

any air pollutant subject to regulation under the Act.

(ii) "Building, structure, or facility" 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" (i.e., which have the same two-digit code) as described in the *Standard Industrial Classification Manual*, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0068 and 003-005-00176-0, respectively).

(iii) "Installation" means an identifiable piece of process equipment.

(iv) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant 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 only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(v)(a) "Major stationary source" means:

(1) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Act; or

(2) Any physical change that would occur at a stationary source not qualifying under paragraph (v)(a)(1) as a major stationary source, if the change would constitute a major stationary source by itself.

(b) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(vi)(a) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.

(b) Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.

(c) A physical change or change in the method of operation shall not include:

(1) Routine maintenance, repair and replacement;

(2) 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 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(3) Use of an alternative fuel by reason of an order or rule under section 125 of the Act;

(4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(5) Use of an alternative fuel or raw material by a stationary source which:

(i) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24; or

(ii) The source is approved to use under any permit issued under regulations approved pursuant to this section;

(6) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24.

(7) Any change in ownership at a stationary source.

(vii)(a) "Net emissions increase" means the amount by which the sum of the following exceeds zero:

(1) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(2) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs.

(c) An increase or decrease in actual emissions is creditable only if:

(1) It occurs within a reasonable period to be specified by the reviewing authority; and

(2) The reviewing authority has not relied on it in issuing a permit for the source under regulations approved pursuant to this section which permit is in effect when the increase in actual emissions from the particular change occurs.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(e) A decrease in actual emissions is creditable only to the extent that:

(1) The old level of actual emissions or the old level of allowable emissions, whichever, is lower, exceeds the new level of actual emissions;

(2) It is federally enforceable at and after the time that actual construction on the particular change begins; and

(3) The reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR 51.18 or the state has not relied on it in demonstrating attainment or reasonable further progress.

(4) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(f) 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 that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(viii) "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Act.

(ix) "Reconstruction" will be presumed to have taken place where the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost of a comparable entirely new stationary source. Any final decision as to whether reconstruction has occurred shall be made in accordance with the provisions of 40 CFR 60.15(f)(1)-(3). A reconstructed stationary source will be treated as a new stationary source for purposes of this subsection. In determining lowest achievable emission rate for a reconstructed stationary source, the provisions of 40 CFR 60.15(f)(4) shall be taken into account in assessing whether a new source performance standard is applicable to such stationary source.

(x) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(xi) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must

be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions.

Secondary emissions may include, but are not limited to:

(a) Emissions from ships or trains coming to or from the new or modified stationary source; and

(b) Emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

(xii) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(xiii) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Sulfur dioxide: 40 tpy

Particulate matter: 25 tpy

Ozone: 40 tpy of volatile organic compounds

Lead: 0.6 tpy

(xiv) "Allowable emissions" means the emissions rate of a stationary source calculated using 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, or both) and the most stringent of the following:

(a) The applicable standards set forth in 40 CFR Parts 60 or 61;

(b) Any applicable State Implementation Plan emissions limitation 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.

(xv)(a) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit as determined in accordance with subparagraphs (b)-(d) below.

(b) 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 two-year period which precedes the particular date and which is representative of normal source operation. The reviewing authority shall 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.

(c) The reviewing authority may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(xvi) "Lowest achievable emission rate" means, for any source, the more stringent rate of emissions based on the following:

(a) The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(b) The most stringent emissions limitation which is achieved in practice by such 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. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

(xvii) "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to this section, 40 CFR 51.18, or 51.24.

(xviii) "Begin actual construction" means in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(xix) "Commence" as applied to construction of a major stationary source or major modification means 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 on-site 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.

(xx) "Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State Implementation Plan.

(xxi) "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 actual emissions.

(2) Each plan shall adopt a preconstruction review program to satisfy the requirements of sections 172(b)(6) and 173 of the Act for any area designated nonattainment for any national ambient air quality standard under 40 CFR 81.300 *et seq.* Such a program shall apply to any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment, if the stationary source or modification would locate anywhere in the designated nonattainment area.

(3)(i) Each plan shall provide that for sources and modifications subject to any preconstruction review program adopted pursuant to this subsection the baseline for determining credit for emissions reductions is the emissions limit under the applicable State Implementation Plan in effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

(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; or

(b) The applicable State Implementation Plan does not contain an emissions limitation for that source or source category.

(ii) The plan shall further provide that:

(a) Where the emissions limit under the applicable State 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;

(b) For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable State 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 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 dirtier fuel at some later date. The reviewing authority should ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches;

(c) Emissions reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels may be credited, provided that the work force to be affected has been notified of the proposed shutdown or curtailment. Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed generally may not be used for emissions offset credit.

However, where an applicant can establish that it shut down or curtailed production after August 7, 1977, or less than one year prior to the date of permit application, whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment credit for such shutdown or curtailment may be applied to offset emissions from the new source;

(d) 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];

(e) All emission reductions claimed as offset credit shall be federally enforceable;

(f) Procedures relating to the permissible location of offsetting emissions shall be followed which are at least as stringent as those set out in 40 CFR Part 51 Appendix S, section IV.D.

(g) Credit for an emissions reduction can be claimed to the extent that the reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR 51.18 or the state has not relied on it in

demonstrating attainment or reasonable further progress.

(4) Each plan may provide that the provisions of this subsection do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

- (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 (furnace process);
- (p) Primary lead smelters;
- (q) Fuel conversion plants;
- (r) Sintering plants;
- (s) Secondary metal production plants;
- (t) Chemical process plants;
- (u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (w) Taconite ore processing plants;
- (x) Glass fiber processing plants;
- (y) Charcoal production plants;
- (z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

(5) Each plan shall include enforceable procedures to provide that:

(i) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provision of the plan and any other requirements under local, state or federal law.

(ii) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement 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 regulations approved pursuant to this section shall apply to the source or modification as though construction had not yet commenced on the source or modification.

Restrictions on Construction For Nonattainment Areas

5. 40 CFR 52.24 is amended by adding new paragraphs (f), (g), (h) and (i) to read as follows:

§ 52.24 Statutory restriction on new stationary sources.

(f) The following definitions shall apply under this section.

(1) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Act.

(2) "Building, structure, or facility" 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" (i.e., which have the same two-digit code) as described in the following document, *Standard Industrial Classification Manual*, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0086 and 003-005-00176-0, respectively).

(3) "Installation" means an identifiable piece of process equipment.

(4) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant 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 amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(5)(i) "Major stationary source" means:

(a) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Act; or

(b) Any physical change that would occur at a stationary source not qualifying under paragraph (5)(i)(a) as a major stationary source, if the change would constitute a major stationary source by itself.

(ii) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(6)(i) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.

(ii) Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.

(iii) A physical change or change in the method of operation shall not include:

(a) Routine maintenance, repair, and replacement;

(b) 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 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(c) Use of an alternative fuel by reason of an order or rule under section 125 of the Act;

(d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) Use of an alternative fuel or raw material by a stationary source which:

(1) The source was capable of accommodating before July 1, 1979, unless such change would be prohibited under any federally enforceable permit condition which was established after July 1, 1979 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24; or

(2) The source is approved to use under any permit issued under regulations approved pursuant to 40 CFR 51.18;

(f) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after July 1, 1979 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24.

(g) Any change in ownership at a stationary source.

(7)(i) "Net emissions increase" means the amount by which the sum of the following exceeds zero:

(a) Any increase in actual emissions from a particular physical change or

change in the method of operation at a stationary source; and

(b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(ii) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(a) The date five years before construction on the particular change commences and

(b) The date that the increase from the particular change occurs.

(iii) An increase or decrease in actual emissions is creditable only if the Administrator has not relied on it in issuing a permit for the source under regulations approved pursuant to 40 CFR 51.18 which permit is in effect when the increase in actual emissions from the particular change occurs.

(iv) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(v) A decrease in actual emissions is creditable only to the extent that:

(a) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) It is federally enforceable at and after the time that construction on the particular change begins; and

(c) The Administrator or reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR 51.18 or the State has not relied on it in demonstrating attainment or reasonable further progress.

(d) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(vi) 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 that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(8) "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Act.

(9) "Reconstruction" will be presumed to have taken place where the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost of a comparable entirely new stationary source. Any final decision as to whether reconstruction has occurred

shall be made in accordance with the provisions of 40 CFR 60.15(f) (1)-(3). A reconstructed stationary source will be treated as a new stationary source for purposes of this subsection.

(10) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(11) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

(i) Emissions from ships or trains coming to or from the new or modified stationary source and

(ii) Emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

(12) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(13) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Sulfur dioxide: 40 tpy

Particulate matter: 25 tpy

Ozone: 40 tpy of volatile organic compounds

Lead: 0.6 tpy

(14) "Allowable emissions" means the emissions rate of a stationary source calculated using 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, or both) and the most stringent of the following:

(i) The applicable standards set forth in 40 CFR Parts 60 and 61;

(ii) Any applicable State Implementation Plan emissions limitation, including those with a future compliance date; or

(iii) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(15) "Federally enforceable" means all limitations and conditions which are

enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State Implementation Plan; and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 and 51.24.

(16)(i) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with subparagraphs (ii)-(iv) below.

(ii) 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 two-year period which precedes the particular date and which is representative of normal source operation. The Administrator shall 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.

(iii) The Administrator may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(iv) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(17) "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 actual emissions.

(18) "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(i) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(ii) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(19) "Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State Implementation Plan.

(20) "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(g) This section shall not apply to a major stationary source or major modification if the source or modification was not subject to 40 CFR Part 51 Appendix S, as in effect on January 16, 1979, and the owner or operator:

(1) Obtained all final federal, state, and local preconstruction approvals or permits necessary under the applicable State Implementation Plan before August 7, 1980;

(2) Commenced construction within 18 months from August 7, 1980, or any earlier time required under the applicable State Implementation Plan; and

(3) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time.

(h) This section shall not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(1) Coal-cleaning plants [with thermal dryers];

(2) Kraft pulp mills;

(3) Portland cement plants;

(4) Primary zinc smelters;

(5) Iron and steel mills;

(6) Primary aluminum ore reduction plants;

(7) Primary copper smelters;

(8) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(9) Hydrofluoric, sulfuric, or nitric acid plants;

(10) Petroleum refineries;

(11) Lime plants;

(12) Phosphate rock processing plants;

(13) Coke oven batteries;

(14) Sulfur recovery plants;

(15) Carbon black plants (furnace process);

(16) Primary lead smelters;

(17) Fuel conversion plants;

(18) Sintering plants;

(19) Secondary metal production plants;

(20) Chemical process plants;

(21) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(23) Taconite ore processing plants;

(24) Glass fiber processing plants;

(25) Charcoal production plants;

(26) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(27) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

(i) At such time that a particular source or modification becomes a major stationary 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:

(1) If the construction moratorium imposed pursuant to this section is still in effect for the nonattainment area in which the source or modification is located, then the permit may not be so revised; or

(2) If the construction moratorium is no longer in effect in that area, then the requirements of 40 CFR 51.18(j) shall apply to the source or modification as though construction had not yet commenced on the source or modification.

Consolidated Permit Regulations

6. 40 CFR Part 124 is amended as follows:

a. 40 CFR 124.3(b) is deleted and reserved as follows:

§ 124.3 Application for a permit.

* * * * *

(b) [Reserved]

* * * * *

§ 124.5 [Amended]

b. 40 CFR 124.5(g)(2) is revised as follows:

* * * * *

(g) * * *

(2) PSD permits may be terminated only by rescission under § 52.21(w) or by automatic expiration under § 52.21(r). Applications for rescission shall be processed under § 52.21(w) and are not subject to this Part.

§ 124.42 [Amended]

c. The first sentence of 40 CFR 124.42(b) is amended by substituting "submitted" for "requested."

[FR Doc. 80-23780 Filed 8-8-80; 0:45 am]

BILLING CODE 0560-01-M

June 1973

Users' Guides
to the
Interactive Versions
of
Three Point Source Dispersion Programs:
PTMAX, PTDIS, and PTMTP

by
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and
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Meteorology Laboratory
Program Element 21ADN

Notice

This document is a preliminary draft. It has not been formally released by EPA and should not at this stage be construed to represent Agency policy. It is being circulated for comment on its technical accuracy and policy implications.

NATIONAL ENVIRONMENTAL RESEARCH CENTER
OFFICE OF RESEARCH AND MONITORING
U.S. ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, N. C. 27711

*On Assignment from the National Oceanic & Atmospheric Administration,
U.S. Department of Commerce

Three steady-state Gaussian plume point source models have recently been added to EPA's UNAMAP (Users' Network for Applied Modeling of Air Pollution) and to the UNAMAP system available to non-EPA users.

EPA users access UNAMAP models by entering "UNAMAP" as the procedure name at log on. Non-EPA users may obtain information as to access to UNAMAP models by contacting Mr. Peter Loux, Computer Sciences Corporation, 1701 North Fort Meyer Drive, Arlington, Va. 22209. Phone (703) 527-6080. On both systems the command "UNAMAP" after log on is accomplished, produces a brief description of each model currently available.

Each of the three programs is briefly described including a program abstract for each program.

READY
unamap
'TSO.UNAMAP(CATAL)'
UNAMAP- Users Network for Applied Modeling of Air Pollution

Contact: Dr. Ron Ruff, Chief, Computer Techniques Group
Division of Meteorology
Environmental Protection Agency
Research Triangle Park, North Carolina 27711
Phone 919/549-4566

CATALOG OF PROGRAMS as of 06/01/73

APRAC - A short-term Urban Diffusion Model that calculates the automotive contribution to Carbon Monoxide. The model was developed by Stanford Research Institute (SRI). A 120 page manual is available on the model.

HIWAY - A model that calculates a pollutant concentration in the vicinity of a roadway. The model is self-documenting.

PTMAX - An interactive program which performs an analysis of the maximum, short-term concentration from a point source as a function of stability and wind speed.

PTDIS - An interactive program which computes short-term concentrations downwind from a point source at distances specified by the user.

PTMTP - An interactive program which computes, at multiple receptors, short term concentrations resulting from multiple point sources.

Users' Guide to PTMAX (the Interactive Version of DBT 52)

Program Abstract

PTMAX produces an analysis of maximum concentration as the function of wind speed and stability. A separate analysis is made for each individual stack. Input to the program consists of ambient air temperature, and characteristics of the source, such as emission rate, physical stack height, and stack gas temperature. Either the stack gas volume flow or both the stack gas velocity and inside diameter at the top are also required. Outputs of the program consist of effective height of emission, maximum ground level concentration, and distance of maximum concentration for each condition of stability and wind speed.

This program determines for each wind speed and stability the final plume rise using methods suggested by Briggs. This plume rise is added to the physical stack height to determine the effective height of emission. The effective height is used to determine both the maximum concentration and the distance to maximum concentration.

The following assumptions are made: a steady-state Gaussian plume model is applicable to determine ground level concentrations. Computations can be performed according to the "Workbook of Atmospheric Dispersion Estimates." The dispersion parameter values used for the horizontal dispersion coefficient, sigma y, and the vertical dispersion coefficient, sigma z, are those given in Figures 3-2 and 3-3 of the workbook. The stated wind speed occurs at the stack top for dilution of the plume and through the layer that the plume rise occurs. The stated stability occurs from ground level to well above the top of the plume. If there is a limit to vertical mixing, it

occurs far enough above the top of the plume so that it has no influence upon the maximum concentration. There are no topographic obstructions in the vicinity of the source. The source exists in either flat or gently rolling terrain.

Use of this program is applicable where single sources exist in relatively uniform terrain. It is not applicable if aerodynamic downwash around buildings in the vicinity of the source affects the plume emitted from the stack. The calculated concentrations are for the single source considered. Where multiple stacks exist for a given single plant this program can be applied to each individual stack. It cannot give the maximum concentrations of the combination of the stacks however. This program is useful in determining what combinations of wind speed and stability produce maximum concentrations. For a given stability the critical wind velocity, that is, the wind speed that causes the maximum concentration, can be determined. This can be done by seeing which wind speed produces the highest concentration for that stability.

The use of the interactive version of the program is quite simple. An alpha-numeric title is used to put a heading on the output. The ambient air temperature in degrees-K is asked for. If a zero is entered a value of 293 will be used. The stability class is asked for next. If a zero is entered, all stabilities 1 through 6 are considered. Numbers 1 through 6 correspond to stabilities A through F. Source strength of the pollutant considered

in grams per second is asked for next. The physical stack height in meters is then required. The stack gas temperature in degrees-K is next entered. If the volume flow in cubic meters per second is known, it is next entered. If it is not known, a zero is entered, and both stack gas velocity in meters per second, and stack diameter at the top of the stack in meters are required.

The above inputs are then used to perform the calculations and are repeated on the output. The output table is in the form of 5 columns of information: stability, wind speed, maximum concentration, the distance of the maximum concentration, and plume height. The maximum concentration is in grams per cubic meter. The distance of the maximum concentration is in kilometers and the plume height which is final plume height according to Briggs method is in meters. When the table is completed for each stability or the stated stability the program asks for input for a second run, starting with the title. This is repeated until the user wishes to terminate the run. Termination is by entering END when the title is asked for. For second and subsequent runs, parameter values which are to remain unchanged from the preceding run may be entered by using a comma. Concentrations of 9.90 E+01 and distances of 999.000 are indicators that no concentration estimates were attempted. Also numbers in parentheses refer to footnotes. These are printed at the bottom of the first output if they are needed. The user is offered the option of another run starting with a title or concluding the run by typing END.

READY
ptmax
ENTER ALPHANUMERIC TITLE OF UP TO 64 CHARACTERS, OR "END".
?
test of ptmax 7/5/73
ENTER AMBIENT AIR TEMPERATURE (DEG K) OR ZERO TO USE DEFAULT VALUE
OF 293.
?
0
ENTER SELECTED STABILITY CLASS OR ZERO (0) FOR ALL STABILITIES
?
0
ENTER SOURCE STRENGTH (G/SEC)
?
287
ENTER PHYSICAL STACK HEIGHT (M)
?
30
ENTER STACK GAS TEMPERATURE (DEG K)
?
350
ENTER VOLUME FLOW (M**3/SEC) IF KNOWN, OR ZERO (0) IF NOT KNOWN
?
0
ENTER STACK GAS VELOCITY (M/SEC)
?
20
ENTER STACK DIAMETER (M)
?
0.6

TEST OF PTMAX 7/5/73
ANALYSIS OF CONCENTRATION AS A FUNCTION OF STABILITY AND WIND SPEED.
1971 VERSION, D. B. TURNER.

EMISSION RATE (G/SEC) = 287.00
PHYSICAL STACK HEIGHT (M) = 30.00
STACK GAS TEMP (DEG K) = 350.00
AMBIENT AIR TEMPERATURE (DEG K) = 293.
STACK GAS VEL (M/SEC) = 20.00
STACK DIAMETER (M) = 0.60
VOLUME FLOW (CU M/SEC) = 5.65

STABILITY	WIND SPEED (M/SEC)	MAX CONC (G/CU M)	DIST OF MAX (KM)	PLUME HEIGHT (M)
1	0.5	7.7219E-03	0.486	124.6
1	0.8	7.9789E-03	0.397	89.1
1	1.0	8.0089E-03	0.357	77.3
1	1.5	7.7614E-03	0.297	61.5
1	2.0	7.3243E-03	0.264	53.6
1	2.5	6.8569E-03	0.243	48.9
1	3.0	6.4449E-03	0.229	45.8
2	0.5	5.9313E-03	0.858	124.6
2	0.8	6.8110E-03	0.632	89.1
2	1.0	7.0593E-03	0.555	77.3
2	1.5	7.1534E-03	0.445	61.5
2	2.0	6.9109E-03	0.387	53.6
2	2.5	6.5671E-03	0.352	48.9
2	3.0	6.2193E-03	0.329	45.8
2	4.0	5.5448E-03	0.300	41.8
2	5.0	4.9602E-03	0.283	39.5
3	2.0	6.9162E-03	0.593	53.6
3	2.5	6.6545E-03	0.536	48.9
3	3.0	6.3366E-03	0.498	45.8
3	4.0	5.6913E-03	0.452	41.8
3	5.0	5.1156E-03	0.424	39.5
3	7.0	4.2116E-03	0.392	36.8
3	10.0	3.3027E-03	0.368	34.7
3	12.0	2.8817E-03	0.359	33.9
3	15.0	2.4164E-03	0.350	33.2

4	0.5	2.7076E-03	4.218	124.6
4	0.8	3.8535E-03	2.469	89.1
4	1.0	4.3419E-03	1.978	77.3
4	1.5	5.0153E-03	1.387	61.5
4	2.0	5.2362E-03	1.120	53.6
4	2.5	5.2049E-03	0.980	48.9
4	3.0	5.0042E-03	0.912	45.8
4	4.0	4.5535E-03	0.827	41.8
4	5.0	4.1275E-03	0.777	39.5
4	7.0	3.4331E-03	0.719	36.8
4	10.0	2.7143E-03	0.676	34.7
4	12.0	2.3762E-03	0.660	33.9
4	15.0	1.9993E-03	0.643	33.2
4	20.0	1.5790E-03	0.626	32.4
5	2.0	2.8291E-03	2.547	61.0
5	2.5	2.4885E-03	2.403	58.7
5	3.0	2.2350E-03	2.294	57.0
5	4.0	1.8775E-03	2.139	54.6
5	5.0	1.6334E-03	2.031	52.8
6	2.0	2.4535E-03	4.410	55.7
6	2.5	2.1665E-03	4.120	53.9
6	3.0	1.9514E-03	3.906	52.4
6	4.0	1.6456E-03	3.603	50.4
6	5.0	1.4270E-03	3.434	48.9

ENTER ALPHANUMERIC TITLE OF UP TO 64 CHARACTERS, OR "END".

?

end

Users' Guide to PTDIS (the Interactive Version of DBT 43)

Program Abstract

PTDIS calculates downwind ground-level concentrations for various downwind distances for the input meteorological conditions. Only an individual source can be considered. Inputs to the program consist of information on the source and information on the meteorological conditions to be considered. Primary output of the program consists of a table with height of emission and concentration given for each downwind distance. Also included in this table but not frequently needed are the values of the dispersion parameters sigma y and sigma z for each distance and also a relative concentration normalized for wind speed and source strength commonly called $\chi u/Q$. An optional feature of the program allows the user to enter a value of concentration to be used for the determination of half-width of isopleths. For each distance, if the concentration exceeds the stated isopleth value the half-width of an isopleth will be determined. Also this half-width will be compared in the form of a ratio to the half-width of a sector of given angular size in terms of degrees. The user is also given the option of either specifying effective height of emission or having it calculated using Briggs' plume rise methods.

This program determines the concentration at ground level from a single point source using a steady-state Gaussian model. The computations used are similar to those shown in the Workbook of Atmospheric Dispersion Estimates. The dispersion parameter values are also those given in Figures 3-2 and 3-3 of this Workbook. The concentrations are for a single meteorological condition defined by a stability class using the numbers 1 through 6 to represent the Pasquill stability types A through F. The single wind speed used is assumed to be representative of the top of the stack, as well as through the layer that plume rise occurs. The effect of a

definite limit to vertical dispersion or mixing height is included in the computations. It is assumed that complete eddy reflection occurs at this barrier. It is assumed that the given stability occurs from ground level to the mixing height. The concept of a mixing height is not employed for stabilities 5 or 6. It is assumed that there are no topographic obstructions in the vicinity of the source and that the source is in an area of either flat or gently rolling terrain. No consideration of the possibility of aerodynamic downwash is included.

Given a stability and wind speed condition, this program is useful in obtaining the variation of ground level concentration with distance. Concentrations derived from these calculations can be considered to be valid for averaging times from ten minutes to an hour. The meteorological input must also be valid for these averaging times. Although the computational system will yield numerical values for effective plume heights of above 1,000 meters, any computations performed for plume heights of greater than three or four hundred meters should be considered with a certain amount of skepticism.

The use of the interactive version of this program is quite simple. Some cautionary statements are printed out first indicating where the computations are most valid. The number of distances for which calculations are to be made is entered first.

There is a maximum of 50 distances. After this number of distances has been entered, the distances, in kilometers, are entered separated by commas or spaces. Although the distances can be entered in any order, it is handy in interpreting output if the smallest distances are first and the distances ordered with increasing distance. The user is asked if he wants to use the isopleth option. He can answer yes or no. If he says yes he is asked how many isopleths he wants to consider. There is a maximum of eight. Next, the isopleth values in grams per cubic meter are entered separated by commas and he is also asked to enter a wind segment size in degrees. This is commonly 10° or 22.5° . This is used to compare the isopleth widths at each distance. Whether the isopleth option is used or not, the next variable entered is the stability class, a number from 1 to 6. Next the wind speed in meters per second is entered, and finally the mixing height in meters. This concludes the entries of the meteorological variables. The source strength in grams per second of the pollutant being considered is entered next. If a specific effective height of emission is desired this is entered, in meters. A zero is entered here if the plume rise is to be calculated. The physical stack height in meters is entered. The stack gas temperature in degrees Kelvin is entered. The ambient air temperature in degrees Kelvin is entered. If a zero is used here a value of 293 is used. If the stack gas volume flow, in cubic meters per second, is known it is entered next; if it is

unknown, a zero is entered. If the volume flow was not entered, the stack gas velocity, in meters per second, is next entered and the stack diameter in meters. Outputs consist of a listing of the source conditions, the meteorological conditions, and a table giving distance, effective height, and concentration for each distance. If the isopleth option is used an additional table giving the half-width, and a ratio of the isopleth half-width to the sector half-width for each isopleth value, for each distance. This concludes one run of the program. The user has options as to where he can reenter the program or to conclude the run.

.READY
ptdis

* * * NOTICE * * *

USE OF THIS MODEL PRIOR TO JUNE 14, 1973 MAY HAVE PRODUCED ERRONEOUS RESULTS IF MORE THAN ONE PASS WAS MADE AND A COMMA WAS USED TO DEFINE MIXING HEIGHT.

DO YOU WANT THE PRECAUTIONARY MESSAGE PRINTED? ENTER YES OR NO

?

yes

CARE SHOULD BE EXERCISED IN THE INTERPRETATION OF THESE CALCULATED CONCENTRATIONS. CONCENTRATION ESTIMATES MAY BE EXPECTED TO BE WITHIN A FACTOR OF THREE FOR: 1) ALL STABILITIES OR DISTANCES OF TRAVEL OUT TO A FEW HUNDRED METERS. 2) NEUTRAL TO MODERATELY UNSTABLE CONDITIONS FOR DISTANCES OUT TO A FEW KILOMETERS. 3) UNSTABLE CONDITIONS IN THE LOWER 1000 METERS OF THE ATMOSPHERE WITH A MARKED INVERSION ABOVE FOR DISTANCES OUT TO TEN KILOMETERS OR MORE. FOR OTHER CONDITIONS THESE ESTIMATES BECOME LESS RELIABLE FOR EXTREMES OF STABILITY AND AS TRAVEL DISTANCE INCREASES.

ENTER ALPHANUMERIC TITLE (UP TO 64 CHARACTERS)

?

test of ptdis 7/5/73

ENTER NUMBER OF DISTANCES FOR WHICH CALCULATIONS ARE TO BE MADE. MAXIMUM 50

?

22

ENTER DISTANCES (KM) SEPARATED BY COMMAS OR SPACES

?

0.1,0.2,0.3,0.4,0.452,0.5,0.6,0.7,0.8,0.9,1.0,2.,3.,5.,7.,10.,

?

15.,20.,30.,50.,70.,100.

DO YOU WANT THE ISOPLETH OPTION? ENTER YES OR NO

?

yes

ENTER NUMBER OF ISOPLETHS TO BE CONSIDERED. MAXIMUM 8

?

3

ENTER ISOPLETH VALUES (G/M**3) SEPARATED BY COMMAS OR SPACES

?

1.0e-03,2.0e-4,1.0e-04

ENTER WIND SEGMENT SIZE (DEG)

?

22.5

ENTER SOURCE STRENGTH (G/SEC)
?
287
ENTER EFFECTIVE HEIGHT OF EMISSION (M) IF YOU WISH OR ENTER ZERO
(0) TO HAVE PLUME RISE CALCULATED
?
0
ENTER PHYSICAL STACK HEIGHT (M)
?
30
ENTER STACK GAS TEMPERATURE (DEG K)
?
350
ENTER VOLUME FLOW (M**3/SEC) IF KNOWN, OR ZERO (0) IF NOT KNOWN
?
0
ENTER STACK GAS VELOCITY (M/SEC)
?
20
ENTER STACK DIAMETER (M)
?
0.6
ENTER AMBIENT AIR TEMPERATURE (DEG K), OR ZERO (0) TO USE DEFAULT
VALUE OF 293
?
0
ENTER STABILITY CLASS (1-6)
?
3
ENTER WIND SPEED (M/SEC)
?
4
ENTER MIXING HEIGHT (M)
?
700

DOWNDOWN CONCENTRATIONS FOR SPECIFIC DISTANCES
DBT43 - JUNE 1973 VERSION, D. B. TURNER

TEST OF PTDIS 7/5/73

* * * SOURCE CONDITIONS * * *

SOURCE STRENGTH (G/SEC) = 287.0
PHYSICAL STACK HEIGHT (M) = 30.0
STACK GAS TEMPERATURE (DEG K) = 350.0
STACK GAS VELOCITY (M/SEC) = 20.0
STACK DIAMETER (M) = 0.6
VOLUME FLOW (M**3/SEC) = 5.7

* * * METEOROLOGICAL CONDITIONS * * *

AMBIENT AIR TEMPERATURE (DEG K) = 293.0
STABILITY CLASS = 3
WIND SPEED (M/SEC) = 4.0
HEIGHT OF MIXING LAYER (M) = 700.0

FINAL EFFECTIVE HEIGHT OF EMISSION (M) = 41.8
DISTANCE TO FINAL EFFECTIVE HEIGHT (KM) = 0.095

DISTANCE (KM)	HEIGHT (M)	CONCENTRATION (G/CU M)	SIGY (M)	SIGZ (M)	CHI*U/Q (SEC/M**3)
0.100	41.8	3.41E-08	12.46	7.44	4.75E-10
0.200	41.8	8.10E-04	23.62	14.03	1.13E-05
0.300	41.8	3.95E-03	34.29	20.33	5.50E-05
0.400	41.8	5.54E-03	44.65	26.45	7.72E-05
0.452	41.8	5.69E-03	49.94	29.57	7.93E-05
0.500	41.8	5.60E-03	54.77	32.43	7.80E-05
0.600	41.8	5.08E-03	64.71	38.32	7.08E-05
0.700	41.8	4.43E-03	74.49	44.12	6.18E-05
0.800	41.8	3.83E-03	84.14	49.85	5.34E-05
0.900	41.8	3.31E-03	93.68	55.52	4.61E-05
1.000	41.8	2.87E-03	103.11	61.14	4.00E-05
2.000	41.8	9.59E-04	193.45	115.26	1.34E-05
3.000	41.8	4.75E-04	279.00	167.01	6.62E-06
5.000	41.8	1.92E-04	441.54	266.47	2.67E-06
7.000	41.8	1.05E-04	596.81	362.43	1.46E-06
10.000	41.8	5.76E-05	820.13	502.32	8.03E-07
15.000	41.8	3.51E-05	1175.00	727.85	4.90E-07
20.000	41.8	2.70E-05	1514.57	946.93	3.76E-07
30.000	41.8	1.89E-05	2161.94	1372.09	2.64E-07
50.000	41.8	1.21E-05	3373.06	2189.25	1.69E-07
70.000	41.8	9.07E-06	4510.52	2978.18	1.26E-07
100.000	41.8	6.68E-06	6123.50	4120.98	9.31E-08

RATIO IS THE HALF-WIDTH OF THE ISOPLETH COMPARED TO THE HALF-WIDTH OF A SECTOR OF 22.5 DEGREES AT THIS DISTANCE.

DISTANCE (KM)	ISOPIEHT VALUES (GRAMS PER CUBIC METER)							
	HALF- WIDTH (M)	0.10000E-02	0.20000E-03	HALF- WIDTH (M)	0.10000E-03	HALF- WIDTH (M)	0.10000E-03	HALF- WIDTH (M)
0.100	0.	0.0		0.	0.0	0.	0.0	
0.200	0.	0.0		40.	1.006	49.	1.227	
0.300	57.	0.961		84.	1.412	93.	1.567	
0.400	83.	1.045		116.	1.453	127.	1.597	
0.452	94.	1.042		130.	1.443	142.	1.585	
0.500	102.	1.028		142.	1.427	156.	1.568	
0.600	117.	0.982		165.	1.384	182.	1.524	
0.700	129.	0.927		186.	1.336	206.	1.477	
0.800	138.	0.870		205.	1.288	228.	1.431	
0.900	145.	0.813		222.	1.243	248.	1.387	
1.000	150.	0.755		238.	1.199	268.	1.346	
2.000	0.	0.0		343.	0.863	412.	1.036	
3.000	0.	0.0		367.	0.616	493.	0.827	
5.000	0.	0.0		0.	0.0	504.	0.508	
7.000	0.	0.0		0.	0.0	187.	0.135	
10.000	0.	0.0		0.	0.0	0.	0.0	
15.000	0.	0.0		0.	0.0	0.	0.0	
20.000	0.	0.0		0.	0.0	0.	0.0	
30.000	0.	0.0		0.	0.0	0.	0.0	
50.000	0.	0.0		0.	0.0	0.	0.0	
70.000	0.	0.0		0.	0.0	0.	0.0	
100.000	0.	0.0		0.	0.0	0.	0.0	

ENTER "DISTANCE" OR "SOURCE" OR "METEOROLOGY" OR "END"

?

end

RFAny

Users' Guide to PTMTP (The Interactive Version of DBT 51)

Program Abstract

PTMTP produces hourly concentrations at up to 30 receptors whose locations are specified from up to 25 point sources. A Gaussian plume model is used. Inputs to the program consist of the number of sources to be considered, and for each source the emission rate, physical height, stack gas temperature, volume flow, or stack gas velocity and diameter, the location, in coordinates. The number of receptors, the coordinates of each and the height above ground of each receptor are also required. Concentrations for a number of hours up to 24 can be estimated, and an average concentration over this time period is calculated. For each hour the meteorological information required is: wind direction, wind speed, stability class, mixing height, and ambient air temperature.

The assumptions that are made in this model follow:

Meteorological conditions are steady-state for each hour and a Gaussian plume model is applicable to determine ground level concentrations. Computations can be performed according to the "Workbook of Atmospheric Dispersion Estimates." The dispersion parameter values used for the horizontal dispersion coefficient, sigma y, and the vertical dispersion coefficient, sigma z, are those given in Figures 3-2 and 3-3 of the Workbook. The sources and receptors exist in either flat or gently rolling terrain, and the stacks are tall enough to be free from building turbulence so that no aerodynamic downwash occurs. The wind speed and wind direction apply from the shortest to the tallest plume height. No wind direction shear or wind speed shear occurs. The given stability exists from ground-level to well above the top of the plume.

Calculations for each hour are made by considering each source-receptor pair. Plume rise is calculated according to Briggs' plume rise estimates. For each source-receptor pair, the downwind and crosswind distances are determined. If the downwind distance is closer than the distance to final rise, the plume rise for this distance is calculated. The concentration from this source upon this receptor is determined using these distances by the Gaussian model.

The use of the interactive version of the program is relatively straightforward. First, an alphanumeric title to identify the output is entered. Next, the number of sources to be considered is given. The source strength, physical height, stack gas temperature, and volume flow is entered for each stack. If the volume flow is not known the stack gas velocity and diameter are required. The coordinates based on a coordinate system having units of one kilometer are required for each source. Next, the number of receptors to be processed, the coordinates of each and the height above ground for each are entered. The meteorological information includes the number of hours to be averaged up to 24, the wind direction, wind speed, stability class, mixing height, and ambient air temperature are entered for each hour. An option exists to print the partial concentrations, that is, the concentration from each source at each receptor. Also, an option exists to print the hourly concentrations.

The output is quite simple, consisting of title followed by input information on the sources, receptors, and meteorology. This is followed by hour by hour partial concentrations if desired and total concentrations. If partial concentrations are printed the final plume height for that hour for each source is also printed. Then average concentrations for the time period are printed including partial concentrations if desired. When the output is complete, the user is offered the option of ending the run or entering at 3 different points. He may go back to enter new sources or he may keep the same sources and enter new receptors or he may keep both the same sources and receptors and enter only different meteorological conditions.

ptmtp

* * * N O T I C E * * *

USE OF THIS MODEL PRIOR TO JUNE 7, 1973 MAY HAVE PRODUCED
ERRONEOUS RESULTS IF ANY RECEPTORS WERE CLOSER TO SOURCES
THAN THE DISTANCE TO FINAL PLUME RISE.

ENTER ALPHANUMERIC TITLE (UP TO 64 CHARACTERS)

?

test of ptmtp 7/5/73

ENTER NUMBER OF SOURCES TO BE CONSIDERED. MAX 25

?

4

ENTER SOURCE STRENGTH (G/SEC) FOR EACH STACK

?

287,287,287,287

ENTER PHYSICAL HEIGHT (M) OF EACH STACK

?

30,30,30,30

ENTER GAS TEMPERATURE (DEG K) OF EACH STACK

?

4*350

IS VOLUME FLOW KNOWN FOR EACH STACK? YES OR NO

?

no

ENTER GAS VELOCITY (M/SEC) FOR EACH STACK

?

4*20

ENTER DIAMETER (M) OF EACH STACK

?

4*0.6

ENTER COORDINATES (KM) OF EACH STACK. ORDERED PAIRS

?

1.,0., 1.05,0., 1.10,0., 1.15,0.

ENTER NUMBER OF RECEPTORS TO BE PROCESSED. MAX 30
?
14
ENTER COORDINATES (KM) OF EACH RECEPTOR. ORDERED PAIRS
?
0.8,0., 1.02,0., 1.07,0., 1.12,0., 1.17,0., 1.2,0.,
?
1.3,0., 1.4,0., 1.5,0., 1.6,0., 1.7,0., 1.8,0.,
?
1.9,0., 2.0,0.,
ENTER HEIGHT (M) ABOVE GROUND FOR EACH RECEPTOR
?
14*0.
ENTER NUMBER OF HOURS TO BE AVERAGED. MAX 24
?
3
ENTER WIND DIRECTION (DEG) FOR EACH HOUR
?
265,270,275
ENTER WIND SPEED (M/SEC) FOR EACH HOUR
?
4,4,4
ENTER STABILITY CLASS FOR EACH HOUR
?
3*3
ENTER MIXING HEIGHT (M) FOR EACH HOUR
?
3*700
ENTER AMBIENT AIR TEMPERATURE (DEG K) FOR EACH HOUR
?
3*293
DO YOU WANT PARTIAL CONCENTRATIONS PRINTED? YES OR NO
?
yes
DO YOU WANT HOURLY CONCENTRATIONS PRINTED? YES OR NO
?
yes

HOUR # 1

* * * R E C E P T O R N U M B E R * * *

	1	2	3	4	5	6	
S EFFHT	PARTIAL CONCENTRATIONS (G/M**3)						
1	42.	0.0	0.0	4.650E-13	1.554E-06	1.733E-04	6.014E-04
2	42.	0.0	0.0	0.0	4.650E-13	1.554E-06	4.653E-05
3	42.	0.0	0.0	0.0	0.0	4.650E-13	2.405E-08
4	42.	0.0	0.0	0.0	0.0	0.0	8.150E-21
TOTAL CONCENTRATION (G/M**3)							
		0.0	0.0	4.650E-13	1.554E-06	1.749E-04	6.480E-04

HOUR # 1

* * * R E C E P T O R N U M B E R * * *

	7	8	9	10	11	12	
S EFFHT	PARTIAL CONCENTRATIONS (G/M**3)						
1	42.	2.925E-03	4.072E-03	4.080E-03	3.669E-03	3.179E-03	2.726E-03
2	42.	1.772E-03	3.695E-03	4.164E-03	3.898E-03	3.424E-03	2.945E-03
3	42.	6.014E-04	2.925E-03	4.072E-03	4.080E-03	3.669E-03	3.179E-03
4	42.	4.653E-05	1.772E-03	3.695E-03	4.164E-03	3.898E-03	3.424E-03
TOTAL CONCENTRATION (G/M**3)							
		5.344E-03	1.246E-02	1.601E-02	1.581E-02	1.417E-02	1.227E-02

HOUR # 1

* * * R E C E P T O R N U M B E R * * *

	13	14				
S EFFHT	PARTIAL CONCENTRATIONS (G/M**3)					
1	42.	2.337E-03	2.014E-03			
2	42.	2.523E-03	2.168E-03			
3	42.	2.726E-03	2.337E-03			
4	42.	2.945E-03	2.523E-03			
TOTAL CONCENTRATION (G/M**3)						
		1.053E-02	9.043E-03			

TEST OF PTMTP 7/5/73

MULTIPLE SOURCE MODEL DBT51, JUNE 1973 VERSION

* * * S O U R C E S * * *

NO	Q (G/SEC)	HP (M)	TS (DEG K)	VS (M/SEC)	D (M)	VF (M**3/SEC)	R (KM)	S (KM)
1	287.0	30.0	350.0	20.0	0.6	5.7	1.000	0.0
2	287.0	30.0	350.0	20.0	0.6	5.7	1.050	0.0
3	287.0	30.0	350.0	20.0	0.6	5.7	1.100	0.0
4	287.0	30.0	350.0	20.0	0.6	5.7	1.150	0.0

* * * R E C E P T O R S * * *

NO	RREC (KM)	SREC (KM)	Z (M)
1	0.800	0.0	0.0
2	1.020	0.0	0.0
3	1.070	0.0	0.0
4	1.120	0.0	0.0
5	1.170	0.0	0.0
6	1.200	0.0	0.0
7	1.300	0.0	0.0
8	1.400	0.0	0.0
9	1.500	0.0	0.0
10	1.600	0.0	0.0
11	1.700	0.0	0.0
12	1.800	0.0	0.0
13	1.900	0.0	0.0
14	2.000	0.0	0.0

* * * M E T E O R O L O G Y * * *

NO	THETA (DEG)	U (M/SEC)	KST (°F)	HL (°F)	T (DEG K)
1	265.0	4.0	3	700.	293.
2	270.0	4.0	3	700.	293.
3	275.0	4.0	3	700.	293.

HOUR # 2

* * * R E C E P T O R N U M B E R * * *

S	EFFHT	1	2	3	4	5	6
		PARTIAL CONCENTRATIONS (G/M**3)					
1	42.	0.0	0.0	6.813E-13	2.148E-06	2.342E-04	8.096E-04
2	42.	0.0	0.0	0.0	6.813E-13	2.148E-06	6.322E-05
3	42.	0.0	0.0	0.0	0.0	6.813E-13	3.407E-08
4	42.	0.0	0.0	0.0	0.0	0.0	1.324E-20
		TOTAL CONCENTRATION (G/M**3)					
		0.0	0.0	6.813E-13	2.148E-06	2.364E-04	8.728E-04

HOUR # 2

* * * R E C E P T O R N U M B E R * * *

S	EFFHT	7	8	9	10	11	12
		PARTIAL CONCENTRATIONS (G/M**3)					
1	42.	3.946E-03	5.538E-03	5.598E-03	5.077E-03	4.434E-03	3.829E-03
2	42.	2.384E-03	5.004E-03	5.689E-03	5.371E-03	4.756E-03	4.123E-03
3	42.	8.096E-04	3.946E-03	5.538E-03	5.598E-03	5.077E-03	4.434E-03
4	42.	.6.323E-05	2.384E-03	5.004E-03	5.689E-03	5.371E-03	4.756E-03
		TOTAL CONCENTRATION (G/M**3)					
		7.203E-03	1.687E-02	2.183E-02	2.173E-02	1.964E-02	1.714E-02

HOUR # 2

* * * R E C E P T O R N U M B E R * * *

S	EFFHT	13	14				
		PARTIAL CONCENTRATIONS (G/M**3)					
1	42.	5.306E-03	2.867E-03				
2	42.	3.557E-03	3.077E-03				
3	42.	3.829E-03	3.306E-03				
4	42.	4.123E-03	3.557E-03				
		TOTAL CONCENTRATION (G/M**3)					
		1.482E-02	1.281E-02				

HOUR # 3

* * * R E C E P T O R N U M B E R * * *

	1	2	3	4	5	6	
S EFFHT	PARTIAL CONCENTRATIONS (G/M**3)						
1	42.	0.0	0.0	4.637E-13	1.550E-06	1.729E-04	6.001E-04
2	42.	0.0	0.0	0.0	4.637E-13	1.550E-06	4.642E-05
3	42.	0.0	0.0	0.0	0.0	4.637E-13	2.398E-08
4	42.	0.0	0.0	0.0	0.0	0.0	8.121E-21
	TOTAL CONCENTRATION (G/M**3)						
	0.0	0.0	4.637E-13	1.550E-06	1.745E-04	6.465E-04	

HOUR # 3

* * * R E C E P T O R N U M B E R * * *

	7	8	9	10	11	12	
S EFFHT	PARTIAL CONCENTRATIONS (G/M**3)						
1	42.	2.918E-03	4.062E-03	4.070E-03	3.660E-03	3.171E-03	2.719E-03
2	42.	1.768E-03	3.686E-03	4.154E-03	3.888E-03	3.415E-03	2.937E-03
3	42.	6.001E-04	2.918E-03	4.062E-03	4.070E-03	3.660E-03	3.171E-03
4	42.	4.642E-05	1.768E-03	3.686E-03	4.154E-03	3.888E-03	3.415E-03
	TOTAL CONCENTRATION (G/M**3)						
	5.332E-03	1.243E-02	1.597E-02	1.577E-02	1.413E-02	1.224E-02	

HOUR # 3

* * * R E C E P T O R N U M B E R * * *

	13	14				
S EFFHT	PARTIAL CONCENTRATIONS (G/M**3)					
1	42.	2.331E-03	2.009E-03			
2	42.	2.517E-03	2.162E-03			
3	42.	2.719E-03	2.331E-03			
4	42.	2.937E-03	2.517E-03			
	TOTAL CONCENTRATION (G/M**3)					
	1.050E-02	9.019E-03				

AVERAGE CONCENTRATIONS FOR 3 HOURS.

* * * R E C E P T O R N U M B E R * * *

S	1	2	3	4	5	6
	PARTIAL CONCENTRATIONS (G/M**3)					
1	0.0	0.0	5.367E-13	1.751E-06	1.935E-04	6.704E-04
2	0.0	0.0	0.0	5.367E-13	1.751E-06	5.206E-05
3	0.0	0.0	0.0	0.0	5.367E-13	2.737E-08
4	0.0	0.0	0.0	0.0	0.0	9.836E-21

TOTAL CONCENTRATION (G/M**3)

0.0 0.0 5.367E-13 1.751E-06 1.952E-04 7.224E-04

* * * R E C E P T O R N U M B E R * * *

S	7	8	9	10	11	12
	PARTIAL CONCENTRATIONS (G/M**3)					
1	3.263E-03	4.557E-03	4.582E-03	4.135E-03	3.595E-03	3.091E-03
2	1.975E-03	4.128E-03	4.669E-03	4.386E-03	3.865E-03	3.335E-03
3	6.704E-04	3.263E-03	4.557E-03	4.582E-03	4.135E-03	3.595E-03
4	5.206E-05	1.975E-03	4.128E-03	4.669E-03	4.386E-03	3.865E-03

TOTAL CONCENTRATION (G/M**3)

5.960E-03 1.392E-02 1.794E-02 1.777E-02 1.598E-02 1.389E-02

* * * R E C E P T O R N U M B E R * * *

S	13	14
	PARTIAL CONCENTRATIONS (G/M**3)	
1	2.658E-03	2.297E-03
2	2.866E-03	2.469E-03
3	3.091E-03	2.658E-03
4	3.335E-03	2.866E-03

TOTAL CONCENTRATION (G/M**3)

1.195E-02 1.029E-02

ENTER "SOURCES" OR "RECEPTORS" OR "METEOROLOGY" OR "END"

?

end

READY

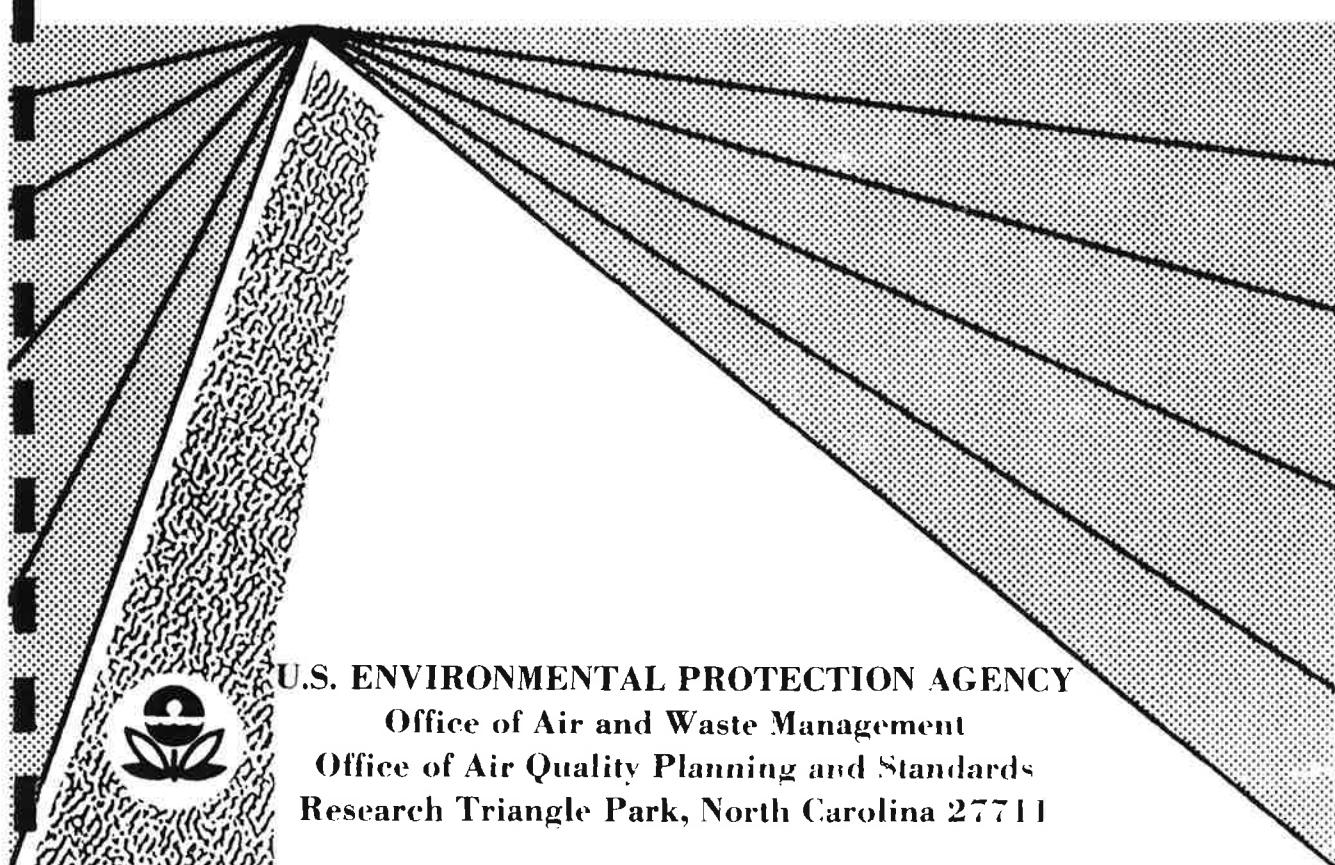
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OCTOBER 1977
DOAQPS NO. 1.2-029 R)

**GUIDELINES FOR AIR QUALITY
MAINTENANCE PLANNING
AND ANALYSIS
VOLUME 10 (REVISED):
PROCEDURES FOR EVALUATING
AIR QUALITY IMPACT OF NEW
STATIONARY SOURCES**



U.S. ENVIRONMENTAL PROTECTION AGENCY
Office of Air and Waste Management
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

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**PROCEDURES FOR EVALUATING
AIR QUALITY IMPACT OF NEW
STATIONARY SOURCES**

by

Laurence J. Budney

**Monitoring and Data Analysis Division
Source Receptor Analysis Branch**

**U.S. ENVIRONMENTAL PROTECTION AGENCY
Office of Air and Waste Management
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711**

October 1977

OAQPS GUIDELINE SERIES

This report is issued by the Environmental Protection Agency to report technical data of interest to a limited number of readers. Copies are available free of charge to federal employees, current contractors and grantees, and non-profit organizations--in limited quantities--from the Library Services Office (MD-35), Research Triangle Park, North Carolina 27711; or, for a fee, from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

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FOREWORD

Through the publication of Guidelines for Air Quality Maintenance Planning and Analysis, the U.S. Environmental Protection Agency provides State and local agencies with information and guidance for the preparation of Air Quality Maintenance Plans required under 40 CFR 51. The volumes in this series are:

- Volume 1: Designation of Air Quality Maintenance Areas
- Volume 2: Plan Preparation
- Volume 3: Control Strategies
- Volume 4: Land Use and Transportation Consideration
- Volume 5: Case Studies in Plan Development
- Volume 6: Overview of Air Quality Maintenance Area Analysis
- Volume 7: Projecting County Emissions
- Volume 8: Computer-Assisted Area Source Emissions Gridding Procedure
- Volume 9: Evaluating Indirect Sources
- Volume 10: Procedures for Evaluating Air Quality Impact of New Stationary Sources (original version titled "Reviewing New Stationary Sources")
- Volume 11: Air Quality Monitoring and Data Analysis
- Volume 12: Applying Atmospheric Simulation Models to Air Quality Maintenance Areas
- Volume 13: Allocating Projected Emissions to Sub-County Areas
Appendices A and B
Supplement: Accounting for New Source Performance Standards
- Volume 14: Designated Air Quality Maintenance Areas

Additional volumes may be issued.

PREFACE

This document is a revision of an earlier guideline¹ for applying screening techniques to estimate the air quality impact of new (proposed) stationary sources. The revision is in a more readily useable format and incorporates changes and additions to the technical approach. Also, a simple screening procedure has been added. The techniques are applicable to chemically stable, gaseous or fine particulate pollutants. An important advantage of the techniques is that a sophisticated computer is not required. A pocket or desk calculator will generally suffice.

If the analysis indicates that a more refined analysis is required, the user is directed to the Guideline on Air Quality Models².

ACKNOWLEDGMENTS

Credit is due Mr. Russell F. Lee, Project Officer for EPA on the preparation of the original version of this document, who continued to provide valuable technical assistance for this revision. Considerable support and insight were also provided by Messrs. James L. Dicke, Joseph A. Tikvart and William H. Keith.

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1. INTRODUCTION

Pursuant to Clean Air Act requirements for new sources, addressed in Title 40 of the Code of Federal Regulations (40 CFR 51.18: Review of New Sources and Modifications), States are required to enact legally enforceable review procedures to prevent the construction of pollutant sources that would result in noncompliance with an approved State control strategy, or would cause or contribute to ambient concentrations in excess of National Ambient Air Quality Standards. A review procedure for a "major" new stationary source³ must include an air quality analysis to estimate the impact of the source on ambient air quality. This document presents a three-phase approach* that is applicable to the air quality analysis:

- Phase 1. Apply a simple screening procedure (Section 4.1) to determine if either (1) the source clearly poses no air quality problem or (2) the potential for an air quality problem exists.
- Phase 2. If the simplified screening results indicate a potential threat to air quality, further analysis is warranted, and the detailed screening (basic modeling) procedures described in Sections 4.2 through 4.5 should be applied.
- Phase 3. If the detailed screening results or other factors indicate that a more refined analysis is necessary, refer to the Guideline on Air Quality Models².

The simple screening procedure (Phase 1) is applied to determine if the source poses a potential threat to air quality. The purpose of applying a simple screening procedure is to conserve resources by eliminating from further consideration those sources that clearly will not

*The techniques described herein can also be used, where appropriate, to review sources to prevent significant air quality deterioration, addressed in 40 CFR 52.21 (Significant Deterioration of Air Quality).

cause or contribute to ambient concentrations in excess of short-term air quality standards or allowable concentration increments. A relatively large degree of "conservatism" is incorporated in that screening procedure to provide reasonable assurance that maximum concentrations will not be underestimated.

If the source is not eliminated by the simple screening procedure, a detailed screening analysis is then conducted (Phase 2). The Phase 2 analysis will yield a somewhat conservative first approximation (albeit less conservative than the simple screening estimate) of the source's maximum impact on air quality. If the Phase 2 analysis indicates that the new source does not pose an air quality problem, further modeling may not be necessary. However, there are situations in which analysis beyond the scope of this document (Phase 3) may be required; for example, when:

1. The accuracy of the estimated concentrations must be maximized (e.g., if the results of the Phase 2 analysis indicate a potential air quality problem).
2. The source configuration is complex.
3. Emission rates are highly variable.
4. Pollutant dispersion is significantly affected by nearby terrain features or large bodies of water.

In most of those situations, more refined analytical techniques, such as computer-based dispersion models², can be of considerable help in estimating air quality impact.

In all cases, particularly when proceeding beyond the scope of this guideline, the services of knowledgeable, well-trained air pollution engineers, meteorologists and air quality analysts should be engaged. An air quality simulation model applied improperly can lead to serious misjudgments regarding the source impact.

2. SOURCE DATA

In order to estimate the impact of a stationary point source on air quality, certain characteristics of the source must be known. As a minimum, the following information should generally be available:

- Pollutant emission rate;
- Stack height;
- Stack gas temperature and volume flow rate (for plume rise calculations);
- Location of the point of emission with respect to surrounding topography, and the character of that topography;
- A detailed description of all structures in the vicinity of (or attached to) the stack in question. (See the discussion of aerodynamic downwash in Procedure 4(f) on page 4-18.)
- Similar information from other significant sources in the vicinity of the subject source (or air quality data or dispersion modeling results that demonstrate the air quality impact of those sources).

2.1 Emissions

The analysis of air quality impact requires that the emissions from each source be completely characterized. If the pollutants are not emitted at a constant rate (most are not), information should be obtained on how emissions vary with season, day or the week, and hour of the day. In most cases, emission rates vary with the source production rate or rate of fuel consumption. For example, for a coal-fired power plant, emissions are related to the kilowatt-hours of electricity produced, which is proportional to the tonnage of coal used to produce the electricity. If pollutant emission data are not directly available, emissions

can be estimated from fuel consumption or production rates by multiplying the rates by appropriate emission factors.^{4,5} Emission factors can be determined using three different methods. They are listed below in decreasing order of confidence:

1. Stack-test results or other emission measurements from an identical or similar source.
2. Material balance calculations based on engineering knowledge of the process.
3. Emission factors derived for similar sources or obtained from a compilation by the U.S. Environmental Protection Agency.⁵

In cases where emissions are reduced by control equipment, the effectiveness of the controls must be accounted for in the emissions analysis. The source operator can estimate control effectiveness in reducing emissions and how this effectiveness varies with changes in plant operating conditions. EPA Report No. APTD-1570⁶ is a compilation of the types of control and control efficiencies for a variety of types of sources that are reported in the National Emissions Data System (NEDS). More detailed guides to the available types and degrees of control may be found in standard references.⁷⁻¹⁶

2.2 Merged Parameters for Multiple Stacks

Sources that emit the same pollutant from several similar stacks that are within about 100 meters of each other may be analyzed by treating all of the emissions as coming from a single representative stack⁴.

For each stack compute the parameter K:

$$K = \frac{hVT}{Q} S$$

where K = an arbitrary parameter accounting for the relative influence of stack height, plume rise, and emission rate on concentrations

h = stack height (m)

$V = (\pi/4) d^2 v_s$ = stack gas volume flow rate (m^3/sec)

d = stack exit diameter (m)

v_s = stack gas exit velocity (m/sec)

T_s = stack gas exit temperature (K)

Q = pollutant emission rate (g/sec)

The stack that has the lowest value of K is used as a "representative" stack. Then the sum of the emissions from all stacks is assumed to be emitted from the representative stack; i.e., the equivalent source is characterized by h_1 , V_1 , T_{s1} and Q , where subscript 1 indicates the representative stack and $Q = Q_1 + Q_2 + \dots + Q_n$.

The parameters from dissimilar stacks should be merged with caution. For example, if the stacks are located more than about 100 meters apart, or if stack heights or volume flow rates differ by more than about 20 percent, the resulting estimates of concentrations due to the merged stack procedure may be unacceptably high.

2.3 Topographic Considerations

It is important to study the topography in the vicinity of the source being analyzed. Topographic features, through their effects on plume behavior, will sometimes be a significant factor in determining ambient ground-level pollutant concentrations. Important features to note are the locations of large bodies of water, elevated terrain, valley configurations, and general terrain roughness in the vicinity of the source.

Section 4.5.1 provides guidance on estimating ambient concentrations at receptors located on elevated terrain features. Any other topographic considerations are beyond the scope of this guideline.

3. METEOROLOGICAL DATA

Each computational procedure given in Section 4 for estimating the impact of a stationary source on air quality requires data on one or more of the following meteorological parameters:

- Wind speed and direction
- Stability class
- Mixing height
- Temperature

A discussion of each of those parameters and their relation to the procedures of Section 4 follows.

3.1 Wind Speed and Direction

Wind speed and direction data are required to estimate short-term peak and long-term average concentrations. The wind speed determines (1) the amount by which a plume is diluted as it leaves the stack and (2) the plume rise downwind of the stack. These factors, in turn, affect the magnitude of and distance to the maximum ground-level concentration.

Most wind data are collected near ground level. The wind speed at plume height can be estimated from the following power law equation:

$$u = u_1 \left[\frac{h}{z_1} \right]^{\beta}$$

where:

u = the wind speed (m/sec) at height h ,

u_1 = the wind speed at the anemometer height z_1 , and

p = the stability-related exponent from Table 3-1.

Table 3-1. WIND PROFILE EXPONENT AS A FUNCTION OF ATMOSPHERIC STABILITY

Stability Class	Exponent
A	0.10
B	0.15
C	0.20
D	0.25
E, F	0.30

The wind direction is an approximation to the direction of transport of the plume. The variability of the direction of transport over a period of time is a major factor in estimating ground-level concentrations averaged over that time period.

Wind speed and direction data from National Weather Service, Air Weather Service, and Naval Weather Service stations are available from the National Climatic Center, Asheville, North Carolina. Wind data are often also recorded at existing plant sites and at air quality monitoring sites. It is important that the equipment used to record such data be properly designed, sited, and maintained to record data that are reasonably representative of the direction and speed of the plume.

3.2 Stability

Stability categories, as depicted in Tables 3-1 and 3-2, are measures of atmospheric turbulence. The stability category at any given time will

Table 3-2. KEY TO STABILITY CATEGORIES

Surface Wind Speed at a Height of 10m (m/sec)	Day			Night	
	Incoming Solar Radiation* (Insolation)			Thinly Overcast or $\geq 4/8$ Low Cloud Cover	$\leq 3/8$ Cloud Cover
	Strong	Moderate	Slight		
< 2	A	A-B	B		
2-3	A-B	B	C	E	F
3-5	B	B-C	C	D	E
5-6	C	C-D	D	D	D
> 6	C	D	D	D	D

The neutral class (D) should be assumed for all overcast conditions during day or night.

*Appropriate insolation categories may be determined through the use of sky cover and solar elevation information as follows:

Sky Cover	Solar Elevation Angle $> 60^\circ$	Solar Elevation Angle $\leq 60^\circ$ But $> 35^\circ$	Solar Elevation Angle $\leq 35^\circ$ But $> 15^\circ$
4/8 or Less or Any Amount of High Thin Clouds	Strong	Moderate	Slight
5/8 to 7/8 Middle Clouds (7000 feet to 16,000 foot base)	Moderate	Slight	Slight
5/8 to 7/8 Low Clouds (less than 7000 foot base)	Slight	Slight	Slight

depend upon static stability (the change in temperature with height), thermal turbulence (caused by heating of the air at ground level), and mechanical turbulence (a function of wind speed and surface roughness). It is generally estimated by a method given by Turner¹⁷, which requires information on solar elevation angle, cloud cover, ceiling height, and wind speed (see Table 3-2).

The solar elevation angle is a function of the time of year and the time of day, and is presented in charts in the Smithsonian Meteorological Tables¹⁸. The hourly weather observations of the National Weather Service include cloud cover, ceiling height, and wind speed. These data are available from the National Climatic Center.

For computation of seasonal and annual concentrations, a joint frequency distribution of stability class, wind direction, and wind speed (stability wind rose) is needed. Such frequency distributions can be obtained from the National Climatic Center.

3.3 Mixing Height

The mixing height is the distance above the ground to which relatively free vertical mixing occurs in the atmosphere. When the mixing height is low (but still above plume height) ambient ground-level concentrations will be relatively high because the pollutants are prevented from dispersing upward. For estimating long-term average concentration, it is generally adequate to use an annual-average mixing height rather than daily values.

Mixing height data are generally derived from surface temperatures and from the twice-daily upper air soundings which are made at selected

National Weather Service Stations. The procedure used to determine mixing heights is one developed by Holzworth¹⁹. Tabulations and summaries of mixing height data can be obtained from the National Climatic Center.

3.4 Temperature

Ambient air temperature must be known in order to calculate the amount of rise of a buoyant plume. Plume rise is proportional to a fractional power of the temperature difference between the stack gases and the ambient air (see Section 4.2). Ambient temperature data are collected hourly at National Weather Service Stations, and are available from the National Climatic Center.

4. ESTIMATING SOURCE IMPACT ON AIR QUALITY

A three-phase approach, as discussed in the Introduction, is recommended for estimating the air quality impact of a proposed major source:

Phase 1. Simple screening analysis

Phase 2. Detailed screening (basic modeling) analysis

Phase 3. Refined modeling analysis*

This section presents the simple screening procedure (Section 4.1) and the detailed screening procedures (Sections 4.2 through 4.5). All of the procedures, with the partial exception of Section 4.5.1, are based upon the bi-variate Gaussian dispersion model assumptions described in the Workbook of Atmospheric Dispersion Estimates¹⁷. A consistent set of units (meters, grams, seconds) is used throughout:

Distance (m)

Pollutant Emission Rate (g/sec)

Pollutant Concentration (g/m³)

Wind Speed (m/sec)

4.1 Simple Screening Procedure

The simple screening procedure is the "first phase" that is recommended when assessing the air quality impact of a new point source. The purpose of this screening procedure is to eliminate from further consideration those sources that clearly will not cause or contribute to ambient concentrations in excess of short-term air quality standards.

*The Phase 3 analysis is beyond the scope of this guideline, and the user is referred to the Guideline on Air Quality Models².

The scope of the procedure is confined to point sources, plume heights of 10 to 300 meters and concentration averaging times of 1 to 24 hours. The procedure is particularly useful for sources where the short-term air quality standards are the "controlling" ones; i.e., in cases where meeting the short-term standards provides good assurance of meeting the annual standard for that pollutant. Elevated point sources (i.e., sources for which the emission points are well above ground level) are often in that category, particularly when they are remote from other sources.

When applying the screening procedure to elevated point sources, the following assumptions apply:

1. No aerodynamic downwash of the effluent plume occurs. (Refer to Procedure 4(f) on page 4-18 to determine if downwash is a potential problem.)
2. The plume does not intercept terrain. (Refer to Section 4.5.1 to determine if terrain may be intercepted.)

If the potential for either of those problems is found to exist, the calculation procedure described in the indicated section should be applied (in addition to the screening procedure described in this section) to estimate the resulting maximum ground-level concentration. Except for sources close to ground level, the calculation procedures for aerodynamic downwash and terrain interception will tend to yield higher concentration estimates than the simple screening procedure.

The screening procedure utilizes the Gaussian dispersion equation to estimate the maximum 1-hour ground-level concentration likely to result from the source in question (Computations 1-6 below). To obtain concentrations for other averaging times up to 24 hours, multiply the

one-hour value by an appropriate factor (Computation 7). Then account for background concentrations (Computation 8) to obtain a total concentration estimate. That estimate is then used, in conjunction with any downwash or terrain estimates, to determine if further analysis of the source impact is warranted (Computation 9):

1. Compute the normalized plume rise ($u\Delta h$), utilizing the procedure described in Step 1 on page 4-7.

2. Divide the $u\Delta h$ value obtained in (1) by each of five wind speeds ($u = 0.5, 1.0, 2.0, 3.0$ and 5.0 m/sec) to estimate the actual plume rise (Δh) for each wind speed:

$$\Delta h = \frac{(u\Delta h)}{u} \quad \text{meters}$$

3. Compute the plume height (H) that will occur during each wind speed by adding the respective plume rises to the stack height (h_s):

$$H = h_s + \Delta h \quad \text{meters}$$

4. For each plume height computed in (3), estimate a xu/Q value from Figure 4-1.

5. Divide each xu/Q value by the respective wind speed to determine the corresponding x/Q values:

$$x/Q = \frac{xu/Q}{u}$$

6. Multiply the maximum x/Q value obtained in (5) by the emission rate Q (g/sec), and incorporate a factor of 2 margin of safety, to obtain the maximum 1-hour ground-level concentration x_1 (g/m^3) due to emissions from the stack in question:

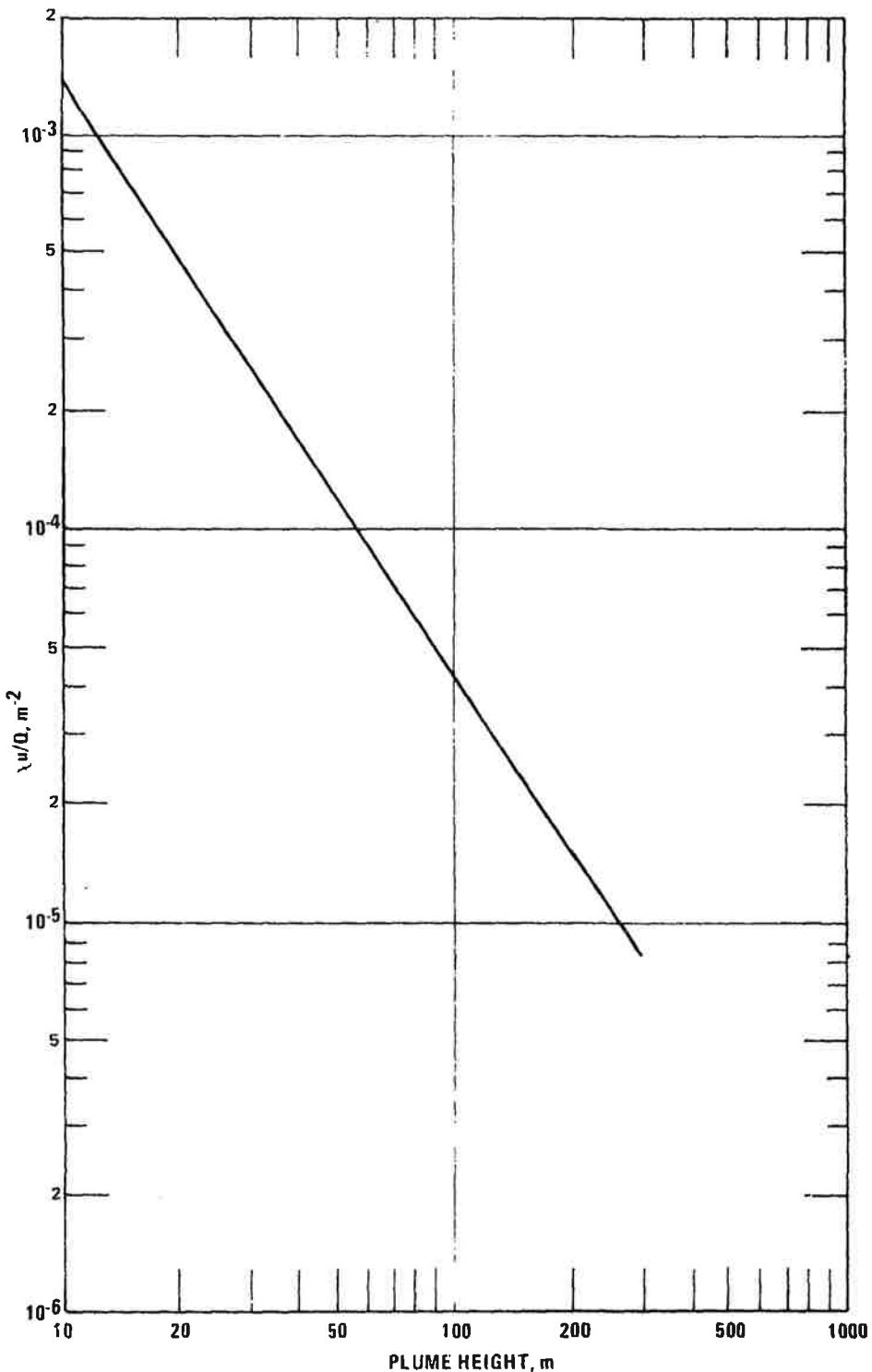


Figure 4-1. Maximum χ_u/Q as a function of plume height, H (for use only with the simple screening procedure).²⁰

$$x_1 = 2Q[x/Q]$$

The margin of safety is incorporated in the screening procedure to account for the potential inaccuracy of concentration estimates obtained through calculations of this type.

If more than one stack is being considered, and the procedure for merging parameters for multiple stacks is not applicable (Section 2.2), (1) through (6) must be applied for each stack separately. The maximum values (x_1) found for each stack are then added together to estimate the total maximum 1-hour concentration.

7. To obtain a concentration estimate (x_p) for an averaging time greater than one hour, multiply the one-hour value by an appropriate factor R. (See the discussion in Step 5 on page 4-20, which addresses multiplication factors for averaging times longer than one hour.)

$$x_p = x_1 (R)$$

8. Next, contributions from other sources (B) should be taken into account, yielding the final screening procedure concentration estimate x_{max} (g/m³):

$$x_{max} = x_p + B$$

Guidance on estimating concentrations due to other sources is provided in Section 4.5.2.

9. Based on the estimate of x_{max} and (if applicable) estimates of concentrations due to downwash or terrain problems, determine if further

analysis of the source is warranted: If any of the estimated concentrations exceeds the air quality level of concern (e.g., an air quality standard), proceed to Section 4.2 for further analysis. If the concentrations are below the level of concern, the source can be safely assumed to pose no threat to that air quality level, and no further analysis is necessary.*

4.2 Estimating Maximum Short-Term Concentrations

The basic modeling procedures described in the remainder of this guideline comprise the recommended "second phase" (or detailed screening) that may be used in assessing new source air quality impact. The procedures are intended for application in those cases where the simple screening procedure (first phase) indicates a potential air quality problem.

Two parallel approaches are offered. Primary emphasis is given to an approach that can be applied without the aid of a computer (a pocket or desk calculator will suffice). The alternative approach, which is only applicable in certain cases, is to use a series of computer programs that has been made available by EPA. The series of programs, referred to as UNAMAP ("User's Network for Applied Modeling of Air Pollution"), is available through a commercial teleprocessing network and it can be accessed by remote terminal. Alternatively, a magnetic computer tape of the UNAMAP programs may be purchased from the National Technical Information Service. (See Appendix A for more information about UNAMAP).

*A relatively large degree of "conservatism" is incorporated in the simple screening procedure and in the procedures for downwash and terrain situations to provide reasonable assurance that maximum concentrations will not be underestimated.

This section (4.2) presents the basic procedures for estimating maximum short-term concentrations for specific meteorological situations. In Steps 1-3, plume rise^{21,22,23} and critical wind speed are computed. In Step 4, maximum 1-hour concentrations are estimated. In Step 5, the 1-hour concentrations are used to estimate concentrations for averaging times up to 24 hours. Contributions from other sources are accounted for in Step 6.

If aerodynamic downwash is a problem at the facility (see Procedure 4(f) on page 4-18) or if the UNAMAP computer programs are to be used, begin with Step 4. For area sources, refer to Section 4.5.2 (C) for guidance. Otherwise, proceed with Step 1:

Step 1. Estimate the normalized plume rise ($u\Delta h$) that is applicable to the source during neutral and unstable atmospheric conditions. First, compute a buoyancy term F:

$$F = \frac{g}{4} v_s d^2 \left[\frac{T_s - T_a}{T_s} \right]$$

$$= 3.12 V \left[\frac{T_s - T_a}{T_s} \right]$$

where g = acceleration of gravity (9.8 m/sec²)

v_s = stack gas exit velocity (m/sec)*

d = inside stack diameter (m)

T_s = stack gas temperature (K)*

*If stack gas temperature or exit velocity data are unavailable, they may be approximated from guidelines that present typical values for those parameters for existing plants²⁴.

T_a = ambient air temperature (K) (If no ambient temperature data are available, assume that $T_a = 293$ K.)

V = actual stack gas flow rate (m^3/sec)

Normalized plume rise is then given by:

$$u\Delta h = 21.4F^{3/4} \text{ when } F < 55 \text{ m}^4/\text{sec}^3$$

$$u\Delta h = 38.7F^{3/5} \text{ when } F \geq 55 \text{ m}^4/\text{sec}^3$$

Step 2. Estimate the critical wind speed (u_c) applicable to the source during neutral and unstable atmospheric conditions. The critical wind speed is a function of two opposing effects that occur with increasing wind speed; namely, increased dilution of the effluent as it leaves the stack (which tends to decrease the maximum impact on ground-level concentrations) and suppression of plume rise (tending to increase the impact). The wind speed at which the interaction of those opposing effects results in the highest ground-level concentration is the critical wind speed.

The critical wind speed can be estimated through the following approximation:

$$u_c = \frac{(u\Delta h)}{h_s}$$

Step 3. For sources where the height of emission is greater than or equal to 50 meters, proceed to Step 4. If the emission height is less than 50 meters, stable atmospheric conditions may be critical. The stable case plume rise (Δh) should be estimated as the smaller of the following two values: (The second value is the limiting case for calm and near calm conditions.)

$$\Delta h = 2.4 \left[\frac{F}{ug} \frac{T_a}{\frac{\Delta \theta}{\Delta z}} \right]^{1/3}$$

$$\Delta h = 5F^{1/4} \left[\frac{g}{T_a} \frac{\Delta \theta}{\Delta z} \right]^{-3/8}$$

The value $\frac{\Delta \theta}{\Delta z}$ is the change in potential temperature with height. If typical values of $\frac{\Delta \theta}{\Delta z}$ are not known for the site, a value of 0.02 K/m for E stability, and 0.035 K/m for F stability may be used for sources with stacks less than about 100m high. For stacks more than 100m high, use 0.01 K/m and 0.02 K/m respectively.

Step 4. Estimate maximum 1-hour concentrations that will occur during various dispersion situations. (Note: UNAMAP users begin with this step.) First, using Table 4-1 as a guide, determine the dispersion situations and corresponding calculation procedures applicable to the source being considered. Then apply the applicable calculation procedures, which are described on the following pages, in order to estimate maximum 1-hour concentrations. Then proceed to Step 5 on page 4-20.

Table 4-1. CALCULATION PROCEDURES TO USE WITH
VARIOUS STACK HEIGHTS

Height of Emission (stack height)	Applicable Calculation Procedures
$h_s \geq 50$ meters	Looping 4(a) Limited mixing 4(b) Coning 4(c) Fumigation 4(e)
$10 \leq h_s < 50$ meters	Looping 4(a) Coning 4(c) Fanning 4(d) Fumigation 4(e)
$h_s < 10$ meters	Coning 4(c) Fanning 4(d)
$h_s < h_b + 1.5a$	Downwash 4(f)

Procedure 4(a): Looping Plume

During very unstable conditions the plume from a stack will be mixed to ground level relatively close to the source, resulting in high short-term concentrations. Such a plume is called a looping plume because of its appearance.

Calculation Procedure:

1. Estimate plume height H , using the values of $u_{\Delta h}$ and u_c computed in Steps 1 and 2 on pages 4-7 and 4-8:

$$H = 2 h_s \text{ if } u_c \leq 3.0 \text{ m/sec}$$

$$H = h_s + \frac{[u_{\Delta h}]}{3.0} \text{ if } u_c > 3.0 \text{ m/sec}$$

2. Determine the maximum xu/Q from Figure 4-2 (for the rural case) using the A stability curve, or from Figure 4-3 (urban case) using the A-B stability curve.

3. Compute the maximum 1-hour concentration x_1 :

$$x_1 = \frac{Q}{u_c} [xu/Q]$$

If the computed value of u_c is greater than 3, set it equal to 3.

An alternate procedure using the UNAMAP series of computer programs may be applied:

1. Using the PTMAX program, enter the emission rate, stack height, stack gas temperature and either the actual stack gas volume flow rate or the stack diameter and stack gas exit velocity.
2. Assume stability class A.
3. Select the highest 1-hour concentration printed.

Procedure 4(b): Limited Mixing

Limited mixing (also called plume trapping) occurs when a stable layer aloft limits the vertical mixing of the plume. The result can be relatively high ground-level concentrations that may persist for hours. The highest concentrations occur when the mixing height is at or slightly above the plume height.

Calculation Procedure:

1. Estimate plume height H , using the $u\Delta h$ value computed in Step 1 on page 4-7:

$$H = h_s + \frac{[u\Delta h]}{2.5}$$

The value 2.5 represents the assumed critical wind speed (m/sec).

2. Using the curve for stability C on Figure 4-2 (rural) or Figure 4-3 (urban), determine the maximum 1-hour x_u/Q for that plume height.
3. Compute the maximum 1-hour concentration x_1 :

$$x_1 = 2Q[x_u/Q]/2.5$$

The value 2 reflects the assumption that the maximum concentration may be double the maximum that would occur if there were no restriction to vertical mixing.

Alternate procedure using the UNAMAP programs:

1. Using the PTMAX program, enter emission rate, stack height, stack gas temperature and either the actual stack gas volume flow, or the stack diameter and stack gas exit velocity.
2. Assume stability class C.
3. Select the 1-hour concentration for the 2.5 m/sec wind speed, and double the value.

Procedure 4(c): Coning Plume

Some buoyant plumes will have their greatest impact on ground-level concentrations during neutral or near-neutral conditions (coning plume).

Calculation procedure:

1. Assume that plume height is equal to twice the stack height:

$$H = 2 h_s$$

2. Using the curve for stability C on Figure 4-2 (rural) or Figure 4-3 (urban), determine the maximum 1-hour xu/Q for that plume height.

3. Compute the maximum 1-hour concentration x_1 , using the value of u_c computed in Step 2 on page 4-8:

$$x_1 = Q[xu/Q]/u_c$$

If u_c is substantially greater than wind speeds that one could reasonably expect at plume height, a more reasonable critical wind speed (u_c') may be specified, and the equation $H = h_s + [u\Delta h]/u_c'$ used for Step 1 and $x_1 = Q[xu/Q]/u_c'$ used for Step 3.

Caution: Wind speeds aloft are generally higher than at the surface, so that a wind speed that is rare at the surface may be relatively common at plume height.

Alternate procedure using the UNAMAP computer programs:

1. Using the PTMAX program, enter the emission rate, stack height, stack gas temperature, and either the actual stack gas volume flow or the stack diameter and stack gas exit velocity.

2. Assume stability class C.
3. Select the highest 1-hour concentration printed.

Procedure 4(d): Fanning Plume

Low-level sources (i.e., sources with stack heights less than about 50 m) sometimes produce the highest concentrations during stable atmospheric conditions. Under such conditions, the plume's vertical spread is severely restricted and horizontal spreading is also reduced. This results in what is called a fanning plume.

Calculation procedures:

- A. For low-level sources with some plume rise, calculate the concentration as follows:

1. Compute the plume height (H) that will occur during F stability (for rural cases) or E stability (for urban cases) and for wind speeds of 2, 3 and 5 m/sec. Use the stable-case plume rise (Δh) values obtained in Step 3 on page 4-8:

$$H = h_s + \Delta h$$

2. For each wind speed and stability considered in (1), find the maximum 1-hour xu/Q from Figure 4-2 (rural) or 4-3 (urban). Compute the maximum 1-hour concentration for each case, using

$$x_1 = [xu/Q] Q/u$$

and select the highest concentration computed.

- B. For low-level sources with no plume rise ($H = h_s$), find the maximum 1-hour xu/Q from Figure 4-2 (rural case--assume F stability) or

4-3 (urban case--assume E stability). Compute the maximum 1-hour concentration, assuming that $u = 1 \text{ m/sec}$:

$$x_1 = [xu/Q] Q/u$$

Alternate procedure using the UNAMAP computer programs:

1. Using PTMAX, follow the procedure given for the "Looping Plume Model," except apply the procedure for stabilities E and F.

2. If the minimum distance at which the concentration is of concern (e.g., the distance to the closest point at which the general public has access) is greater than the distances indicated in the PTMAX program output, apply the PTDIS model (see Appendix A) and specify the minimum distance of concern.

3. Select the highest of the 1-hour concentrations computed.

Procedure 4(e): Fumigation

(Note: UNAMAP is not applicable to the fumigation situation.)

Fumigation occurs when a plume that was originally emitted into a stable layer is mixed rapidly to ground-level when unstable air below the plume reaches plume level. Fumigation can cause very high ground-level concentrations. Typical situations in which fumigation occurs are:

1. "Burning off" of the nocturnal radiation inversion by solar warming of the ground surface;
2. Advection of pollutants from a stable rural environment to a turbulent urban environment;
3. "Shoreline fumigation" caused by advection of pollutants from a stable marine environment to an unstable inland environment.

The following procedure is for estimating concentrations only due to the first type of fumigation listed above. (The second and third types can also result in high concentrations²⁵. However, procedures for estimating concentrations during those situations are beyond the scope of this document.)

1. Compute the plume height (H) that will occur during F stability and a wind speed of 2.5 m/sec:

$$H = h_s + \Delta h$$

To obtain a value for Δh , use the procedure described in Step 3 on page 4-8.

2. Using Table 4-2 (derived from Turner's fumigation procedure¹⁷), estimate the downwind distance at which the maximum fumigation concentration is expected to occur. (If this distance is less than about 2 kilometers, fumigation concentrations are not likely to significantly exceed the limited mixing concentrations estimated in Procedure 4(b).)

3. At the distance estimated in (2), determine the values of σ_y and σ_z for F stability from Figures 4-4 and 4-5.

4. Compute the maximum concentration (x_f), using the following equation¹⁷:

$$x_f = \frac{Q}{\sqrt{2\pi} u(\sigma_y + H/8) (H + 2\sigma_z)}$$

The concentration x_f can be expected to persist for about 30 to 90 minutes. It is not recommended that the computed concentration be extrapolated to longer averaging times.

Table 4-2. DOWNWIND DISTANCE (km) TO THE MAXIMUM GROUND-LEVEL FUMIGATION CONCENTRATION AS A FUNCTION OF STACK HEIGHT (h) AND PLUME HEIGHT (H); STABILITY CLASS F AND WIND SPEED = 2.5 m/sec

H	< 60	60	75	100	125	150	175	200	225	250	275	300
h	(< 2)	2	3	7	10	14	18	22	26	31	36	41
10	(< 2)	2	3	7	10	14	18	22	26	31	36	41
30	(< 2)	2	3	6	9	13	17	22	26	31	36	41
50	(< 2)	(< 2)	2	6	9	13	17	21	26	31	36	41
75	-	-	(< 2)	5	8	12	16	20	25	30	35	40
100	-	-	-	3	6	10	15	19	24	29	34	39
125	-	-	-	-	4	8	13	17	22	27	32	38
150	-	-	-	-	-	5	11	15	20	25	30	36
175	-	-	-	-	-	-	7	12	18	23	28	34
200	-	-	-	-	-	-	-	9	15	21	26	32
225	-	-	-	-	-	-	-	-	11	17	23	29
250	-	-	-	-	-	-	-	-	-	13	19	25
275	-	-	-	-	-	-	-	-	-	-	15	21
300	-	-	-	-	-	-	-	-	-	-	-	-

Procedure 4(f): Downwash

(Note: UNAMAP is not applicable to the downwash situation.) In some cases, the aerodynamic turbulence induced by a building will cause a pollutant emitted from an elevated source to be mixed rapidly toward the ground (downwash), resulting in higher ground-level concentrations immediately to the lee of the building than would otherwise occur. Thus, when assessing the impact of a source on air quality, the possibility of downwash problems should be investigated. If downwash is found to be a potential problem, its effect on air quality should be estimated.

The best approach to determine if downwash will be a problem at a proposed facility is to conduct observations of effluent behavior at a similar facility. If such a study is not feasible, wind tunnel study is recommended, particularly if the facility has a complex configuration. If neither of the above approaches is feasible, and if the facility has a simple configuration (e.g., a stack adjacent or attached to a single rectangular building), a simple rule-of-thumb²⁶ may be applied to determine the stack height (h_s) necessary to avoid downwash problems:

$$h_s \geq h_b + 1.5 a,$$

where h_b is building height and "a" is the lesser of either building height or maximum building width. In other words, if the stack height is equal to or greater than $h_b + 1.5 a$, downwash is unlikely to be a problem.

If there is more than one stack at a given facility, the above rule may be successively applied to each stack. If more than one building is involved, the rule may be successively applied to each building. For relatively complex source configurations the rule may not be applicable, particularly when the building shapes are much different than the simple rectangular building for which the above equation was derived.

If it is determined that the potential for downwash exists, the next step is to estimate the maximum ground-level pollutant concentrations that will occur as a result of the downwash. The impact of downwash on ground-level concentrations will be a function of many factors, including building configuration, emission characteristics, stack height, wind speed and wind direction. Generally, however, downwash will have its greatest impact when the effluent:

- (1) has relatively little initial buoyancy or vertical momentum, and
- (2) is released from a point on the building itself or from a stack that is close to the building (within about 3 to 5 building heights) and substantially below the height (computed above) that is necessary to avoid downwash.

In such a case, which may be considered a "worst case" condition for downwash, the maximum 1-hour impact on ground-level concentrations (x_1) will occur within a few building heights of the downwind edge of the building, and can be estimated by the following simple approximation²⁷

$$x_1 = \frac{Q}{1.5(A)(u)}$$

where Q is the maximum emission rate likely to occur for the averaging time of concern, A is the cross-sectional area of the building normal to

the wind, and u is wind speed. For u , one should choose the lowest wind speed likely to result in entrainment of most or all of the pollutant into the downwash "cavity" in the lee of the building. If no data are available from which that minimum wind speed can be estimated, assume a speed of 3 m/sec for the worst case.

It is important to recognize that the above equation for x_1 is only applicable to the worst case described above. (Even for the worst case, the equation will tend to overpredict ground-level concentrations, particularly for relatively tall sources.) For situations significantly different than the worst case, and for complex source configurations, a more detailed analysis is required^{28, 29}.

Step 5. Obtain concentration estimates for the averaging times of concern. The maximum 1-hour concentration is the highest of the concentrations estimated in Step 4. For averaging times greater than one hour, the maximum concentration will generally be less than that 1-hour value. The following discussion describes how that 1-hour value may be used to make an estimate of maximum concentrations for longer averaging times. (This does not apply to the fumigation case described in Procedure 4(e)).

The ratio between a longer-term maximum concentration and a 1-hour maximum will depend upon the duration of the longer averaging time, source characteristics, and local climatology and topography. Because of the many ways in which such factors interact, it is not practical to

categorize all situations that will typically result in any specified ratio between the longer-term and 1-hour maxima. Therefore, ratios are presented here for a "general case" (where it is assumed that emissions are constant and there are no terrain or downwash problems), and the user is given some flexibility to subjectively adjust those ratios to represent more closely any particular point source:

<u>Averaging Time</u>	<u>Multiplying Factor</u>
3 hours	0.9 (<u>± 0.1</u>)
8 hours	0.7 (<u>± 0.2</u>)
24 hours	0.4 (<u>± 0.2</u>)

To obtain the estimated maximum concentration for a 3, 8 or 24-hour averaging time, multiply the 1-hour maximum by the given factor. The numbers in parentheses are recommended limits to which one may diverge from the multiplying factors representing the general case. For example, if aerodynamic downwash or terrain is a problem at the facility, or if the emission height is very low, it may be desirable to increase the factors (within the limits specified in parentheses). On the other hand, if the stack is relatively tall and there are no terrain or downwash problems, it may be appropriate to decrease the factors.

The multiplying factors listed above are based upon general experience with elevated point sources. The factors are only intended as a rough guide for estimating maximum concentrations for averaging times

greater than one hour. A degree of conservatism is incorporated in the factors to provide reasonable assurance that maximum concentrations for 3, 8 and 24 hours will not be underestimated.

Step 6. Add the expected contribution from other sources to the concentration estimated in Step 5. Concentrations due to other sources can be estimated from measured data, or by computing the effect of existing sources on air quality in the area being studied. Procedures for estimating such concentrations are given in Section 4.5.2.

At this point in the analysis, a first approximation of maximum short-term ambient concentrations (source impact plus contributions from other sources) has been obtained. If concentrations at specified locations, long-term concentrations, or other special topics must be addressed, refer to applicable portions of Sections 4.3 to 4.5.

4.3 Short-Term Concentrations at Specified Locations

In Section 4.2, maximum concentrations are generally estimated without specific attention to the location(s) of the receptor(s). In some cases, however, it is particularly important to estimate the impact of a new source on air quality in specified (e.g., critical) areas. For example, there may be nearby locations at which high pollutant concentrations already occur due to other sources, and where a relatively small addition to ambient concentrations might cause ambient standards to be exceeded.

Each of the sources affecting a given location can be expected to produce its greatest impact during certain meteorological conditions.

The composite maximum concentration at that location due to the interaction of all the sources may occur under different meteorological conditions than those which produce the highest impact from any one source. Thus, the analysis of this problem can be difficult, and may require substantial use of high-speed computers.

Despite the potential complexity of the problem, some preliminary calculations can be made that will at least indicate whether or not a more detailed study is needed. For example, if the preliminary analysis indicates that the estimated concentrations are near or above the air quality standards of concern, a more detailed analysis will probably be required.

Calculation procedure (If the UNAMAP programs can be used, proceed to the paragraph following Step 10 below. Otherwise, proceed with Step 1.)

Step 1. Compute the normalized plume rise ($u\Delta h$), utilizing the procedure described in Step 1 on page 4-7.

Step 2. Divide the $u\Delta h$ value obtained above by each of several wind speeds ($u = 1, 3, 5, 10$, and 20 m/sec) to estimate the actual plume rise (Δh) associated with each wind speed:

$$\Delta h = \frac{(u\Delta h)}{u}$$

Step 3. Compute the plume height (H) that will occur during each wind speed by adding the respective plume rises to the stack height (h_s):

$$H = h_s + \Delta h$$

Step 4. For each stability class-wind speed combination listed below*, at the downwind distance of the "specified location," determine the xu/Q value from Figures 4-6 through 4-9 (rural) or Figures 4-12 through 4-14 (urban). Note in those figures (see the captions) that very restrictive mixing heights are assumed, resulting in trapping of the entire plume within a shallow layer.

<u>Stability Class</u>	<u>Wind Speed (m/sec)</u>
A	1, 3
B	1, 3, 5
C	1, 3, 5, 10,
D	1, 3, 5, 10, 20

Step 5. (If the physical stack height is greater than 50 meters, Steps 5 and 6 may be skipped.) Compute plume heights (H) for stability classes E and F, for wind speeds of 1, 3 and 5 m/sec:

$$H = h_s + \Delta h$$

where Δh is the plume rise as computed in Step 3 on page 4-8.

*Only consider those stability-wind speed combinations that can exist for the length of time it takes the plume to travel to the location of interest, plus at least one hour. Refer to Table 4-3 for the maximum durations of each stability class.

Table 4-3. MAXIMUM DURATION OF STABILITY CLASSES FOR SELECTED LATITUDES AND DATES

Latitude	Date	Maximum Duration of Stability Class (Hours)*			
		A	B	C	E,F
30°N	Dec 22	0	2	7	16
	Feb 9, Nov 3	0	4	8	15
	Mar 8, Oct 6	0	6	9	14
	Apr 3, Sept 10	2	7	10	14
	May 1, Aug 12	4	8	11	13
	Jun 22	4	8	12	12
40°N	Dec 22	0	0	6	17
	Feb 9, Nov 3	0	1	7	16
	Mar 8, Oct 6	0	5	9	14
	Apr 3, Sept 10	0	6	10	13
	May 1, Aug 12	2	7	11	12
	Jun 22	4	8	12	11
50°N	Dec 22	0	0	2	18
	Feb 9, Nov 3	0	0	6	17
	Mar 8, Oct 6	0	1	8	15
	Apr 3, Sept 10	0	5	10	13
	May 8, Aug 6	2	7	11	11
	Jun 22	4	8	12	10

*Based on duration of solar angle above or below following limits:
 Class A - above 60°, Class B - above 35°, Class C - above 15°,
 Class E and F - below 0°. (Two hours have been added to the duration
 of solar angle below the horizon to account for the stable conditions
 that begin to occur about an hour before sunset and persist for an
 hour after sunrise.) For stability Classes A, B and C, the hours
 are centered on solar noon. Stability D can persist, in all the
 above cases, for periods in excess of 24 hours.

Step 6. For each stability class-wind speed combination considered in Step 5, at the downwind distance of the specified location, determine a x_u/Q value from Figures 4-10 and 4-11 (or Figure 4-15 for the urban case). Also, refer to the Step 4 footnote.

Step 7. For each x_u/Q value obtained in Step 4 (and Step 6 if applicable), compute x/Q :

$$x/Q = [x_u/Q]/u$$

Step 8. Select the largest x/Q and multiply by the source emission rate (g/sec) to obtain a 1-hour concentration value (g/m^3):

$$x_1 = Q[x/Q]_{\max}$$

Step 9. (This step is not applicable if the downwind distance to the specified location is either (1) less than 2 kilometers or (2) less than the distance to the maximum fumigation concentration, obtained from Table 4-2.) Compute the maximum 1-hour concentration, x_f , that will occur due to fumigation (discussed in Procedure 4(e) on page 4-15) using the following equation¹⁷:

$$x_f = \frac{Q}{\sqrt{2\pi} u (\sigma_y + H/8)(H + 2\sigma_z)}$$

Assume a wind speed of 2.5 m/sec and stability class F. From Figures 4-4 and 4-5 obtain σ_y and σ_z values for the downwind distance in question. Plume rise (used to determine H) is computed as in Step 3 on page 4-8.

Step 10. The highest 1-hour concentration at the specified location (not accounting for contributions from other sources) is the larger of the concentration values estimated in Steps 8 and 9. To estimate concentrations for averaging times greater than one hour, take the 1-hour value estimated in Step 8 only, and then refer to the averaging time procedure described earlier (Step 5 on page 4-20). To account for contributions from other sources, see Section 4.5.2.

If the UNAMAP series of computer programs is available, Steps 1 through 8 above can be accomplished as follows:

1. Using the PTMAX program, obtain plume heights (H) for each wind speed-stability combination considered in Step 4 (and Step 5 if applicable).

2. Using the PTDIS program, estimate the maximum concentration at the specified distance for each wind speed-stability combination considered in (1). For the mixing height input to PTDIS, use plume height (H) for stabilities A-D (and for the E stability urban case) and use 5000 meters for stabilities E and F (rural).

3. For the highest 1-hour concentration at the specified location, use the largest value obtained in (2).

4.4 Annual Average Concentrations

This section presents procedures for estimating annual average ambient concentrations caused by a single point source. The procedure for estimating the annual concentration at a specified location is

presented first, followed by a suggestion of how that procedure can be expanded to estimate the overall maximum annual concentration (regardless of location).

The procedures assume that the emissions are continuous and at a constant rate. The data required are emission rate, stack height, stack gas volume flow rate (or diameter and exit velocity), stack gas temperature, average afternoon mixing height, and a representative stability wind rose.* Refer to Sections 2 and 3 for a discussion of such data.

4.4.1 Annual Average Concentration at a Specified Location

Calculation procedure:

Step 1. (Applicable to stability categories A through D) Using the procedure described in Step 1 on page 4-7, obtain a normalized plume rise value ($u\Delta h$):

$$u\Delta h = 21.4 F^{3/4} \text{ when } F < 55 \text{ m}^4/\text{sec}^3$$

$$u\Delta h = 38.7 F^{3/5} \text{ when } F \geq 55 \text{ m}^4/\text{sec}^3$$

Step 2. (Applicable to stability categories E and F) Apply the following equation to estimate plume rise (Δh) as a function of wind speed. Apply the equation for both stable categories (E and F). Refer to Steps 1 and 3 on pages 4-7 and 4-8 for definition of terms in that equation:

*The stability wind rose is a joint frequency distribution of wind speed, wind direction and atmospheric stability for a given locality. Stability wind roses for many locations are available from the National Climatic Center, Asheville, North Carolina.

$$\Delta h = 2.4 \left[\frac{F}{ug} \frac{T_a}{\Delta \theta} \right]^{1/3}$$

Step 3. Compute plume rise (Δh) for each stability-wind speed category in Table 4-4 by (1) substituting the corresponding wind speed for u in the appropriate equation from Step 1 or 2 above and (2) solving the equation for Δh . The wind speeds listed in Table 4-4 are derived from the wind speed intervals used by the National Climatic Center (Table 4-5) in specifying stability-wind roses.

Step 4. Compute plume height (H) for each stability-wind speed category in Table 4-4 by adding the physical stack height (h_s) to each of the plume rise values computed in Step 3:

$$H = h_s + \Delta h$$

Step 5. Estimate the contribution to the annual average concentration at the specified location for each of the stability-wind speed categories in Table 4-4. First, determine the vertical dispersion coefficient (σ_z) for each stability class for the downwind distance (x) between the source and the specified location, using Figure 4-5. (Note: For urban F stability cases, use the σ_z for stability E.) Next, determine the mixing height (L) applicable to each stability class. For stabilities A to D, use the average afternoon mixing height for the area (Figure 4-16). For urban stabilities E and F, use the average morning

Table 4-4. STABILITY-WIND SPEED COMBINATIONS THAT ARE
CONSIDERED IN ESTIMATING ANNUAL AVERAGE CONCENTRATIONS

Atmospheric Stability Categories	Wind Speed (m/sec)					
	1.5	2.5	4.5	7	9.5	12.5
A	*	*				
B	*	*	*			
C	*	*	*	*	*	
D	*	*	*	*	*	*
E	*	*	*			
F	*	*				

*It is only necessary to consider the stability-wind speed conditions marked with an asterisk.

Table 4-5. WIND SPEED INTERVALS USED BY THE NATIONAL CLIMATIC CENTER
FOR JOINT FREQUENCY DISTRIBUTIONS OF WIND SPEED,
WIND DIRECTION AND STABILITY

Class	Speed Interval, m/sec (knots)	Representative Wind Speed m/sec
1	0 to 1.8 (0 to 3)	1.5
2	1.8 to 3.3 (4 to 6)	2.5
3	3.3 to 5.4 (7 to 10)	4.5
4	5.4 to 8.5 (11 to 16)	7.0
5	8.5 to 11.0 (17 to 21)	9.5
6	>11.0 (>21)	12.5

mixing height (Figure 4-17). For rural stabilities E and F, mixing height is not applicable. Then, use that information as follows: For all stability-wind conditions when the plume height (H) is greater than (L), assume a zero contribution to the annual average concentration at the specified location. For each condition when $\sigma_z \leq 0.8L$, and for all rural stability E and F cases, apply the following equation¹⁷ to estimate the contribution C (g/m^3):

$$C = \frac{2.03}{\sigma_z} \frac{Q}{u} f \exp \left[-\frac{1}{2} \left[\frac{H}{\sigma_z} \right]^2 \right]$$

For each condition during which $\sigma_z > 0.8L$, the following equation¹⁷ is applied:

$$C = \frac{2.55}{L} \frac{Q}{u} f$$

In those equations:

Q = pollutant emission rate (g/sec)

u = wind speed (m/sec)

f = frequency of occurrence of the particular wind speed-stability combination (obtained from the stability-wind rose) for the wind direction of concern. Only consider the wind speed-stability combinations for the wind direction that will bring the plume closest to the specified location.

Step 6. Sum the contributions (C) computed in Step 5 to estimate the annual average concentration at the specified location.

4.4.2 Maximum Annual Average Concentration

To estimate the overall maximum annual average concentration (the maximum concentration regardless of location) follow the procedure for

the annual average concentration at a specified location, repeating the procedure for each of several receptor distances, and for all directions. Because of the large number of calculations required, it is recommended that a computer model such as the CDM (Climatological Dispersion Model) be used. The CDM is a part of the UNAMAP series, which is discussed in Appendix A.

4.5 Special Topics

4.5.1 Concentrations at Receptors on Elevated Terrain

Dispersion models developed for estimating maximum ground-level concentrations in complex terrain have not been adequately evaluated. However, there is growing acceptance of the hypothesis that greater concentrations can occur on elevated than on flat terrain in the vicinity of an elevated source.* That is particularly true when the terrain extends well above the plume centerline (plume height).

A procedure is presented here to (1) determine whether or not an elevated plume may intercept terrain and, (2) if terrain is likely to be intercepted, estimate the maximum 24-hour concentration. The procedure is based largely upon the 24-hour mode of the EPA Valley Model³⁰. A concentration estimate obtained through the procedure will likely be somewhat greater than provided by the Valley Model, primarily due to the relatively conservative plume height that is used in Step 1:

*An exception may be certain flat terrain situations where aerodynamic downwash is a problem. (See Procedure 4(f) on page 4-18).

Step 1. Determine if the plume is likely to intercept terrain in the vicinity of the source:

(1) Compute one-half the plume rise ($\Delta h/2$) that can be expected during F stability and a wind speed (u) of 2.5 m/sec. (The reason for using only one-half the normally computed plume rise is to provide a margin of safety in determining (1) if the plume may intercept terrain and (2) the resulting ground-level concentration.):

$$\Delta h/2 = 1.2 \left[\frac{F T_a}{u g} \frac{\Delta \theta}{\Delta z} \right]^{1/3}$$

Refer to Steps 1 and 3 on pages 4-7 and 4-8 for definition of terms.

(2) Compute a conservative plume height (H_c) by adding the physical stack height (h_s) to $\Delta h/2$:

$$H_c = h_s + \Delta h/2$$

(3) Determine if any terrain features in the vicinity of the source are as high as H_c . If so, proceed with Step 2. If that is not the case, the plume is not likely to intercept terrain, and Step 2 is not applicable.*

*Even if the plume is not likely to intercept terrain (and for all concentration averaging times of concern) the user should attempt to account for terrain if the terrain features are significant. A procedure for doing so is to reduce the computed plume height H (for all stabilities) by the elevation difference between stack base and location of the receptor(s) in question. The adjusted plume heights can then be used in conjunction with the "flat-terrain" modeling procedures described earlier.

Step 2. Estimate the maximum 24-hour ground-level concentration on elevated terrain in the vicinity of the source:

- (1) Using a topographic map, determine the distance from the source to the nearest ground-level location at the height H_c .
- (2) Using Figure 4-18 and the distance determined in (a), estimate a 24-hour x/Q value.
- (3) Multiply the $(x/Q)_{24}$ value by the emission rate Q (g/sec) to estimate the maximum 24-hour concentration x_{24} due to plume interception of terrain:

$$x_{24} = (x/Q)_{24} (Q)$$

4.5.2 Contributions from Other Sources

To assess the significance of the air quality impact of a proposed source, the impact of nearby sources and "background" must be specifically determined. (Background includes those concentrations due to natural sources and distant, unspecified man-made sources.) Then the impact of the proposed source can be separately estimated, applying the techniques presented elsewhere in Section 4, and superimposed upon the impact of the nearby sources and background to determine total concentrations in the vicinity of the proposed source.

This section addresses the estimation of concentrations due to nearby sources and background. Three situations are considered:

- A. A proposed source relatively isolated from other sources.
- B. A proposed source in the vicinity of a few other sources.
- C. A proposed source in the vicinity of an urban area or other large number of sources.

It must be noted that in all references to air quality monitoring in the following discussion, it is assumed that the source in question is not yet operating. If the source is emitting pollutants during the period of air quality data collection, care must be taken not to use monitoring data influenced by the impact of the source.

A. Relatively Isolated Proposed Source

A proposed source may be considered to be isolated if it is expected that background will be the only other significant contributor to ambient pollutant concentrations in its vicinity. In that case, it is recommended that air quality data from monitors in the vicinity of the proposed source be used to estimate the background concentrations. If monitoring data are not available from the vicinity of the source, use data from a "regional" site; i.e., a site that characterizes air quality across a broad area, including that in which the source is located.

Annual average concentrations should be relatively easy to determine from available air quality data. For averaging times of about 24 hours or less, meteorology must be accounted for; i.e., it is necessary to ensure that background concentration estimates are based on data collected during the same meteorological situations as those during which the source is expected to have its greatest impact on air quality.

B. Proposed Source in the Vicinity of a Few Other Sources

If there already are a few sources in the vicinity of the proposed facility, the air quality impact of these sources should be accounted for.

As long as the number of nearby sources is relatively small, the recommended procedure is to use (1) air quality monitoring data to estimate background concentrations and (2) dispersion modeling to estimate concentrations due to the nearby sources. Then superimpose those estimates to determine total concentrations in the vicinity of the proposed source.

To estimate background concentrations, follow the same basic procedure as in the case of an isolated source. In this case, however, there is one added complication. Wind direction must be accounted for in order to single out the air quality data that represent background only (i.e., data that are not affected by contributions from nearby sources).

Concentrations due to the nearby sources will normally be best determined through dispersion modeling. The modeling techniques presented in this guideline may be used. If the user has access to UNAMAP (see Appendix A and references to UNAMAP in Section 4), the modeling effort can be considerably simplified. If UNAMAP can not be used, the user should model each source separately to estimate concentrations due to each source during various meteorological conditions and at an array of receptor locations (e.g., see Sections 4.3 and 4.4.1) where interactions between the effluents of the proposed source and the nearby sources can occur. Significant locations include (1) the area of expected maximum impact of the proposed source, (2) the area of maximum impact of the nearby sources, and (3) the area where all sources will combine to cause maximum impact. It may be necessary to identify those locations through a trial and error analysis.

C. Proposed Source in the Vicinity of an Urban Area or Other Large Number of Sources

For more than a very small number of nearby sources, it may be impractical to model each source separately. Two possible alternatives for estimating ambient concentrations are to use air quality monitor data or a multi-source dispersion model.

If data from a comprehensive air monitoring network are available, it may be possible to rely entirely on the measured data. The data should be adequate to permit a reliable assessment of maximum concentrations, particularly in (1) the area of expected maximum impact of the proposed source, (2) the area of maximum impact of the existing sources and (3) the area where all sources will combine to cause maximum impact.

In some cases, the available air quality monitor data will only be adequate to estimate general area-wide background concentrations. In such cases, there is no choice but to use dispersion modeling to estimate concentrations due to the nearby sources. If possible, a multi-source dispersion model should be used. If the user has access to UNAMAP (see Appendix A and references to UNAMAP in Section 4) the Climatological Dispersion Model (CDM) can be applied for long-term concentration estimates and the PTMTP model for short-term estimates (PTMTP can handle up to 25 point sources).

If it is not feasible to apply a multi-source model, and there is a considerable number of nearby sources, a rough estimate of maximum concentrations due to those sources can be made by arbitrarily grouping the sources into an area source through the following equation³¹. (The

estimate is primarily applicable to receptor locations near the center of the area source, defined below, although it may be considered a reasonable first-approximation for any location within the area.):

$$C = 18 \frac{Q}{u} (\Delta x)^{1/4}$$

where:

C = maximum contribution to ground-level concentrations (g/m^3)

Q = average emission rate ($\text{g}/\text{m}^2/\text{sec}$) within the area defined by Δx

u = assumed average wind speed (m/sec) for the averaging time of concern

Δx = length (m) of one side of the smallest square area that will contain the nearby sources, ignoring relatively small outlying sources or any source that is considerably removed from the other sources.

The best results will be obtained with the above equation when emissions are uniformly distributed over the defined area. Any large point sources in the vicinity should be modeled separately, and the estimated concentrations manually superimposed upon that computed for the area source.

4.5.3 Long Range Transport

In certain instances it will be necessary to estimate the air quality impact of a proposed source at locations beyond its vicinity (beyond roughly 30-50 kilometers). To estimate seasonal or annual average concentrations (out to about 100 kilometers) the procedures of Section 4.4 will provide a rough estimate. Those procedures should not be applied beyond 100 kilometers.

For short-term estimates (concentration averaging times up to about 24 hours) beyond the vicinity of the source and out to 100 kilometers downwind, the following procedure is recommended. The procedure accounts for the meteorological situations likely to result in the highest concentrations at large distances; viz., limited mixing conditions (Steps 1-5) and stable conditions (Steps 6-9):

Step 1. Estimate the normalized plume rise ($u\Delta h$) applicable to neutral and unstable atmospheric conditions. Use the procedure described in Step 1 on page 4-7.

Step 2. Compute plume height (H):

$$H = h_s + \frac{u\Delta h}{7.5}$$

Step 3. Using Figure 4-19, obtain a xu/Q value for the desired downwind distance (D stability case).

Step 4. Compute the maximum 1-hour D stability concentration x_{max} , using the xu/Q value obtained in Step 3:

$$x_{max} = \frac{Q}{7.5} [xu/Q]$$

For Q, substitute the source emission rate (g/sec). The value 7.5 is the recommended wind speed (m/sec) for computations of x_{max} at large distances under limited mixing conditions.

Step 5. Estimate the plume rise (Δh) applicable to stable conditions (stability class E), using the procedure described in Step 3 on page 4-8. Assume a wind speed equal to 4 m/sec.

Step 6. Compute plume height (H):

$$H = h_s + \Delta h$$

Step 7. From Figure 4-20, obtain a xu/Q value for the same distance considered in Step 3 above.

Step 8. Compute the maximum 1-hour E stability concentration x_{max} , using the xu/Q value obtained in Step 7:

$$x_{max} = \frac{Q}{4} [xu/Q]$$

where 4 is the assumed wind speed (m/sec).

Step 9. Select the higher of the x_{max} values computed in Steps 4 and 8. The selected value represents the highest 1-hour concentration likely to occur at the specified distance.

Step 10. To estimate concentrations for averaging times up to 24 hours, multiply the 1-hour value by the factors presented in Step 5 on page 4-20.

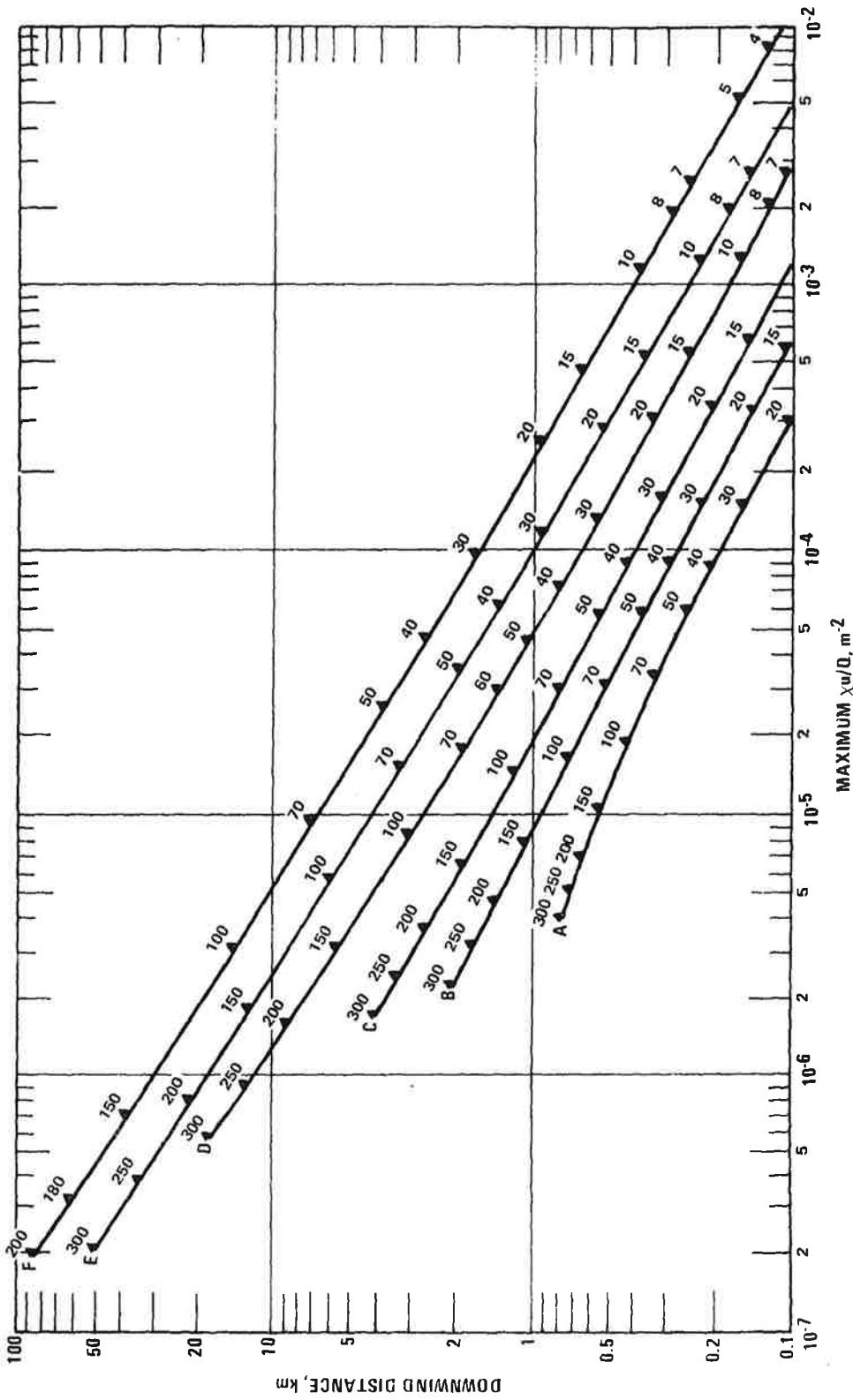


Figure 4-2. Downwind distance to maximum concentration and maximum χ_u/Q as a function of stability class for rural terrain. 17 Plume heights (m) are on the curves.

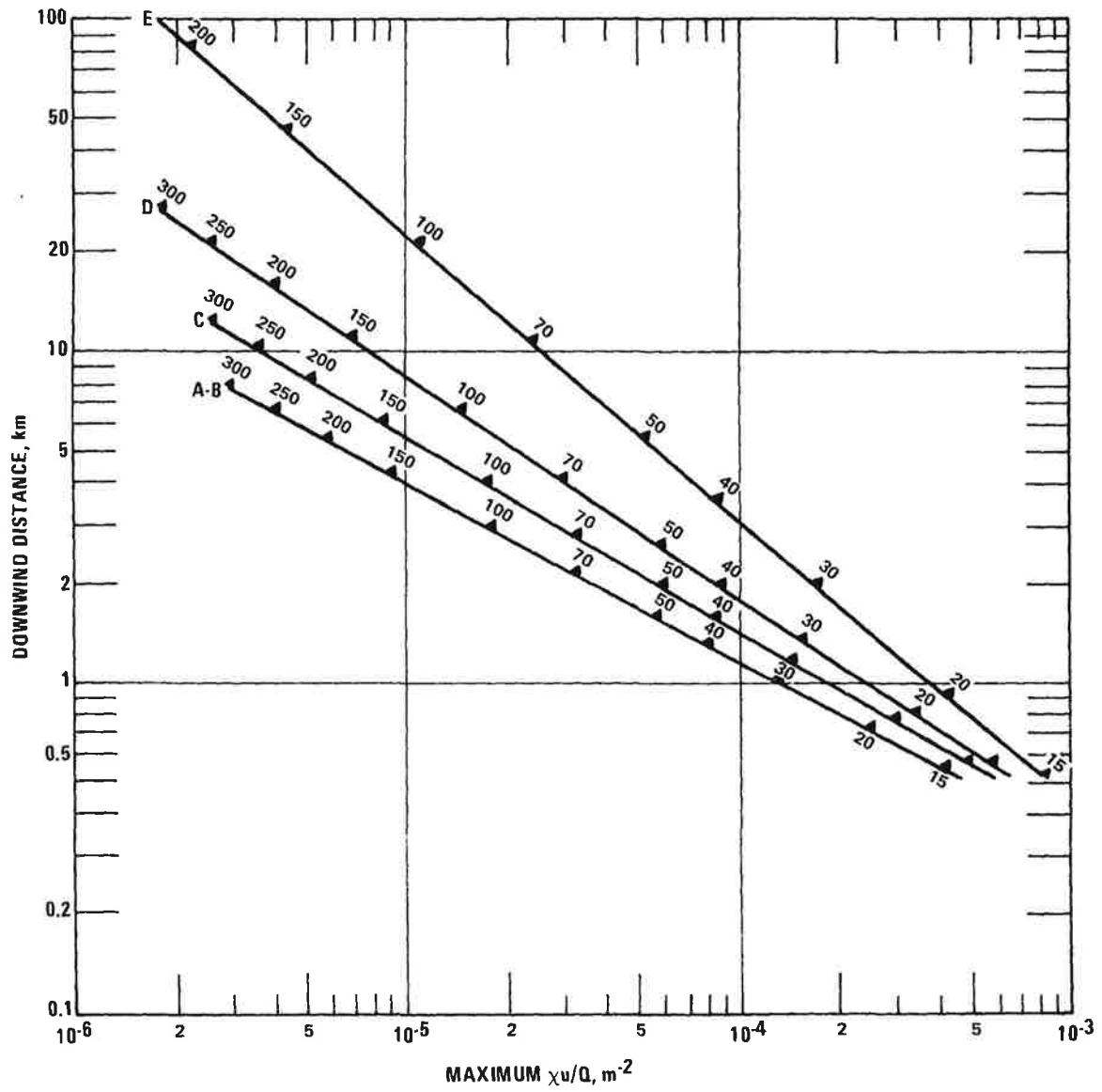


Figure 4-3. Downwind distance to maximum concentration and maximum χ_u/Q as a function of stability class for urban terrain.^{1,32} Plume heights (m) are on the curves.

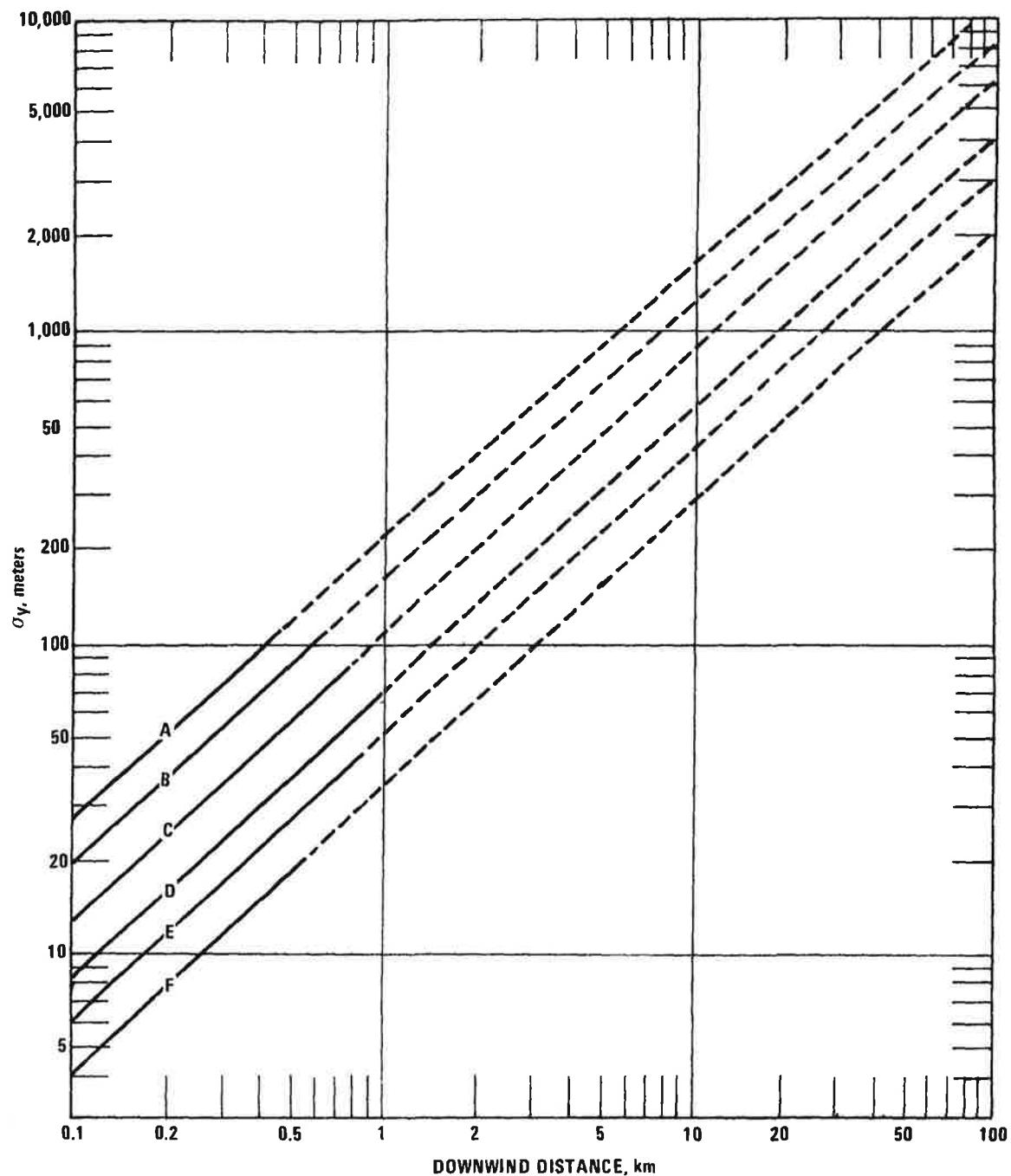


Figure 4-4. Horizontal dispersion parameter (σ_y) as a function of downwind distance and stability class; rural terrain.¹⁷

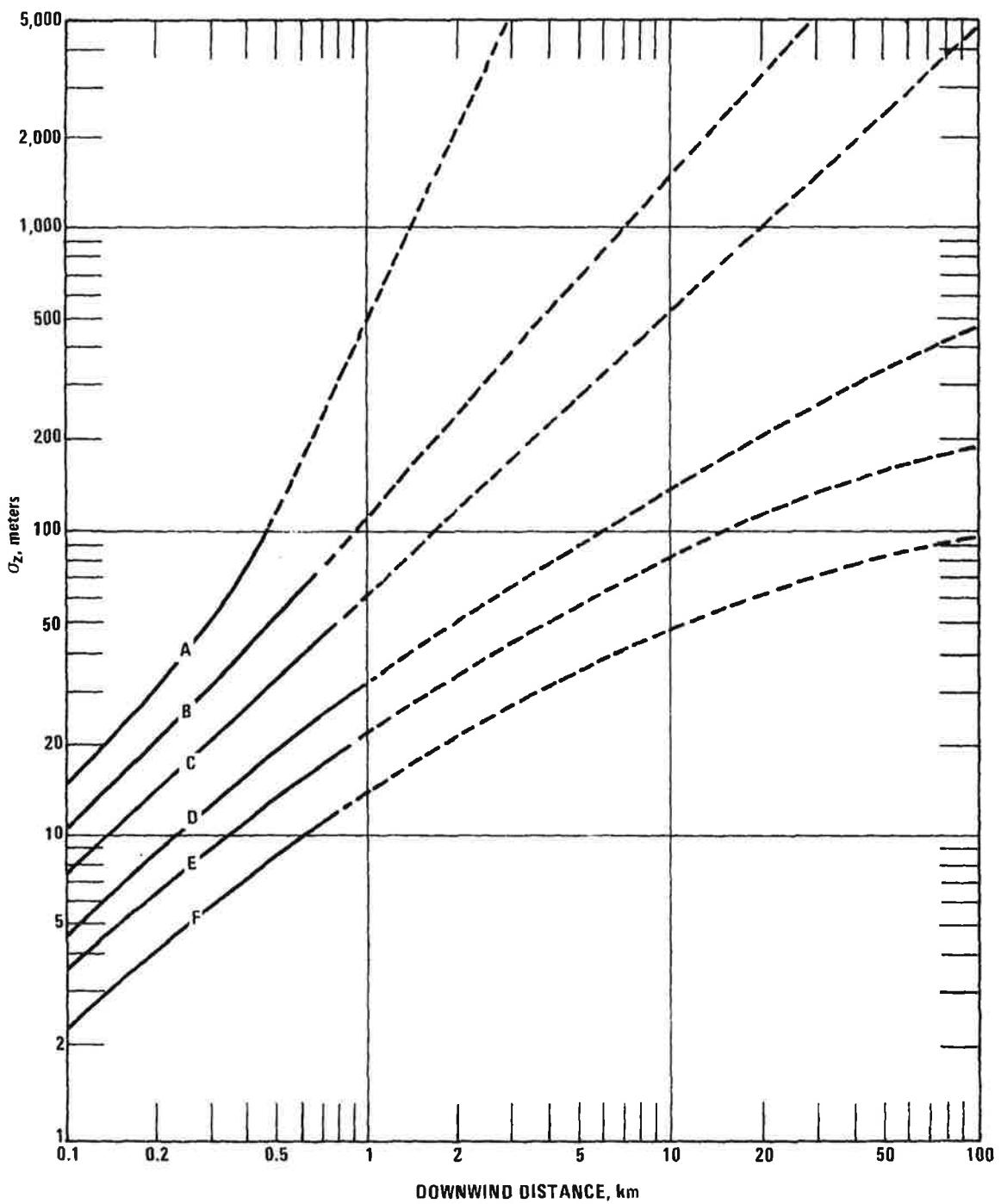


Figure 4-5. Vertical dispersion parameter (σ_z) as a function of downwind distance and stability class; rural terrain.¹⁷

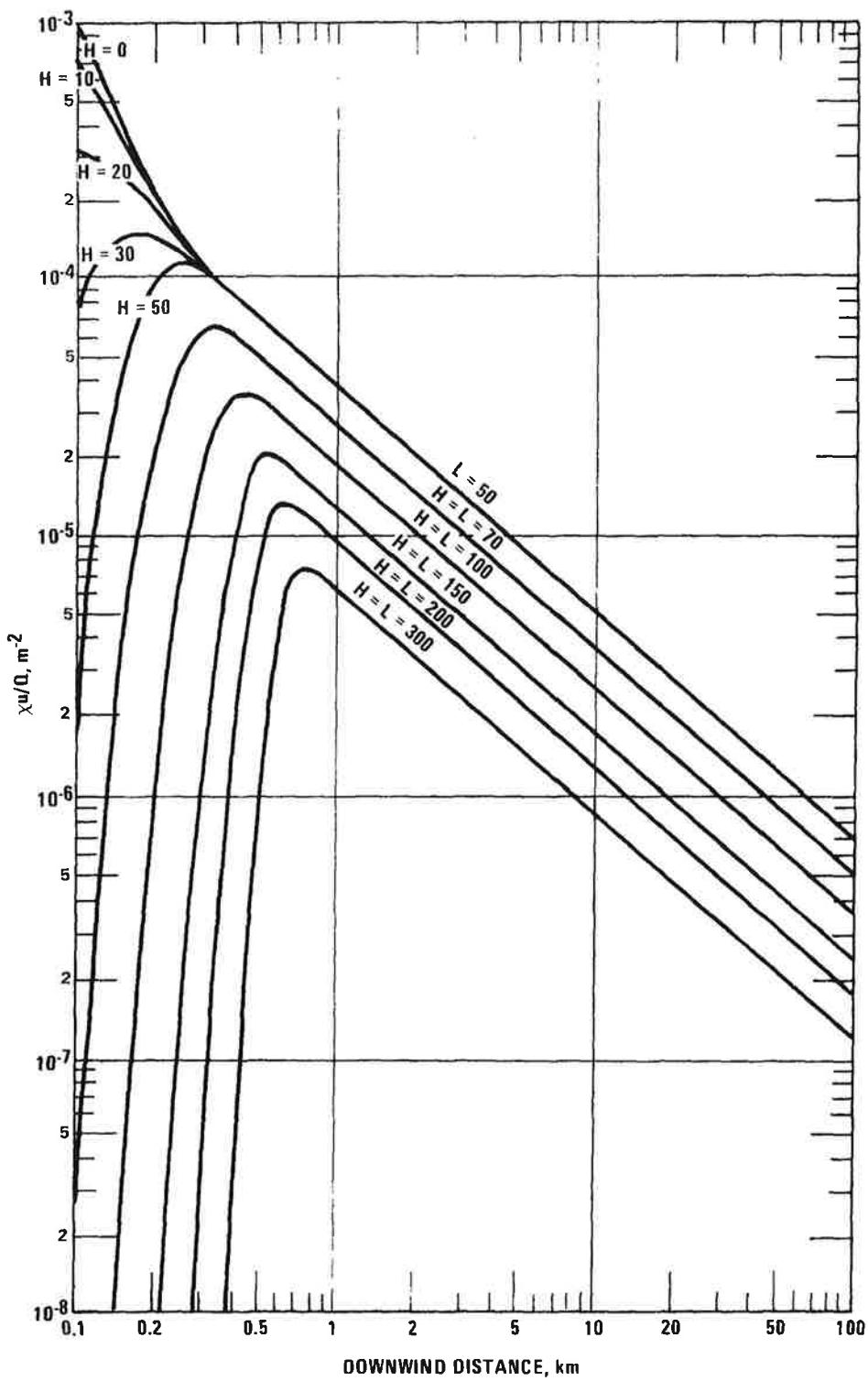


Figure 4-6. Stability class A; rural terrain $\chi u/Q$ versus distance for various plume heights (H), assuming very restrictive mixing heights (L): $L = 50$ m for $H \leq 50$ m; $L = H$ for $H > 50$ m.

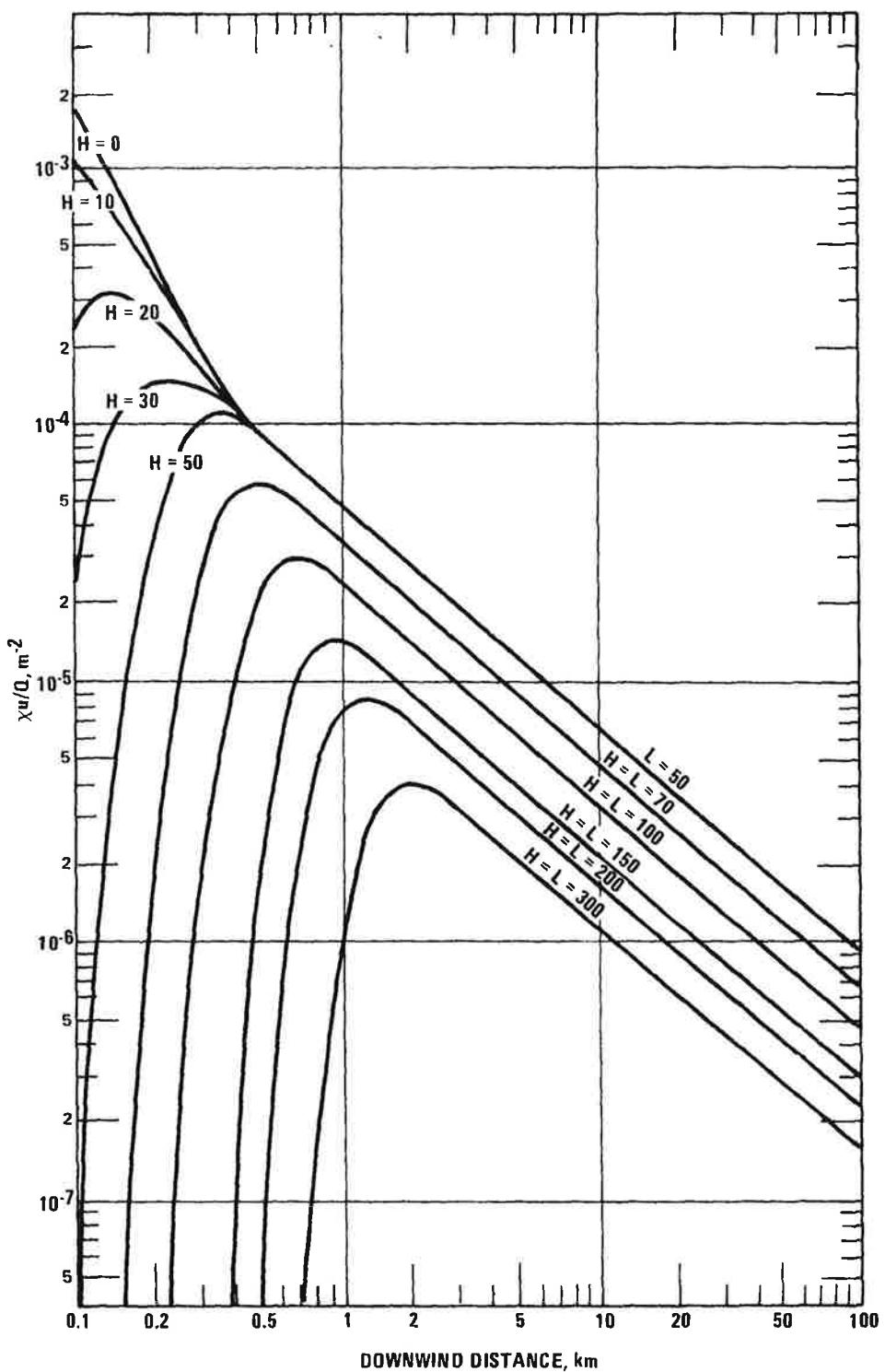


Figure 4-7. Stability class B; rural terrain χ_u/Q versus distance for various plume heights (H), assuming very restrictive mixing heights (L): $L = 50$ m for $H \leq 50$ m; $L = H$ for $H > 50$ m.

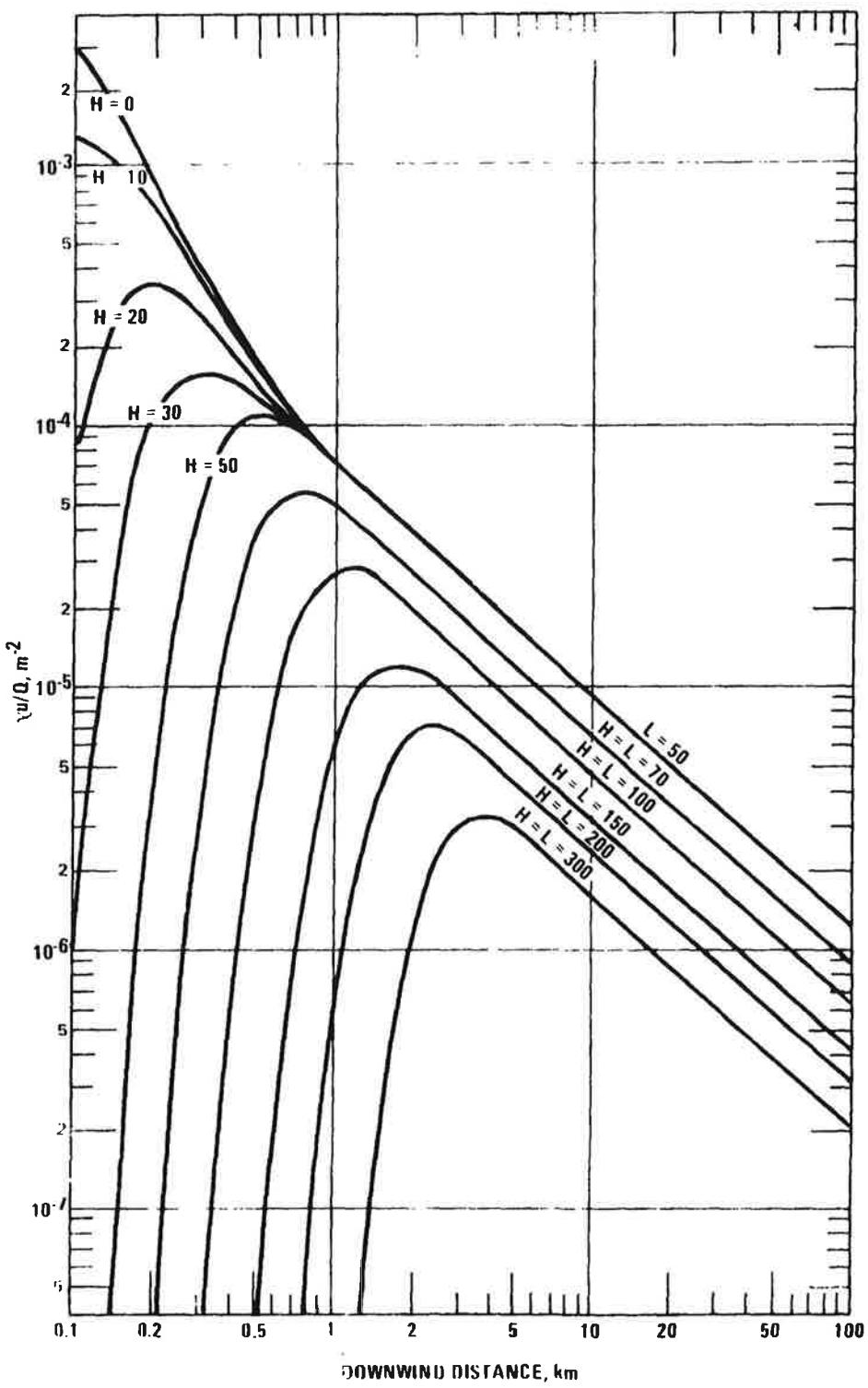


Figure 4.8. Stability class C, rural terrain $\chi u / Q$ versus distance for various plume heights (H), assuming very restrictive mixing heights (L): $L = 50$ m for $H < 50$ m, $L = H$ for $H \geq 50$ m

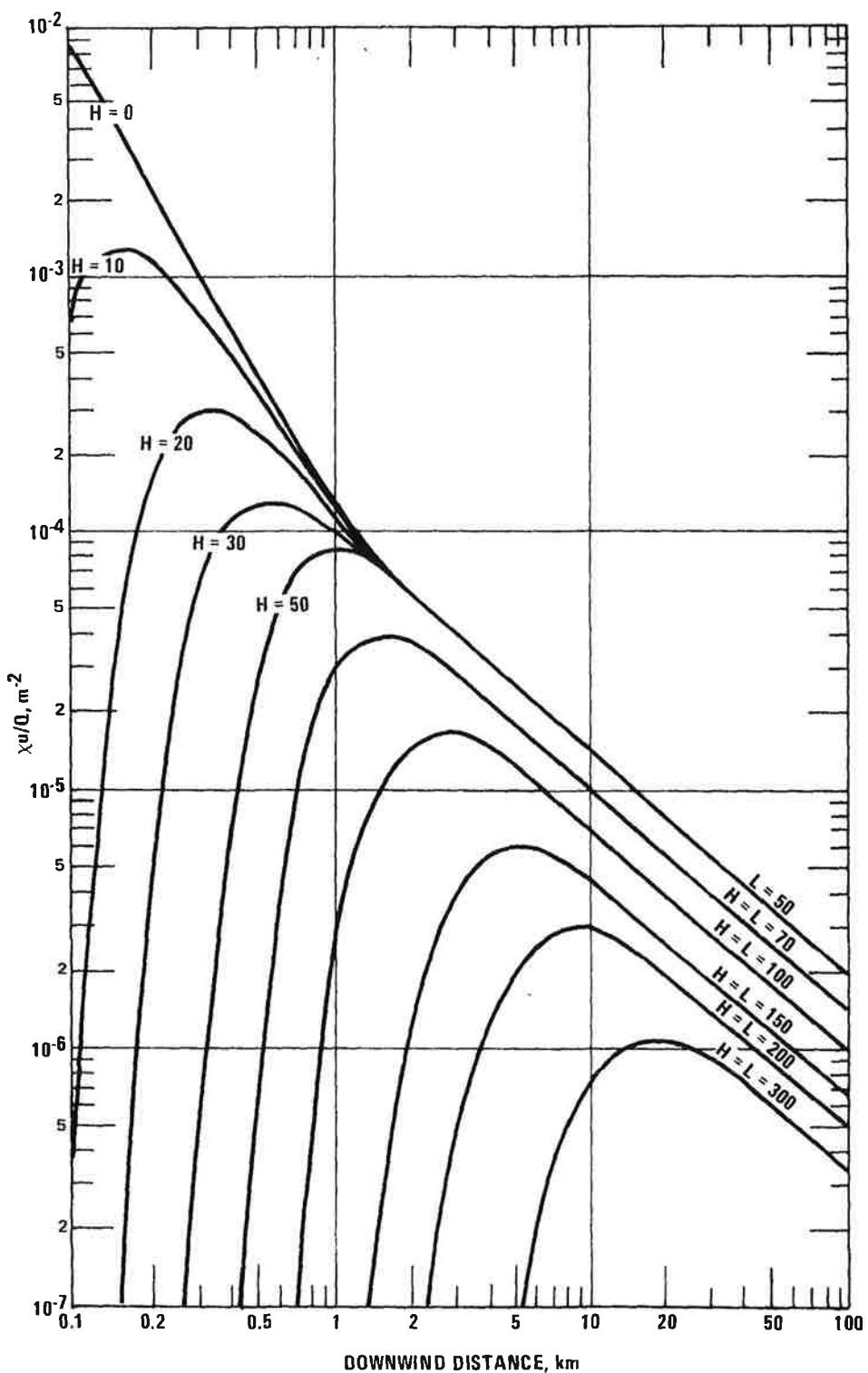


Figure 4-9. Stability class D; rural terrain $\chi u/Q$ versus distance for various plume heights (H), assuming very restrictive mixing heights (L): $L = 50$ m for $H \leq 50$ m; $L = H$ for $H > 50$ m.

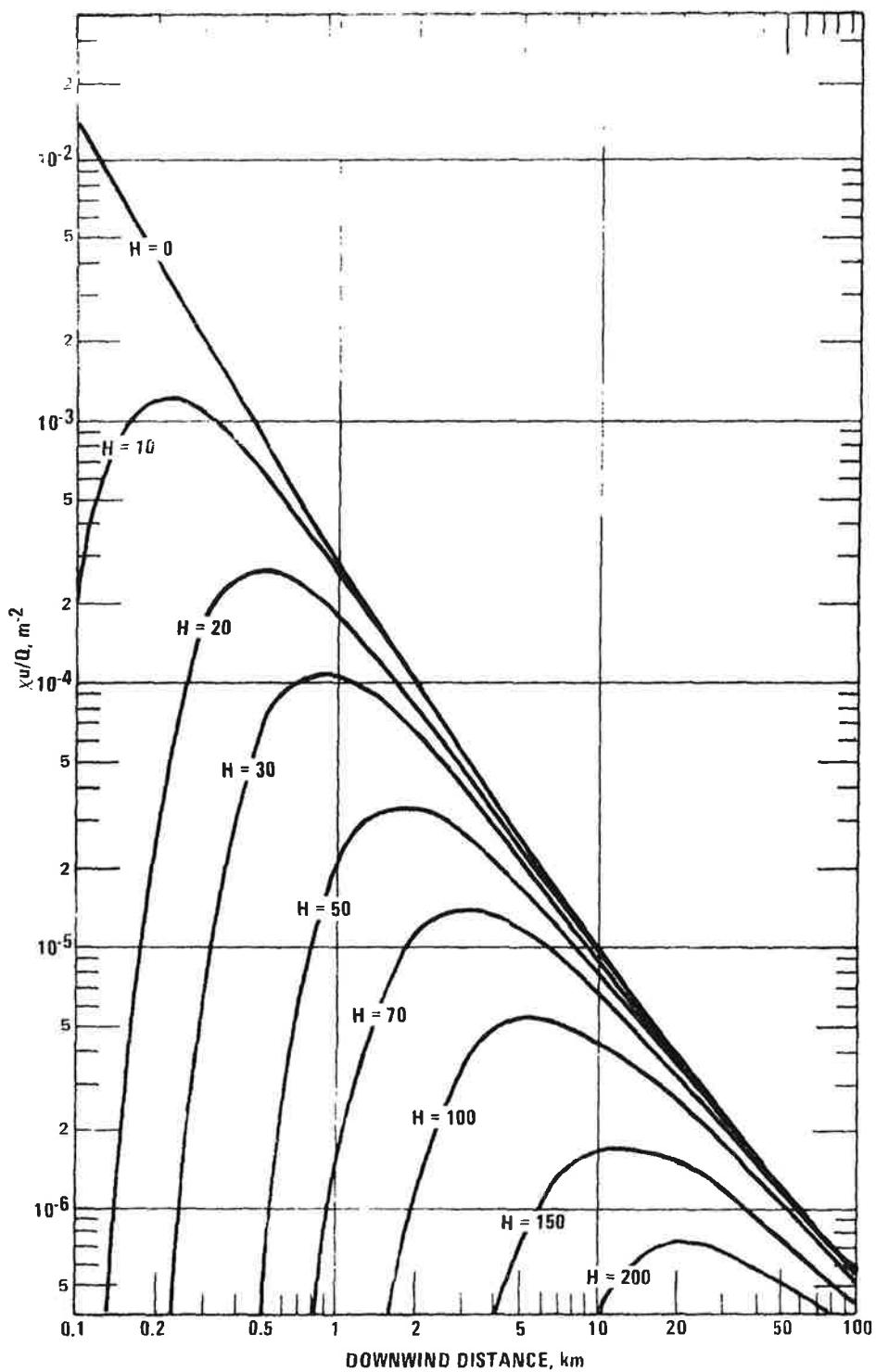


Figure 4-10. Stability class E; rural terrain χ_u/Q versus distance for various plume heights (H), assuming very restrictive mixing heights (L): $L = 50$ m for $H \leq 50$ m, $L = H$ for $H > 50$ m.

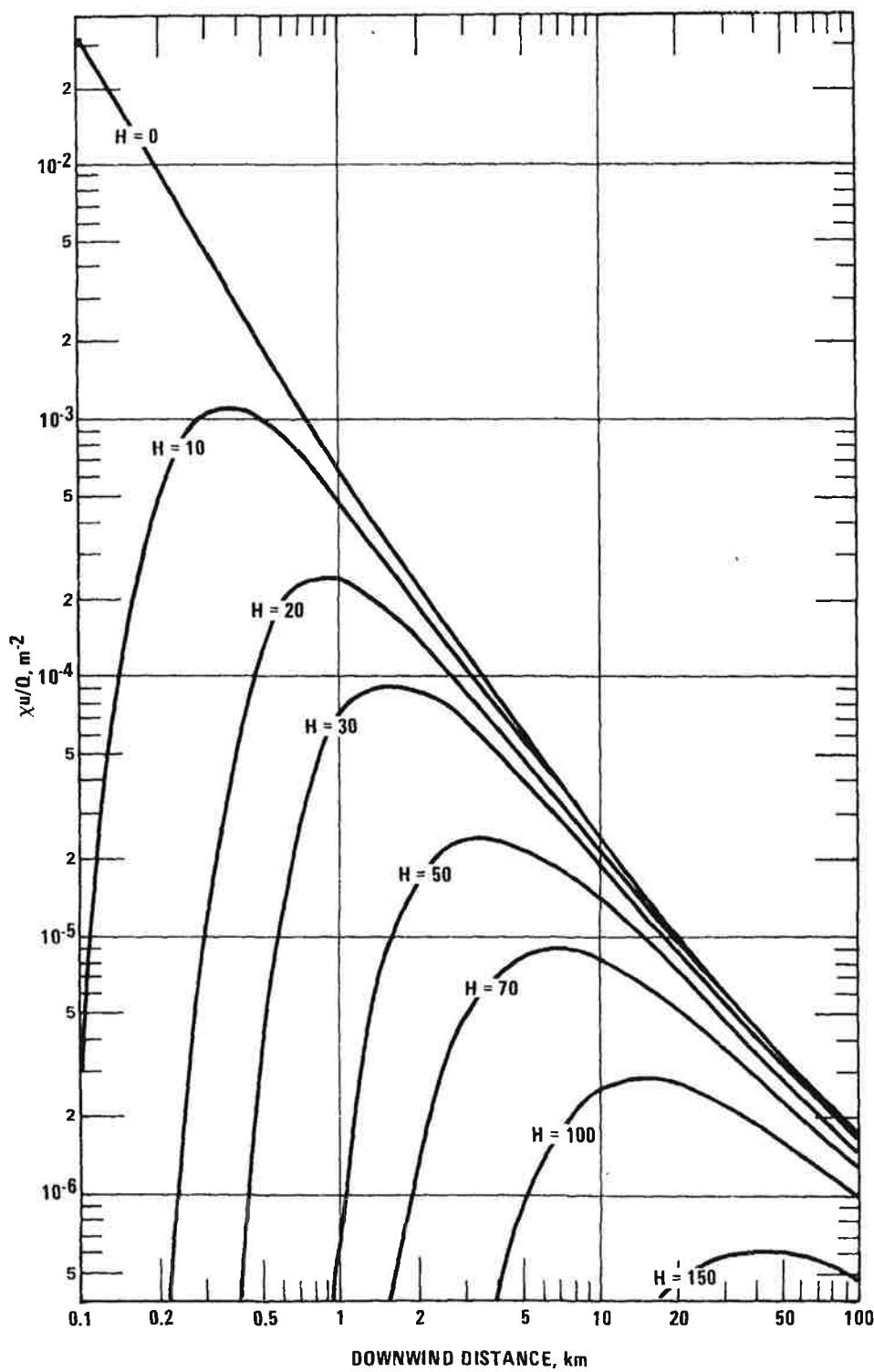


Figure 4-11. Stability class F; rural terrain $\chi u / Q$ versus distance for various plume heights (H), assuming very restrictive mixing heights (L): $L = 50$ m for $H \leq 50$ m; $L = H$ for $H > 50$ m.

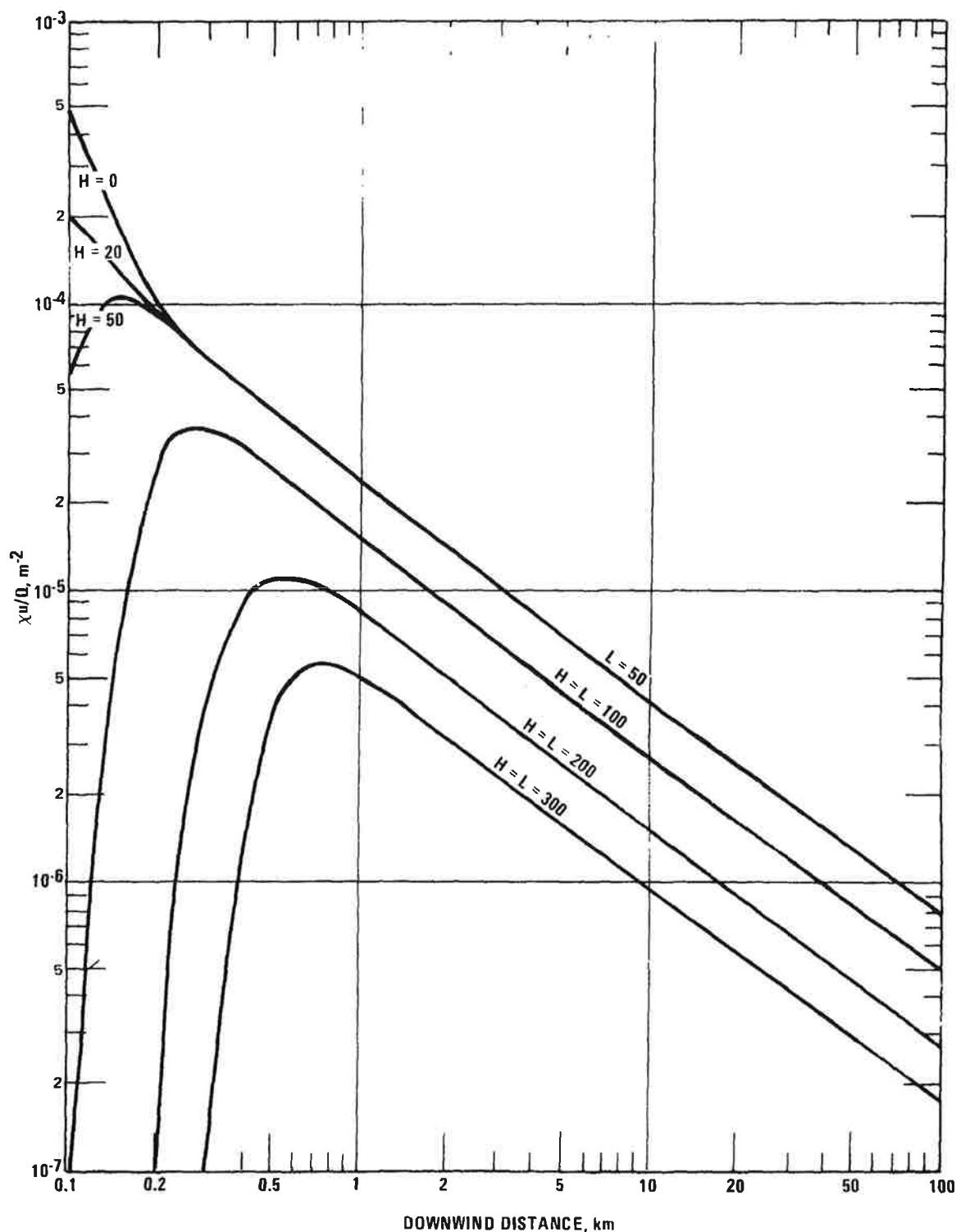


Figure 4-12. Stability classes A and B; urban terrain $\chi u / Q$ versus distance for various plume heights (H), assuming very restrictive mixing heights (L): $L = 50$ m for $H \leq 50$ m; $L = H$ for $H > 50$ m.³²

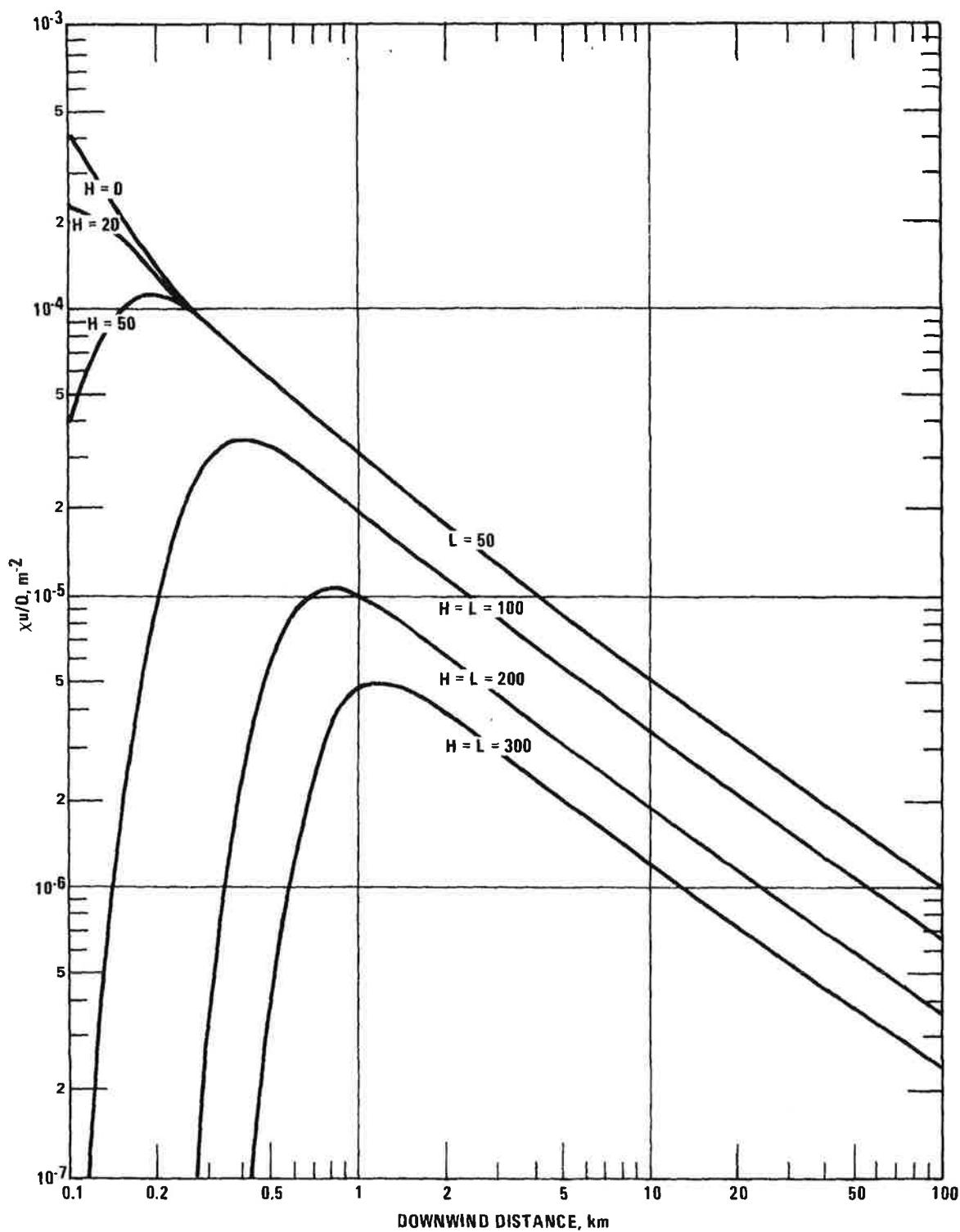


Figure 4-13. Stability class C; urban terrain $\chi u / Q$ versus distance for various plume heights (H), assuming very restrictive mixing heights (L): $L = 50 \text{ m}$ for $H \leq 50 \text{ m}$; $L = H$ for $H > 50 \text{ m}$.³²

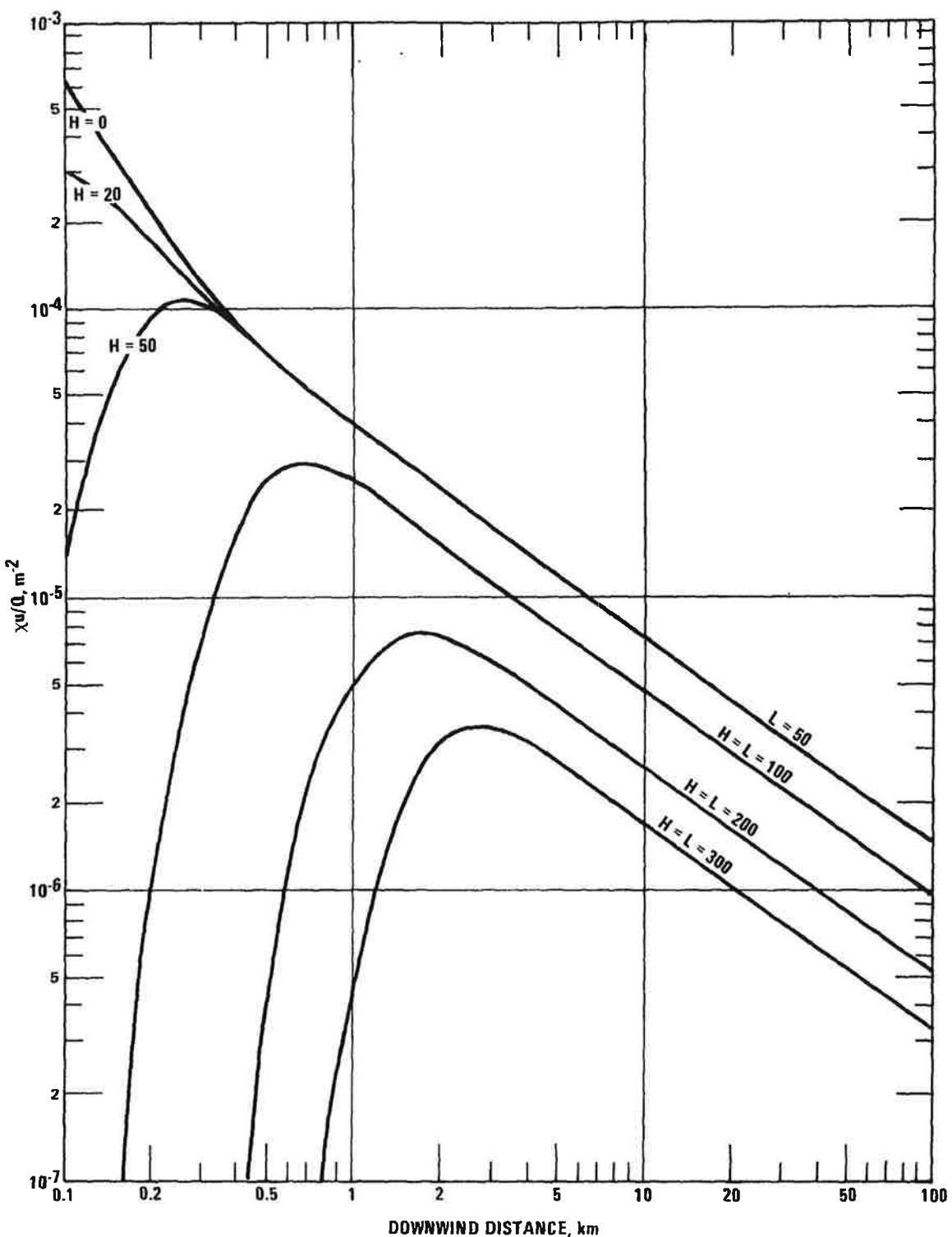


Figure 4-14. Stability class D; urban terrain $\chi u / Q$ versus distance for various plume heights (H), assuming very restrictive mixing heights (L): $L = 50 \text{ m}$ for $H \leq 50 \text{ m}$; $L = H$ for $H > 50 \text{ m}$.³²

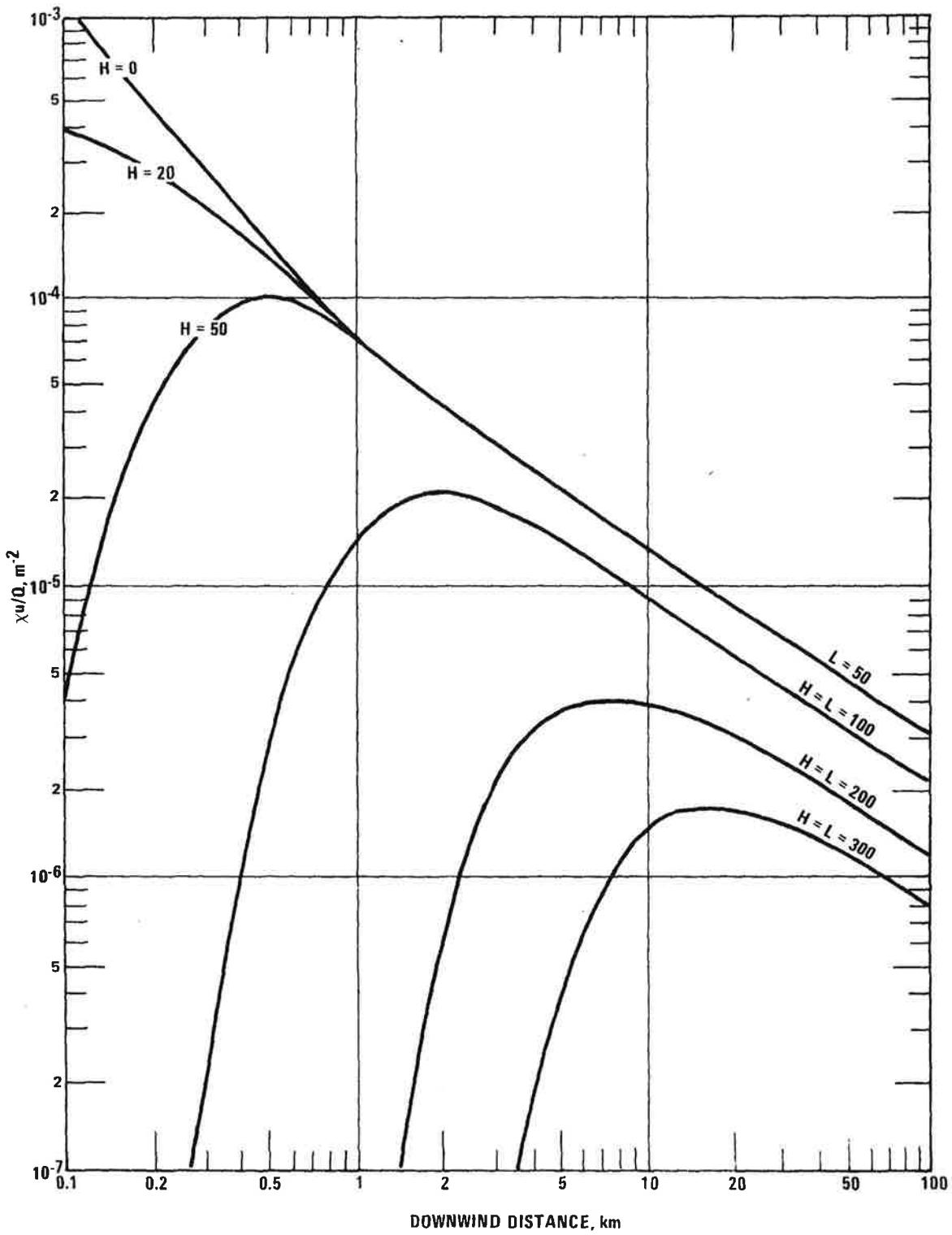


Figure 4-15. Stability class E; urban terrain $\chi u/Q$ versus distance for various plume heights (H), assuming very restrictive mixing heights (L): $L = 50$ m for $H \leq 50$ m; $L = H$ for $H > 50$ m.³²

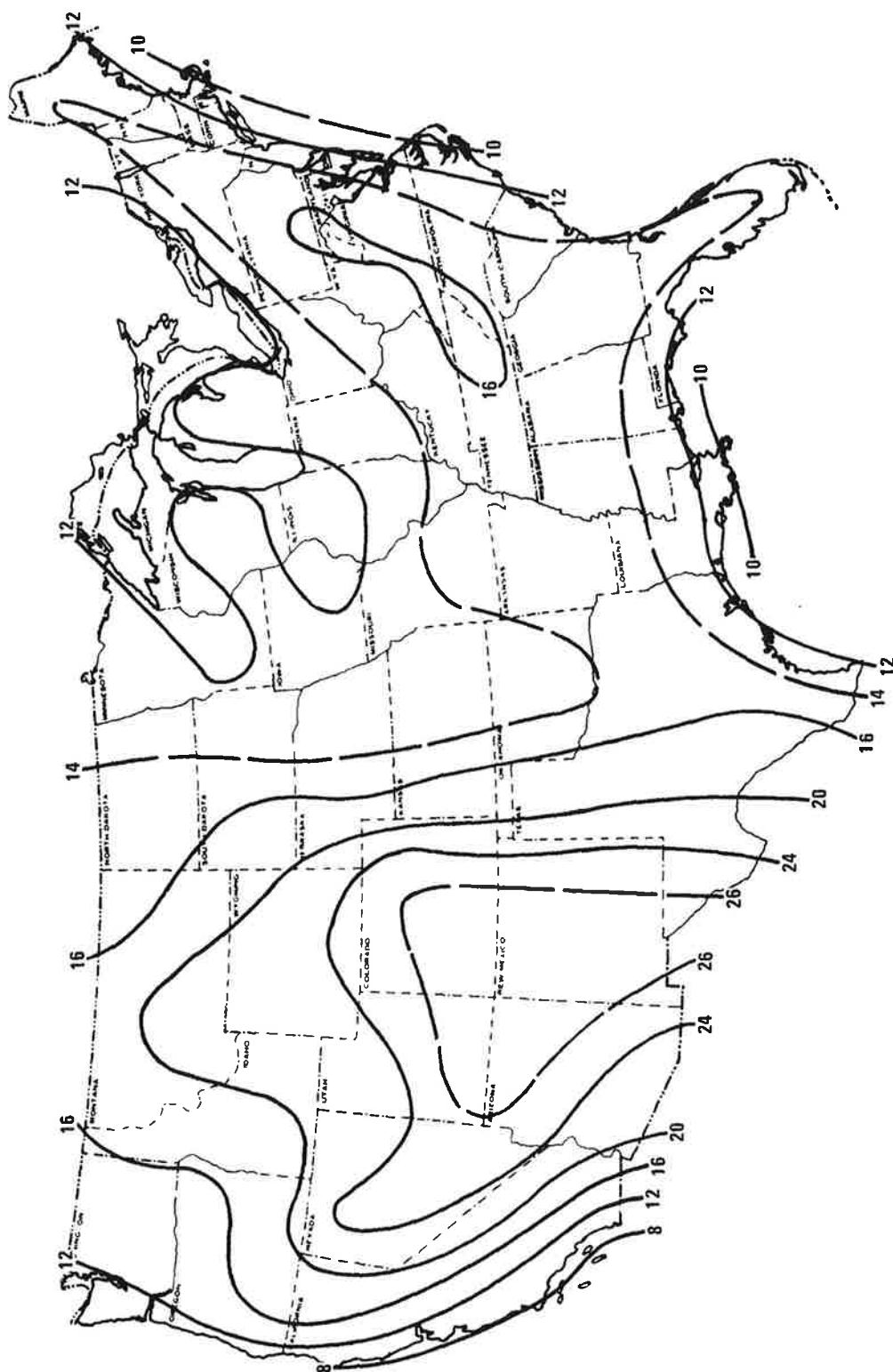


Figure 4-16. Isopleths (hundreds of meters) of mean annual afternoon mixing heights 19.



Figure 4-17. Isopleths (hundreds of meters) of mean annual morning mixing heights 19.

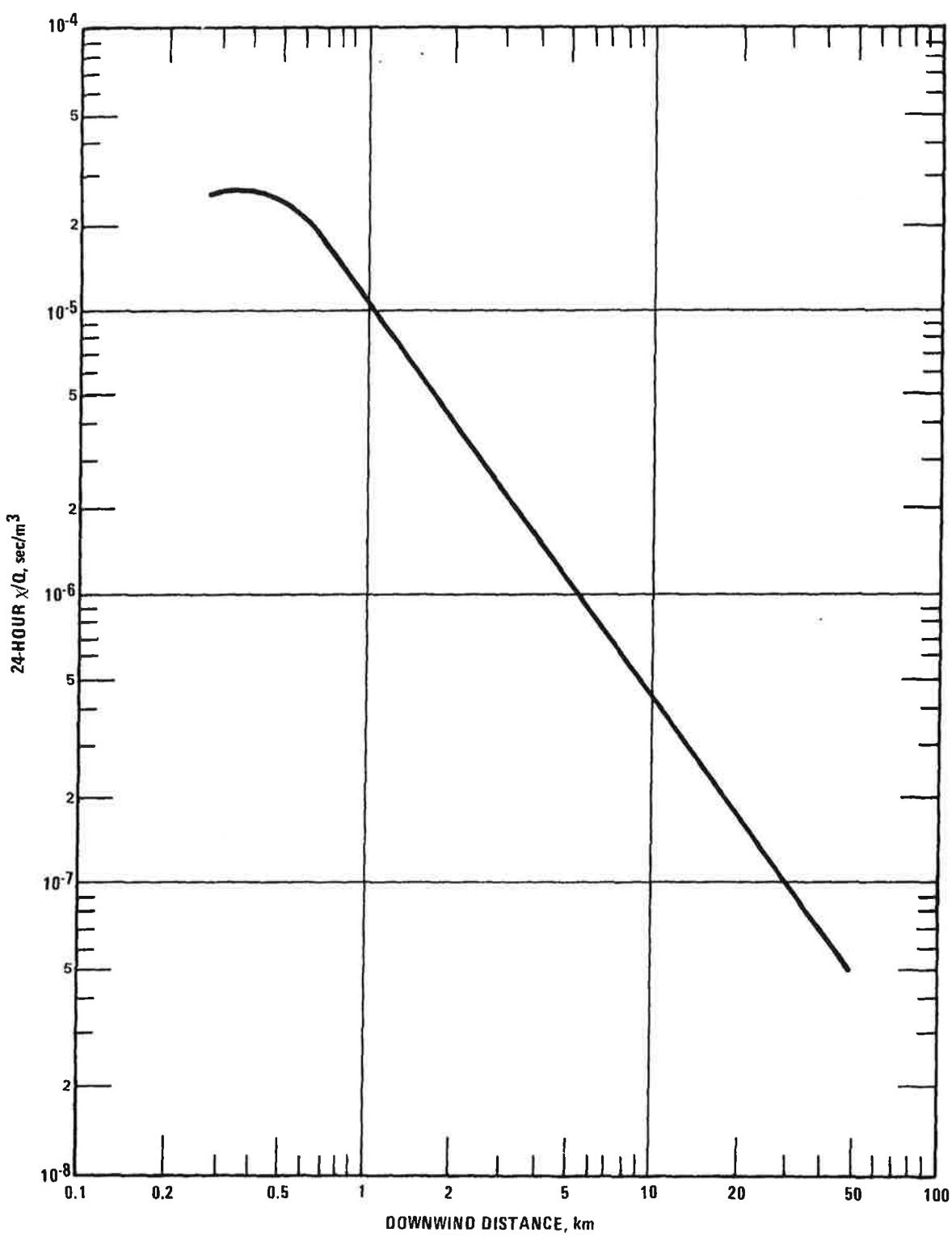


Figure 4-18. 24-hour χ/Q versus downwind distance, obtained from the Valley Model³⁰. Assumptions include stability class F, a wind speed of 2.5 m/sec, and plume height 10 meters above terrain.

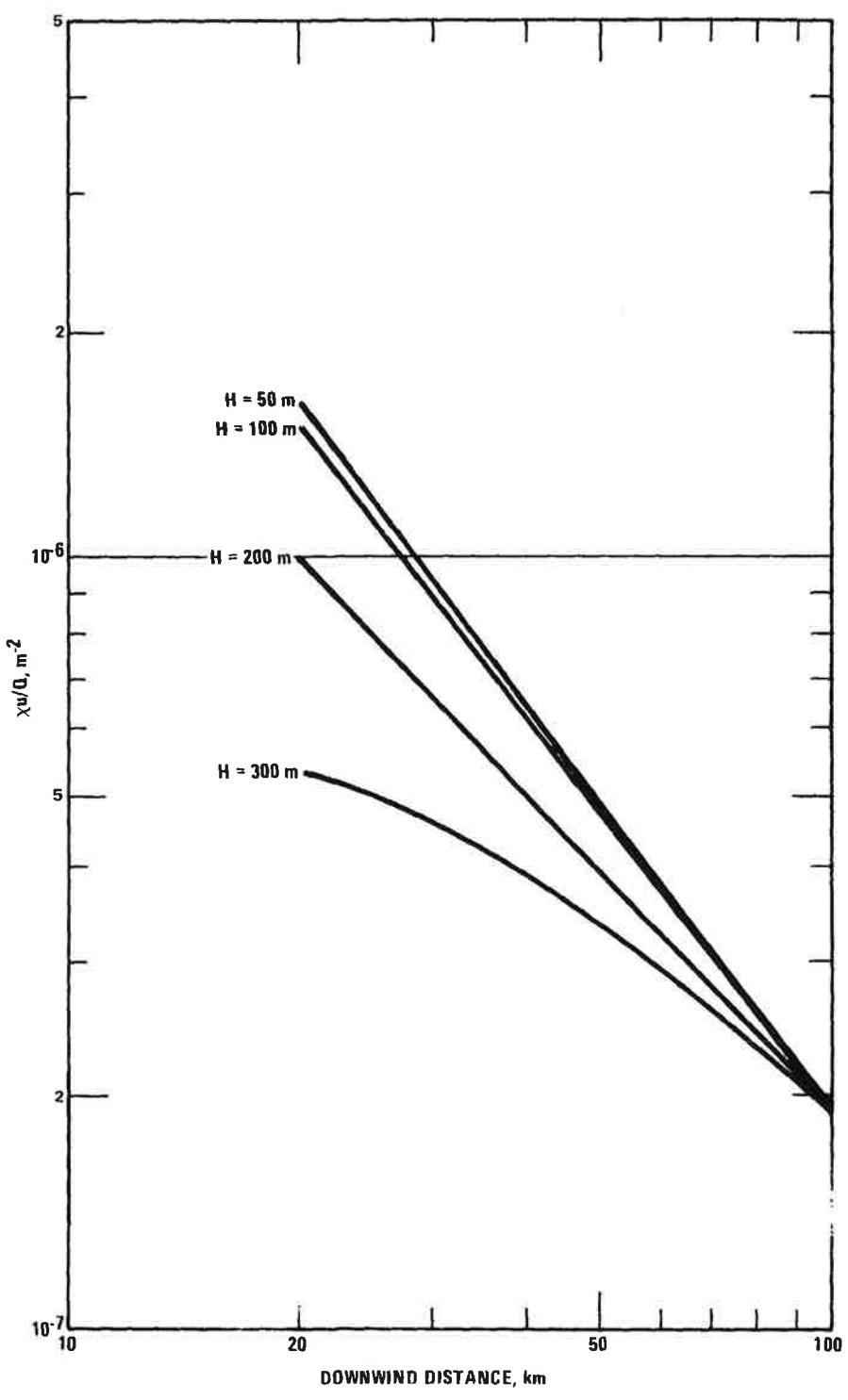


Figure 4-19. Maximum χ_u/Q as a function of downwind distance and plume height (H), assuming a mixing height of 500 meters; D stability.

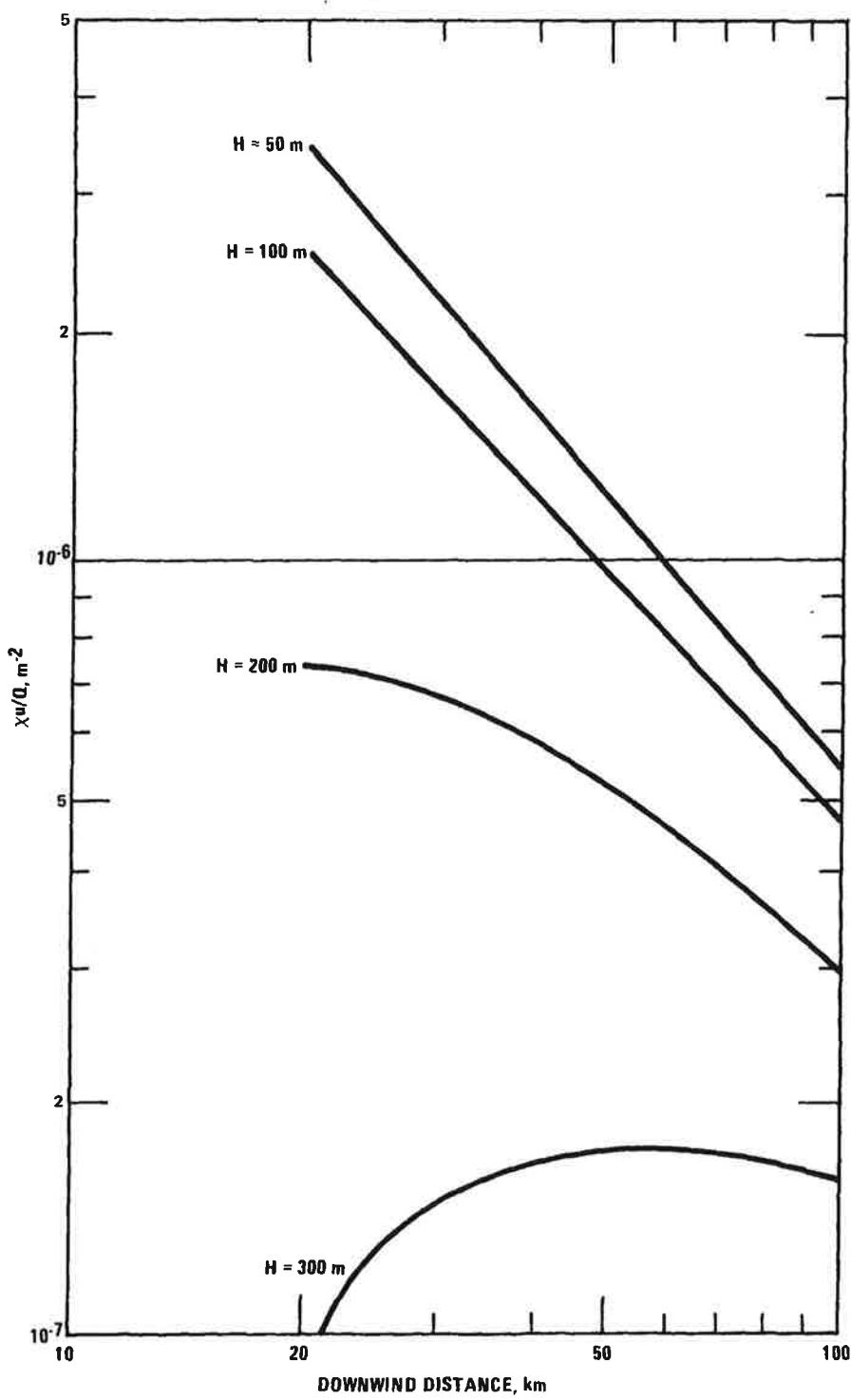


Figure 4-20. Maximum $\chi u/Q$ as a function of downwind distance and plume height (H); E stability.

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APPENDIX A

UNAMAP DISPERSION MODELS

Since May 1973 the Meteorology and Assessment Division, Environmental Protection Agency, Research Triangle Park, North Carolina, has made six air quality simulation models available to those wanting to make dispersion estimates. These six models are collectively referred to as UNAMAP (Users' Network for Applied Modeling of Air Pollution). Brief abstracts of the six models are enclosed. Publications related to these models are listed on the enclosed UNAMAP Reference sheet. Most of these publications are available from NTIS.

In addition to making these models available to EPA users on the UNIVAC 1110 in Research Triangle Park, the UNAMAP models are available in two ways:

(1) The UNAMAP models can be executed on Computer Science Corporation's INFONET. Users must establish accounts with CSC and are charged according to the services provided. Users are linked to the computer via telephone lines. Users interested in access to UNAMAP by this method should contact the INFONET Customer Service Representative at the nearest Computer Sciences Corporation Office. The principal advantage of accessing UNAMAP in this way is relatively rapid access to changes or additions to UNAMAP. CSC is making some changes to the operation of UNAMAP on INFONET in order to ensure that updates reach each customer quickly.

(2) The UNAMAP models are available on magnetic tape from NTIS. The tape record mode is 9 track, 800 bits per inch, EBCDIC code, odd parity. Physical records each contain 10 logical records in card image format (that is, 80 byte logical records; 800 byte block size). As an

option NTIS can copy the tape to 7 track (556 or 800 bpi) BCD format. The price per tape is \$175.00 (\$219.00 - foreign orders). When ordering, specify the desired format as mentioned above. The tape identification should be specified as follows:

NTIS Accession No. PB 229-771, Users Network for Applied Modeling of Air Pollution (UNAMAP)

Until January 1975, the first version of this tape containing interactive versions of the six UNAMAP models was sold. In January 1975, this original tape was replaced with version 2 of this tape. The new tape contains batch versions and test data for all six models and interactive versions of PTMAX, PTDIS, PTMTP, and HIWAY. The principal reason for the change was the availability of a new version of HIWAY. Persons ordering PB 229-771 after about February 1, 1975, should have received version 2. If your tape is version 2 you will have version 74333 in your HIWAY program source listing. For purchasers of the version 1 tape, a 'Change Tape for UNAMAP', PB 240-273 is available for \$97.50 (\$122.50-foreign orders). A list of purchasers of the tape that fill in the registration form accompanying the tape is maintained, so that additional information can be furnished to them.

UNAMAP MODEL ABSTRACTS

APRAC Stanford Research Institute's urban carbon monoxide model. Computes hourly averages for any urban location. Requires an extensive traffic inventory for the city of interest. Requirements and technical details are documented in "User's Manual for the APRAC-1A Urban Diffusion Model Computer Program" which is available from NTIS (accession number PB 213-091, \$5.25).

- HIWAY An interactive program which computes the hourly concentrations of non-reactive pollutants downwind of roadways. It is applicable for uniform wind conditions and level terrain. Although best suited for at-grade highways, it can also be applied to depressed highways (cut sections). The "User's Guide for HIWAY: A Highway Air Pollution Model," is available from EPA as EPA-650/4-74-008 and from NTIS (accession number PB 239-944/AS, \$4.25).
- CDM The Climatological Dispersion Model determines long term (seasonal or annual) quasi-stable pollutant concentrations at any ground level receptor using average emission rates from point and area sources and a joint frequency distribution of wind direction, wind speed, and stability for the same period. The "User's Guide for the Climatological Dispersion Model" is available from EPA as EPA-R4-73-024 and from NTIS (accession number PB 227-346-AS, \$4.75).
- Three Point Source Models - The three following point source models use Briggs plume rise methods and Pasquill-Gifford dispersion methods as given in EPA's AP-26, "Workbook of Atmospheric Dispersion Estimates," to estimate hourly concentrations for stable pollutants. A draft users' guide for these three models is available from the Environmental Applications Branch, Meteorology and Assessment Division, Mail Drop 80, EPA, Research Triangle Park, N.C. 27711.
- PTMAX An interactive program that performs an analysis of the maximum short term concentrations from a single point source as a function of stability and wind speed. The final plume height is used for each computation.
- PTDIS An interactive program that estimates short-term concentrations directly downwind of a point source at distances specified by the user. The effect of limiting vertical dispersion by a mixing height can be included and gradual plume rise to the point of final rise is also considered. An option allows the calculation of isopleth half-widths for specific concentrations at each downwind distance.
- PTMTP An interactive program that estimates for a number of arbitrarily located receptor points at or above ground-level, the concentration from a number of point sources. Plume rise is determined for each source. Downwind and crosswind distances are determined for each source-receptor pair. Concentrations at a receptor from various sources are assumed additive. Hourly meteorological data are used; both hourly concentrations and averages over any averaging time from one to 24 hours can be obtained.

UNAMAP MODEL REFERENCES

- APRAC User's Manual for the APRAC-1A Urban Diffusion Model Computer Program (available from NTIS, accession number PB 213-091. \$5.25 per paper copy, \$2.25 for microfiche.) [Additional information is available on APRAC from:
A Practical, Multipurpose Urban Diffusion Model for Carbon Monoxide (NTIS accession number PB 196-003)
Field Study for Initial Evaluation of an Urban Diffusion Model for Carbon Monoxide (NTIS accession number PB 203-469)
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16. ABSTRACT This document is a revision of the original Volume 10 (EPA-450/4-74-011: "Reviewing New Stationary Sources") of the EPA Guidelines for Air Quality Maintenance Planning and Analysis. It provides basic modeling techniques for estimating the air quality impact of new (proposed) stationary sources. The revision is in a more readily useable format and incorporates changes and additions to the technical approach. Also, a simple screening procedure has been added. The techniques are applicable to chemically stable, gaseous or fine particulate pollutants. An important advantage of the technique is that a sophisticated computer is not required. A pocket or desk calculator will generally suffice.		
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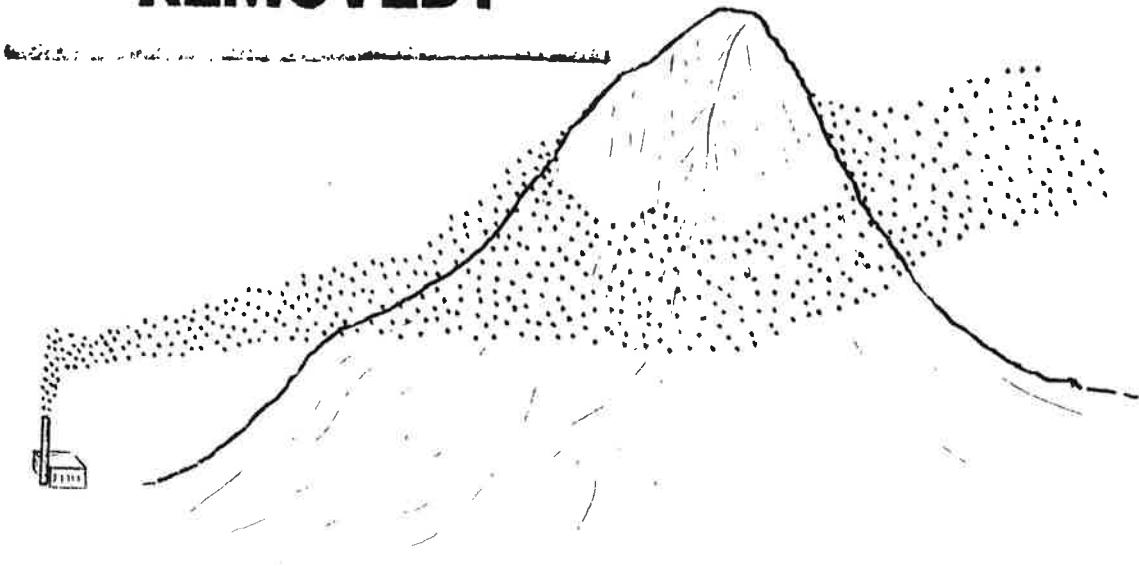
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VALLEY MODEL USER'S GUIDE

by

Edward W. Burt

Monitoring and Data Analysis Division
Source Receptor Analysis Branch

U S ENVIRONMENTAL PROTECTION AGENCY

Office of Air and Waste Management
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

September 1977

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The author, Edward W. Burt, is on assignment to the Environmental Protection Agency from the National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

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PREFACE

This publication contains information on the techniques and applications of the computer program for the Valley Model which is based on a steady-state, univariate Gaussian formulation. It fulfills the need for a formal discussion to replace a very brief description that has received wide distribution.

The last previous version of the computer code was designated C9M3D. For stable atmospheric conditions the present version provides the same results, but can result in significantly greater concentrations for the limited mixing situation because it uses the multiple-reflection formula of Hales-Bierly-Hewson. Version C9M3D used the interpolation technique of Turner as described in his Workbook of Atmospheric Dispersion Estimates.

The Valley Model is one of the atmospheric dispersion models on the User's Network for Applied Modeling of Air Pollution (UNAMAP) system. The UNAMAP system may be purchased on magnetic tape from NTIS for use on the user's computer system, or may be accessed through phone lines and time-share computer terminals. For information on accessing UNAMAP contact: Chief, Data Management Section, Meteorology and Assessment Division, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

Although attempts are made to thoroughly check out computer programs with a wide variety of input data, errors are occasionally found. In case there is a need to correct, revise or update this model, revisions will be distributed to those who complete and return the mailing form on page v. A user can be assured that the latest version of the Valley Model is on the UNAMAP system.

Comments and suggestions regarding this publication should be directed to: Chief, Source Receptor Analysis Branch, Monitoring and Data Analysis Division (MD-14), EPA, Research Triangle Park, NC 27711. However, technical questions regarding execution of the model may be handled by telephone call to the Chief, Modeling Support Section, Source Receptor Analysis Branch in Durham, NC at 919-541-5335 or, using FTS, 629-5335.

ACKNOWLEDGMENTS

Were it not for the technical and administrative support of Mr. Herschel H. Slater, the Valley Model might not be in use today. His efforts under intensive and extensive pressures have provided a basis for improving the air quality in many areas of our country. Messrs. Jerome B. Mersch, Herschel W. Rorex, and David H. Starr contributed to the programming aspects, and largely prepared Section 4. Mr. Donald Henderson, EPA Regional Meteorologist, Denver, provided many useful comments which have improved the clarity and usefulness of this report. This report and a myriad of communications regarding the Valley Model have been typed by Mrs. Barbara M. Stroud; her timely and congenial assistance in these matters over the past several years is greatly appreciated.

Chief, Environmental Applications Branch
Meteorology and Assessment Division (MD-80)
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711

I would like to receive future revisions to the *Valley Model User's Guide*.

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1. MODEL OVERVIEW

1.1 INTRODUCTION

The Valley Model is an analytical technique whose primary use is for estimating the upper limits of 24-hour average pollutant concentrations due to isolated sources in rural, complex terrain. Options are provided which allow multiple sources, flat terrain, urban areas, and long-term averages to be considered also. This manual formally documents the Valley Model and supercedes a brief description of earlier versions which received wide distribution.

A historical overview on the use of Valley and the scope and general data requirements of this model are included in the remainder of Section 1. The assumptions and mathematical formulations are given in Section 2. Specific data requirements are discussed in Section 3, with input format specifications given in Section 4. Four appendices provide an evaluation of model accuracy, a full test run, a program listing, and a simple data set for testing the runstream deck and for obtaining base maps.

1.2 HISTORICAL OVERVIEW

The large non-ferrous smelters in the West posed a particularly difficult problem when State Implementation Plans were being evaluated in 1972 and thereafter. They were known to be large emitters of sulfur dioxide and particulate matter and suspected to be substantial emitters of metals of some toxicity (e.g., arsenic, lead, mercury). Their rates of emissions were not well established. Contaminants were emitted from different processes in different ways at different heights and at different times. The smelters are generally isolated and located in areas of complex mountainous terrain. Their effluents are dispersed and transported initially, at least, by local wind systems determined largely by the orientation and configuration of the nearby terrain, atmospheric radiation (which is a function of time of day and season of the year) and the synoptic weather situation. None of the smelter locations had meteorological data available which was adequately representative of the dispersion and transport factors. Finally, ambient air quality data which were representative of the impact of the smelter on the surrounding air environment did not exist.

Meteorologists attached to the Office of Air Quality Planning and Standards were asked to estimate the likely impact of the smelters on the surroundings. Several had a number of years experience estimating the impact of point sources on ambient air quality, forecasting the weather in the mountainous west, and conducting field sampling studies around large point sources, some of which were in complex terrain. A concensus of their judgments based on their considerable experience and training in dispersion meteorology indicated that a smelter located

in proximity to terrain features in the western mountains would likely cause frequent and greatest threats to an ambient air quality standard under a particular set of meteorological circumstances. The threat was considered to be greatest with light winds, but not calms, when strong inversions with bases at the ground-level, or if elevated, below the crests of nearby ridges, were experienced for several hours of the day. Under these conditions, plumes from smelters were observed to level-off shortly above the stack top and flow in close proximity to elevated terrain in ribbons or sheets. The horizontal spread of the plumes consistently far exceeded the vertical spread. It was anticipated that in complex terrain areas, pollutants emitted from smelter stacks must cause highest ambient 3- to 24-hour average concentrations on the elevated terrain.

Due to large uncertainties in the magnitude, height and timing of emissions, and in the representativeness of the existing meteorological data, it was judged that the threat to the standards could be best represented by an analytical routine that would conveniently calculate a 24-hour concentration on elevated terrain during stable atmospheric conditions with light winds. The algorithm was expected to represent a fanning plume which affects an elevated terrain feature, and to provide a reasonable estimate of the second highest 24-hour concentration that would be experienced during a year.

Careful review of upper air summaries of wind speeds and stability aloft for the western portion of the U.S. provided a basis for the choice of weather parameters. The Briggs plume rise calculations showed

that the heights of the smelter plumes in stable air would likely not exceed 400 m above stack base for the conditions evaluated. Wind speeds of 2.5 m/s, ± 1 m/s, occurred at 300 m above the ground one-third or more of the time at most western upper air observing sites.

The Valley Model does not provide a rigorous mathematical description of the physical circumstances which pertain to flow about a terrain feature. It is an algorithm which describes and associates the meteorological parameters that often prevail when high concentrations are anticipated on elevated terrain.

It is imperative that the user of any model which is purported to estimate the greatest concentrations due to an elevated source in complex terrain realizes that observed meteorological data suitable for calculating these singular events generally do not exist. Hence, the user must generate the meteorological conditions to be used as input to obtain the solution. Needless to say, the user can usually assume a set of reasonably realistic meteorological conditions which will duplicate any observed concentration due to a point source. The real test of a simulation model is an evaluation for several different locations using objective meteorological input data, such as is done in the evaluation herein of the Valley Model (see Appendix D).

1.3 SCOPE OF THE MODEL

The Valley Model is an algorithm which produces output to be used in evaluating the impact of a stationary source or sources on air

quality at ground level. The applicability of the model is bounded by the following operational characteristics:

(1) It is generally recognized that short-term air quality standards are the most difficult for a single source to meet in an area of complex terrain. Assuming constant emissions from an isolated, elevated point source, if the short-term standard is not exceeded then the long-term standard is unlikely to be exceeded by the single facility. Valley was developed with this in mind. The treatment by Valley of plumes in rural, complex terrain was specifically intended for a 24-hour period, a single facility of small areal extent, and particularly for stable conditions which are generally conceded to be the worst situation in complex terrain. However, the program may be executed in the long-term mode for a complex terrain situation. An urban mode is optional, wherein terrain is considered to be flat. Multiple facilities may be evaluated during any run if results are carefully interpreted.

(2) Source emission data is input as an average per source for the period of concern. A user's option allows for a 24-hour analysis or a long-term analysis (e.g., seasonal or annual). The emission and meteorological data are assumed to be uncorrelated with one another when multiple meteorological conditions are input.

(3) The source data array is dimensioned to accept a maximum of 50 sources. Sources may be "point" or "area," and may be input in any order. The point sources may include several specific points of emission from an industrial or residential area. Often, however, emissions from

individual chimneys in residential areas, or specific vents in industrial facilities, cannot be defined except as an average of the multiple emission points. In such cases, the point sources in an area may be grouped for analysis as one or more square area sources.

(4) The computer simulation averages the impact of any non-reactive gaseous, liquid, or solid pollutant for which the deposition rate may be considered negligible. However, a half-life option is available for any pollutant whose concentration decreases exponentially as a function of time (i.e., aside from the decrease due to dispersion).

(5) The program specifies an array of 112 receptors, fixed by the program in a grid internal to the program. The user preassigns the scale of the region to be depicted on the output maps.

(6) The potential ranges of most of the input data are so large as to preclude any meaningful programmed validity checks. For this reason most input data are reproduced on the concentration maps, providing an invaluable aid for post-analysis data verification. Programmed format checks detect and indicate omitted and most erroneously placed input data records; however, they will not detect erroneous ordering within a discrete data subset such as the stability-wind rose (STAR) data.

1.4 GENERAL DATA REQUIREMENTS

General data requirements for the Valley Model are indicated in this section; specifics are discussed in Section 3. It should be noted that data sets prepared for earlier versions of Valley require one simple change to be compatible with the computer program documented in this guide (see MWT under Section 3.1.4).

1.4.1 Meteorological Data

Meteorological data have an important effect on the simulated transport and dispersion of air pollutants. The data required are:

- STABILITY-WIND SUMMARY
- AMBIENT TEMPERATURE
- AMBIENT PRESSURE
- MIXING HEIGHT
- MEAN SPEEDS OF THE WIND SPEED CLASSES

The stability-wind data are the frequencies of occurrence of six wind speed classes by 16 wind directions and by six stability categories for the area and time period of concern. These data define the transport and the degree of dispersion of the pollutant. The mixing height determines the depth through which the pollutant may be mixed before being totally reflected downward. Temperature is used in computing plume rise. Pressure and temperature are used in the optional conversion of concentrations to standard conditions of pressure and temperature.

Meteorological data may be acquired from the National Climatic Center (NCC) at Asheville, North Carolina. The Center is operated by the National Oceanic and Atmospheric Administration. The user must determine whether the available data are representative of the area and period of concern. The NCC will supply summaries of long-term stability-wind data (STAR data) and set the charges for its services. The six-stability deck (Pasquill-Gifford stabilities A through F) should be

specified for use with Valley. STAR data which contain the day/night classifications are not appropriate for use with the model. The stability-wind data for 24-hour analyses must be obtained by other means. (see Section 2.2.2).

1.4.2 Receptor Data

A network of 112 receptors is established by the program. The user controls only two factors relative to the network: (1) the geographic spacing of the receptors, through a scaling factor; and (2) the vertical spacing of the receptors through assignment of the terrain elevation at each receptor. These controllable elements are:

- SCALING FACTOR
- GROUND ELEVATION AT RECEPTORS

1.4.3 Source Data

The source data must include some basic information for each source of concern. Each analysis (one run through the program) is restricted to one pollutant. The required source data elements are:

- IDENTIFICATION
- PHYSICAL CHARACTERISTICS OF SOURCE AND EFFLUENT
- HORIZONTAL COORDINATES OF SOURCE
- GROUND ELEVATION AT SOURCE
- EMISSION RATE

The identification elements have no quantitative value, nor do they control any program options. One such element is available to identify each run through the program, and one is available to identify each source evaluated during the run; these elements are printed at appropriate places on the output pages.

1.4.4 Control Parameters

Several options and controls are available to the user to select the analytical techniques and output of the program. These options and controls specify:

- CONCENTRATIONS IN SITU OR AT STANDARD CONDITIONS
- UNITS OF CONCENTRATION
- REPETITION OF SOURCES FOR SUCCESSIVE RUNS
- OUTPUT DEVICE IDENTIFICATION
- URBAN/RURAL ENVIRONMENT
- POLLUTANT HALF-LIFE
- CONCENTRATION AVERAGING TIME
- FORMAT OF STAR DATA
- TYPE OF SOURCE CONTRIBUTION MAPS

2. TECHNICAL DISCUSSION

The basic treatment of dispersion by the Valley Model is quite similar to that of the Air Quality Display Model (AQDM) and the Implementation Planning Program (IPP); see TRW, Inc. (1969, 1970). However, Valley includes modifications to the techniques used in those models. These modifications include (1) a representation of the effect of terrain on ground-level concentrations, (2) plume rise equations from Briggs (1971, 1972); (3) a different treatment of pollutant reflection from inversions aloft; (4) a rural-area option; (5) a short-term option; and (6) printouts of the spatial distribution of concentrations on equal-area maps. Dispersion equations for Valley and discussions of the assumptions made in the model are presented in this section.

2.1 THE DISPERSION EQUATIONS AND SIMULATION OF COMPLEX TERRAIN EFFECTS

The most important aspect of Valley is its treatment of the effects of terrain on concentration. For stable atmospheric conditions, the model assumes that the plume height above stack base remains constant after final plume rise. Thus, as terrain rises the plume approaches the elevated surface; in effect the plume height decreases. Since the terrain elevations may vary from receptor to receptor, an effective plume height must be calculated for each receptor. All concentrations are then estimated as if the receptors were located at actual ground level at the respective geographical locations. However, it is further assumed that the plume centerline comes no closer than 10 m to the

elevated terrain. If the terrain extends above the original plume height, the plume centerline is adjusted so that it remains 10 m above the ground. Any plume height which is initially within 10 m of the ground during stable conditions is assumed to remain at its initial height above ground, regardless of downwind terrain elevations.

The schematic in the lower half of Figure 2-1 illustrates the treatment of an elevated plume that has encountered terrain during stable conditions. The plume is assumed to be deflected upward and to the side (tending to parallel the axis of the ridge, for example). Any increase in concentration that would occur on the sides of the terrain obstacle due to lateral deflection of the plume beyond the sector of immediate concern is ignored. Therefore, conservation of mass is not accomplished.

Deflection of the plume by terrain during stable conditions is simulated through the attenuation of concentration with height in the sector of immediate concern. This is accomplished by applying a factor based upon the relative elevations of the ground at the receptor and of the centerline of the undisturbed plume, h_0 . The factor has a value of unity at and below the elevation of the plume centerline in free air prior to encountering terrain effects, but decreases linearly with increasing height (from plume level) to zero at and above 400 m above the undisturbed plume centerline. The attenuation should not be inferred to represent pollutant decay or penetration into the terrain. This is an empirical scheme intended as a general representation of the blocking

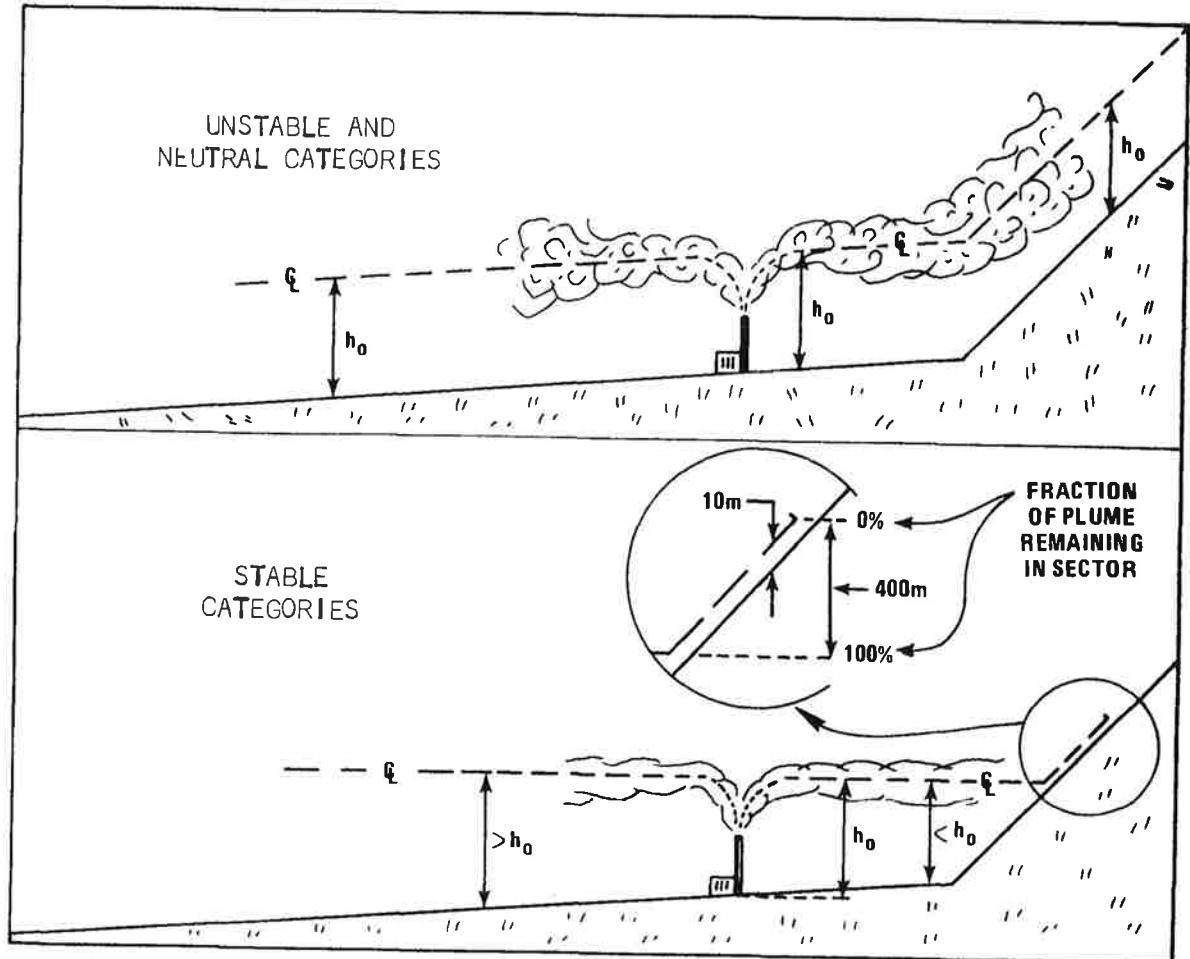


Figure 2-1. Depiction of Plume Height in Complex Terrain, as in the Valley Model. h_0 is the Height of the Plume at Final Rise Above Ground for the Unstable and Neutral Cases and Above Stack Base for the Stable Cases. Plume are Shown for Flows Toward and Away from Elevated Terrain.

of air flow by significant terrain features. Therefore, in case of such plume impingement no attempt should be made to utilize the concentrations that will be calculated for the leeward side of a substantial hill or ridge, because the computer program has no memory regarding upwind terrain features.

For unstable/neutral atmospheric stability conditions, the plume is assumed to maintain a constant height above the terrain. The plume parallels the terrain feature by increasing and decreasing its effective height relative to the stack base; this is, in effect, a flat-plane situation as can be visualized from the upper sketch of Figure 2-1. This technique may lead to underestimates of concentration in complex terrain.

The dispersion equations used in Valley are presented below; subsequent sections provide details of the various factors and terms, and their treatment in Valley. The equations have been developed from the familiar bivariate Gaussian formulation which describes the dispersion of a pollutant from a point source (see, for example, Equation 3.1 of Turner (1970)).

One of the two dispersion equations used in the Valley Model is:

$$x(x,y,z;h,L) = 2.03 \cdot 10^6 Q K ((c-y)/c) ((401-D)/400) C \\ \cdot \sum_{N=-J}^{+J} \exp \left\{ -0.5 \left[(H+2 N L)/\sigma_z \right]^2 \right\} \\ \cdot \left\{ \exp \left[-(0.693 x_p)/(3600 u I) \right] \right\} / (\sigma_z u x) \quad (2.1)$$

where only Q and u are input by the user, and:

x is concentration in micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) or parts per million (ppm), always calculated at ground level (see MWT, Section 3.1.4).

x is the source-receptor distance (m), as projected on the mean wind vector through the source. For area sources, this is the distance from the receptor to the effective point source. Contributions of a point source to a receptor within 20 m of that source are ignored.

y is the crosswind distance (m) of the receptor from a line parallel to the mean wind drawn through the source; $y \leq c$.

H is plume centerline height (m) above the receptor; the receptor is always at ground level. Plume height h_0 above the stack base is calculated internally, or assigned by the user, and then may be adjusted for terrain elevation at the receptor to provide H. For nonstable conditions, or over flat terrain, $H=h_0$.

L is mixing height (m) above ground; L remains constant, regardless of topography (see Section 2.1.6).

Q is the pollutant emission rate (g/s) of a given source, averaged over the period of concern. If the actual emission rate varies one must consider its correlation with the meteorological conditions specified in the input data.

c is the crosswind arc length of the 22.5° wind sector implicit in this formulation (see Section 2.1.2).

D is receptor elevation minus plume height, each in meters above mean sea level. The D term simulates the stable-case deflection by terrain of the plume from the sector being evaluated.

$$1 \leq D \leq 401 \text{ m } \{\text{stable conditions}\}$$

$$D = 1 \text{ m } \{\text{neutral and unstable conditions}\}$$

C determines the units of x:

$$C = 1 \text{ } \{\text{for } x \text{ in } \mu\text{g}/\text{m}^3; \text{ required for nongaseous pollutants}\}$$

$$C = 0.0831 T/(M P) \text{ } \{\text{for gases only, to obtain } x \text{ in ppm}\}$$

where:

T is ambient air temperature ($^{\circ}$ K).

M is molecular weight of the gas (grams per mole).

P is ambient air pressure (millibars).

K converts concentrations from on-site to standard conditions of temperature and pressure. $K = 1013.2 T/(298 P)$.

|N| represents the number of perfect reflections a parcel of air has undergone before reaching the distance of the receptor (see the next paragraph for a discussion of J).

σ_z is the standard deviation (m) of the vertical (Gaussian) distribution of the pollutant and $\sigma_z = f(x)$ (see Section 2.1.3).

x_p is the distance (m) from the receptor to the point source or to the center of the area source projected to the mean wind direction as was defined for x; for point sources, $x_p = x$.

u is the mean wind speed (m/s) affecting the plume.

I is the half-life (hr), of the pollutant and the exponential containing I is the half-life factor (see Section 2.1.5).

The summation term in Equation 2.1 is a special case of the expression developed by Hales (1956), and independently by Bierly and Hewson (1962), to describe concentrations during conditions of plume trapping (see Section 2.1.6). The limits on N determine the accuracy of the term. In Valley, $J \leq 5$. However, as σ_z becomes large relative to L, this low limit on J can result in serious underestimates of x. The error can be reduced to insignificance by equating J to a large value, but with a corresponding increase in computation time. Fortunately, a simple approximation to Equation 2.1 exists for these conditions; for distances beyond which $\sigma_z = 2 L$ the Valley Model utilizes Equation 5.14 from Turner (1970) in the form:

$$x(x,y,z;h,L) = 2.55 \cdot 10^6 Q K ((c-y)/c) ((401-D)/400) C$$

$$\cdot \{ \exp[-(0.693 x_p)/(3600 u I)] \} / (L u x). \quad (2.1a)$$

This simple equation provides a very good approximation to Equation 2.1 when J is very large and the vertical distribution of pollutants has become virtually homogeneous.

2.1.1 Sector Averaging

The constant 2.03 of Equation 2.1 is comprised of the factors $2/(\sqrt{2\pi} 2 \pi/16)$. This is obtained when the bivariate Gaussian formulation is converted to the cross-sector averaging form for a 22.5° (i.e., $2 \pi/16$) sector. Such conversion results in a uniform concentration across the wind sector at a given distance and height.

2.1.2 Cross-Sector Interpolation

To eliminate unrealistic discontinuities in concentration between sectors, which would result when wind frequencies differ in adjacent sectors, the essentially linear interpolation factor $(c-y)/c$ is utilized, where $y \leq c$. The result for wind in a single sector is that the sector-averaged concentration is decreased from 100 percent of its value at the sector centerline to zero about the centerline of the two adjacent sectors.

2.1.3 Vertical Dispersion Coefficient

The values of σ_z calculated by the program are based on the work of Pasquill (1961) as adapted by Gifford (1961). The σ_z required for each stability category is calculated using:

$$\sigma_z = a \times p^b + d \quad (2.2)$$

where a, b and d values are constants for each stability class within three different distance ranges as shown in Table 2-1.

Stability classes S = 5 and 6 are associated with nighttime, surface inversion conditions, and the σ_z values for these cases are the smallest normally used. However, because of the thermal and mechanical influences of urban areas, the lowest part of the typical urban atmosphere is less stable than its rural counterpart. When the urban option is utilized, the σ_z values for S = 4 are always used when the meteorological criteria indicate S = 5 or 6 (see Section 2.3). The σ_z for stacks less than 50 m high, σ'_z , is calculated via $\sigma'_z = (\sigma_z^2 + SIGI^2)^{1/2}$ to account for surface effects, where $SIGI = (50. - (\text{stack height}))$ within the limits $0 \leq SIGI \leq 30$ m, during $S \leq 4$.

2.1.4 Plume Height

The plume rise equations used in Valley are taken from Briggs (1971, 1972), and are calculated in subroutine BEH072; the formulations are annotated in the listing presented in Appendix B.

TABLE 2-1 Constants Used in Calculating the Vertical
Diffusion Coefficient.

STABILITY =	$A^{(1)}$	$x_p \geq 1000 \text{ m}$				
		B	C	D	E	F
a	.001	.0476	.119	2.61	52.6	33.6
b	1.89	1.11	.915	.45	.15	.14
d	9.6	2.0	0	-25.5	-126.	-75.
STABILITY =	A	$100 \text{ m} \leq x_p < 1000 \text{ m}$				
		B	C	D	E	F
a	.001	.0476	.119	.187	.1345	.362
b	1.89	1.11	.915	.755	.745	.55
d	9.6	2.0	0	-1.4	-1.1	-2.7
STABILITY =	A	$x_p < 100 \text{ m}$				
		B	C	D	E	F
a	.1742	.1426	.1233	.0804	.06	.0434
b	.936	.922	.905	.881	.854	.814
d	0	0	0	0	0	0

(1) Stability A corresponds to $S = 1$, stability B corresponds to $S = 2$, etc.

Plume rise is calculated as a function of stability. However, the user has the option of assigning a fixed plume rise for any source(s). A fixed plume rise is not adjusted for wind speed by Valley; the effective plume height is simply defined as the sum of plume rise and the physical stack height. However, for analyses in complex terrain the plume height may be adjusted for each receptor depending on terrain elevation, as described in Section 2.1. Also, no matter what plume rise is calculated or assigned, maximum plume height is limited to the mixing height in the short-term mode during nonstable conditions (see Section 2.2.2).

2.1.5 Pollutant Decay or Transformation

Through each successive period of travel defined by the half-life, I , the pollutant concentration in a given parcel of air is reduced by 50 percent. This reduction of concentration is due to transformation of the pollutant, and should not be confused with the dilution or diffusion of the pollutant.

2.1.6 Limited Mixing (Plume Trapping)

For $N = 0$ Equation 2.1 accounts for the impact of a pollutant source on a ground-level receptor as though there were no elevated temperature inversion (i.e., no stable layer aloft) in the atmosphere. The sum for all other values of N accounts for multiple eddy reflections occurring as a result of a plume being trapped between an inversion base and the surface of the earth. The inversion base and earth are considered to be perfect reflectors. This condition is called limited mixing or plume trapping. Equation 2.1a is used when the vertical concentration profile is uniform. See also Sections 2.2.1 and 2.2.2.

A plume with centerline above the mixing layer is ignored by Valley in the long-term mode, but in the short-term mode the program limits the maximum height of the plume to no greater than the mixing height.

For computational purposes the value of L in Equation 2.1 is in effect treated as a very large value by Valley during stable conditions in rural areas, but pollutant dispersion within this layer proceeds only at the relatively slow rate dictated by σ_z for the stable condition being evaluated. The definition of L previously given (i.e., mixing height) may not be considered technically appropriate, nor is Equation 2.1a used, for stable conditions in rural areas.

For both rural and urban analyses, neutral conditions designated by the STAR data are divided by the computer code into two classes. One class (40 percent) is evaluated for nighttime conditions, and the remainder represents daytime conditions. The mixing height for all daytime neutral conditions is assigned the input value of the mean afternoon mixing height. The nighttime neutral mixing height for rural areas is taken as half that value, whereas for urban areas it is taken as the average of the input mean afternoon and nighttime values. The user inputs the nighttime mixing height used for urban, stable cases.

2.2 TIME-AVERAGING OF CONCENTRATION

Concentration averaging time must be specified by the user as either of two options, 24-hour or long-term. The techniques for the

24-hour and long-term concentration estimates obtained with Valley are identical except for adjustments (Section 2.2.2) made to emission rate, plume height and mixing depth made in the 24-hour option. Resulting concentrations are highly dependent upon the stability-wind data supplied by the user.

2.2.1 Long-Term Average Concentration

For a specific receptor (*r*) and source (*s*) configuration, a long-term estimate of x_{rs} is obtained by solving Equation 2.1 or 2.1a for each meteorological condition assigned by the user, then summing all such concentrations after weighting each by its frequency of occurrence. The expression for average concentration at a receptor due to one source is thus:

$$x_{rs} = \sum_{d=1}^{16} \sum_{n=1}^6 \sum_{S=1}^6 F_{dns} x_{dns} \quad (2.3)$$

where:

F_{dns} = normalized frequency (from the STAR data) during the period of interest for a discrete case of wind direction *d*, wind speed *n*, and stability class *S*.

x_{dns} = ground-level concentration calculated from Equation 2.1 or 2.1a.

The concentration x_r at a specific receptor for a given pollutant due to all contributing sources is:

$$x_r = \sum_s x_{rs}. \quad (2.4)$$

The sum of the STAR frequencies for each long-term analysis (e.g., seasonal or annual) should be very near unity. A 1-hour occurrence of a particular meteorological condition will be included in an annual STAR array as $(1 \text{ hour/year})/(8760 \text{ hours/year}) = 0.00011$, and in a seasonal (quarter-annual) array as 0.00045. The 24-hour analyses (see Section 2.2.2) require a different concept.

The representative speeds usually assigned to the six climatological wind speed categories (0-3, 4-6, 7-10, 11-16, 17-21 and >21 knots), are 0.67, 2.45, 4.47, 6.93, 9.61, and 12.52 m/s. These are user specified.

The six stability categories ($S = 1$ through 6 in order of increasing atmospheric stability, 4 being neutral) of the STAR data are defined on the basis of the criteria stated by Turner (1964). The classification is based upon ground-level meteorological observations only (surface wind speed, cloud cover, ceiling), supplemented by solar elevation data (latitude, time of day, and time of year); thus the stability estimates can be obtained for any site at which suitable observations have been made.

The mixing height, L , exhibits marked diurnal (daily) and seasonal variations at many locations as shown by Holzworth (1972). However, since it is impractical to account for all these variations, a simple procedure reflecting only major changes is included in the long-term option of Valley. The procedure determines mixing height by

modifying the average afternoon mixing height value according to the stability class being considered. Stability classes $S = 1, 2$ and 3 are daytime conditions, with $S = 1$ corresponding to very unstable conditions. When $S = 1$, the value of L is assumed to be 50 percent greater than the climatological value that is input. For $S = 2$ and 3 the climatological value is used. Stability class $S = 4$ is a neutral stability condition which usually occurs either with high wind speeds or with cloudy conditions. Because neutral conditions can exist in both the daytime and nighttime, in rural or urban areas, the afternoon mixing height values are averaged with the nighttime mixing height for 40 percent of the class $S = 4$ occurrences; the remaining 60 percent of the class utilizes the climatological value of the mean afternoon mixing height. Mixing height is assigned a very large value for stable conditions in rural areas; in urban areas the user-assigned nighttime value is used, with a default value of 100 m, for stable cases.

For the long-term analysis, Valley ignores a plume which is higher than the mixing height. It is assumed that such a plume will be contained in the stable layer aloft and will not affect ground-level concentrations.

2.2.2 Short-Term Average Concentration

The intended use of this option is to estimate and locate the maximum 24-hour concentration due to a single source in complex terrain under stable conditions. For a frequency of occurrence input

as 1.0 the model assumes that that particular meteorological condition exists for any 6 hours of a 24-hour period. Since the frequency designates a discrete wind sector, a particular source can affect only one sector during those 6 hours. The source contributes nothing to that sector for the remaining 18 hours. This is accomplished within the model by reducing the input emission rate to 6/24 of its actual value.

One must be careful in assigning the mixing height when the short-term option is used, for no plume heights are permitted to exceed the mixing height. If the effective stack height is greater than the mixing height it is automatically reassigned a height equal to the afternoon mixing height. The plume is then treated as though it were fully contained within the mixed layer. The user must construct a special STAR deck for the 24-hour option.

For the case when a stable atmosphere in mountainous terrain is suspected of causing the maximum 24-hour concentration, the STAR frequency distribution is assigned all zero values except those for elements of stability, wind speed and wind direction that are of concern. They are assigned a value of 1.0 . Multiple wind directions may be specified for a given run, but one must be aware that in such cases the resulting concentration at a receptor may result from several sources in different directions if multiple sources are input. This potential problem can be avoided by assigning only one wind direction per run. For example, one might input 1.0 in the STAR deck for stability F ($S = 6$), a wind speed of 2.5 m/s ($n = 2$) and a westerly wind direction ($d = 13$); all other elements of the STAR deck are input as zero. In this case,

finite concentrations occur only to the east ($\pm 22.5^\circ$) of the source. Concentrations at all other directions are indicated to be zero. The user should input only single directions for multi-source, 24-hour analyses until the implications of multi-directional analyses are fully understood.

2.3 URBAN-RURAL CONSIDERATIONS

Light winds and clear skies usually produce stable atmospheric conditions at night near ground level in rural areas. The simultaneous stability in adjacent urban areas tends to be more unstable because of the heat-island effect. However, stable conditions can remain aloft over the city. These differences are important in the consideration of pollutant dispersion, and are accounted for in Valley through simple measures.

According to Turner's stability criteria, $S = 5$ and 6 (stable) can occur only when nighttime conditions are conducive to the formation of a surface-based inversion. A shallow layer of nonstable air has been found to occur in urban areas while adjacent rural areas are stable. Thus, for the long-term option only, the vertical dispersion coefficients of $S = 4$ (neutral) are substituted in Valley for those of $S = 5$ and 6 for urban analyses. This change is intended to more closely represent the actual dispersion rate for plumes in the urban area provided the plume remains in the shallow, nonstable layer. The user may assign the depth of this mixed layer, or may rely on the default value of 100 m. The concept of mixed layers was discussed in Section 2.1.6.

The conversion of stable conditions to neutral for urban analyses in turn affects the interpretation of terrain relief by Valley. For neutral atmospheric conditions the plume centerline in Valley is always terrain-following. Hence, Valley output for the urban area option is based on the assumption of flat terrain. This may lead to underestimates of concentration in urban areas with significant terrain features.

2.4 DISPERSION FROM AREA SOURCES

Valley computes area source contributions using Equations 2.1 and 2.1a. The total segment of each area source lying in the sector of concern is converted to an effective point source which lies upwind of the actual source. In the conversion process, both the downwind distance and the resultant source strength are dependent on the particular source-receptor configuration. The following discussion of area sources is adapted from the AQDM manual (TRW, Inc., 1969).

If the total emissions were assumed to be concentrated at the center of an area source, concentrations downwind would be overcalculated, especially for nearby receptors. Since uniform spread of the plume across the sector is assumed, it is logical to proceed a step further and assume an effective point source at such distance upwind that the 22.5° sector subtends an effective area width as illustrated in Figure 2-2. The half-life factor and the vertical spread are calculated using x_p , the downwind distance from the centroid of the fraction of the area source affecting the receptor for a given wind direction. However, the vertex of the horizontal angular spread lies at

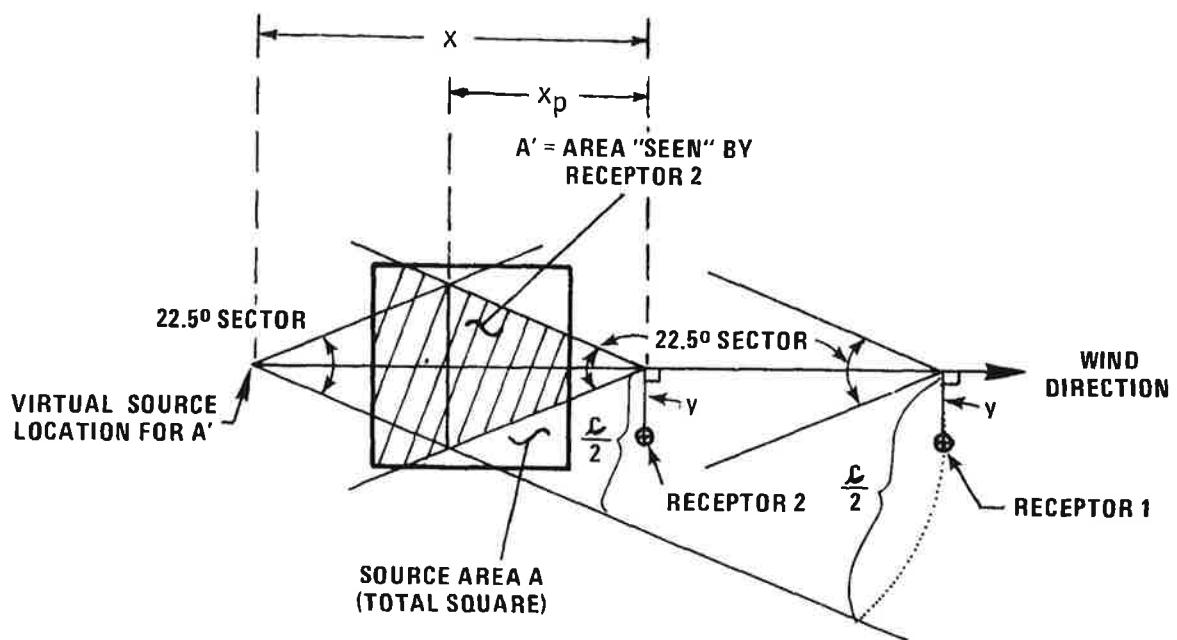


Figure 2-2. Schematic of the Virtual Point Source as Projected from an Area Source (After TRW, Inc., 1969).

distance x from the receptor; that is, at the effective source. This should clarify the need for the two distances, x and x_p , in Equations 2.1 and 2.1a. Note that in these equations x_p assumes the value of x for point source analyses. Also, when the calculated value of x for area sources is less than 100 m, x is reset to 100 m. The geometric treatment of an area source depends on whether the receptor lies within or outside but near, or distant from the source area.

When a receptor lies within a source area, only a fraction of the area emissions could affect the receptor for any assigned wind direction. The program determines this fraction and applies it to the concentration calculated using total emissions at the effective point source of the source area subtended by a 22.5° sector with vertex at the receptor. For a given receptor in a given area source, the sum of the fractions for all 16 sectors should be unity; that is, a receptor lying within a ground level area source is never free of the effects of that source.

In a similar manner, nearby receptors are affected by emissions from only a portion of the area source at a given time, and would show excessive concentration values if the total area emission value were used. To correct this, the source emission rate is multiplied by an area utilization factor, Q^* , which is the ratio of that portion (A') of the source area lying within a 22.5° sector upwind of the receptor to the total area (A). For example, in Figure 2-2, Receptor 1 would use the total area emission value, Q , while Receptor 2 would use the proportional amount, $QQ^* \propto A(A'/A)$. Note that in this figure the effective

point source for Receptor 2 would be defined by the effective area width. Area sources may be considered in either the flat-plane mode or the complex terrain mode of Valley.

2.5 COMMENTS

Valley should only be applied when competent meteorological advice is available to interpret the techniques of the model. Comments on the model are given next. Many of the limitations are not unique to Valley.

- (a) The basis of the model calculations, the Gaussian diffusion formula, was developed to represent the behavior of plumes from point sources. The field data available for development of plume dispersion parameters were primarily obtained from open, flat terrain and for travel distances of no more than a few kilometers. Thus, the model has some potential weaknesses: (1) plume behavior during horizontal transport of more than a few kilometers is not well known; (2) plume behavior in regions of varying thermal and surface-roughness characteristics has not been systematically observed; (3) area sources are only imperfectly simulated by effective point sources; and (4) few real sources are truly point sources.
- (b) The climatological data available for long-term calculations are generally obtained from airport weather observing stations. The character of the atmosphere may vary significantly between the meteorological site and the area of concern in the program analysis.
- (c) The use of observed surface meteorological data to describe the transport and dispersion of pollutants from elevated sources during stable conditions in complex terrain is likely the greatest source of error in the application of Valley or any other model available today.
- (d) The reliability and representativeness of emissions and source data are often overlooked when applying dispersion models. Valley uses average emission rate data. However, significant diurnal and seasonal variabilities in emission rates often occur. Such variabilities may be significantly correlated with the stability and wind data and this can invalidate an analysis made with Valley.

- (e) Only 112 receptors are utilized. During stable conditions in complex terrain situations, very large gradients of concentration may exist in the vertical on slopes. The user should be aware that, due to the fixed receptor network, the maximum concentration attainable using Valley may not fall at any of the 112 receptors of a particular run.
- (f) If one uses Valley to pinpoint the location of the estimated maximum short-term concentration attainable on a slope, a sampler placed at that location during a period matching the conditions of the simulation may well not record the maximum occurring on the slope at that time. The simplicity of the model does not justify a 1-to-1 comparison of observed and estimated concentrations at a point. Rather, the estimated maximum 24-hour concentration should be used as an indication that during two 24-hour sampling periods of a given year the estimated maximum concentration may be equalled or exceeded in the vicinity of the location of the estimated maximum.
- (g) It is generally recognized that if continuous pollutant controls are utilized at a source in order to assure that the 24-hour air quality standard (e.g., for SO_2) is not exceeded as a result of that source alone, then the long-term standard will very likely not be exceeded. Hence, the use of Valley to estimate maximum 24-hour concentrations for complex terrain situations is the most important application of this model.
- (h) If the plume height slightly exceeds the terrain in question, even during stable conditions, the pollutants may be drawn downward to the lee of the crest and create a pollution problem at ground level. If the source itself lies in the lee of a hill, a similar result may occur. Valley does not simulate these situations.
- (i) Straight-line transport of pollutants is assumed. Hence, curvature of the plume due to pressure gradients induced by topographic features is not simulated.
- (j) For Valley Model calculations σ_z is determined from the line of best fit of widely scattered data values obtained over flat terrain. The bulk of interpretations of limited data obtained in complex terrain indicate larger σ_z 's than over flat areas, at least during stable conditions. The assumption is utilized in Valley that a statistical average of σ_z for a given stability over flat terrain (i.e., the familiar Pasquill-Gifford values) may be used to represent the lower limit of dispersion in complex terrain, particularly for stable conditions.

- (k) Because of assumed plume behavior for nonstable cases, the assumption of flat terrain for urban areas may result in underestimates of concentrations on hillsides in urban areas. The same problem may exist on any elevated terrain during nonstable conditions with elevated plumes.
- (l) The description of meteorological conditions by step functions i.e., discrete classes, creates discontinuities in concentration from one meteorological category to the next. These discontinuities are smoothed in Valley across wind-direction classes only.
- (m) The model is not appropriate for evaluating atmospheric situations consisting of flow across an urban/rural boundary when the rural area is stable.
- (n) The sloping-plume concept of Briggs is used in Valley. In the long-term mode of Valley, when a plume centerline height reaches a point where it exceeds the mixing height the contribution of that plume to all ground-level receptors downwind of that point is considered to be zero. This results in an underestimate of concentration, for some of the pollutant will remain in the mixing layer and affect all downwind receptors within the mixing layer, while the remainder of the pollutant will be transported in or above the stable layer aloft and potentially affect receptors on terrain above the inversion base.
- (o) Valley cannot be used to evaluate fumigation. Such conditions can cause high, short-term, ground-level concentrations. In some topographic situations, fumigation can occur with relative regularity.
- (p) The impingement of stable plumes on elevated terrain is treated by Valley as though the receptor lies on a slope facing the pollutant source, regardless of the actual orientation of the slope. Hence, concentrations calculated for receptors not located on windward slopes should be ignored.

The limitations of Valley cited in the comments above are not intended to imply that the Valley Model be kept from use. On the contrary, improved models can be developed only when significant experience with present formulations has been achieved, and when data which justify the use of more complex analytical techniques become available.

3. DATA DEFINITIONS

Detailed descriptions of input and output information follow; the variable names used in the program code are shown in capital letters.

3.1 INPUT DATA

3.1.1 Receptor Heights (RECHT)

--RECHT is an array containing the ground elevation (feet above msl) at each of the program-designated receptors. The use of an English unit for this parameter in an otherwise metrically oriented program was chosen so as to be identical with that on the more readily available topographic charts. The 16 records containing receptor elevations must be entered as blanks if a flat-plane analysis is desired. Each record contains the heights for the seven receptors lying on one radial from the center of the output maps, beginning with the radial directed northward from map center. If at least one receptor height is entered as a positive value, a map containing ground elevation differences (in meters) between each receptor and the first source input by the user will be output. The receptor locations are at the decimal point of the concentrations printed on the 16 radials of the output map. Each of the 16 records containing RECHT represents one direction, beginning with north and proceeding clockwise through north-northwest of map center. The first RECHT on each card corresponds to the innermost receptor on the respective radial, and successive values on that card progress outward along the radial.

3.1.2 Pressure and Temperature (P, TEMP, PRESS)

--P is the ambient pressure in millibars (mb) used in the conversion from $\mu\text{g}/\text{m}^3$ to ppm, and in the conversion from on-site to standard conditions; zero or blank defaults to 960 mb.

--TEMP is the average ambient temperature in degrees Kelvin ($^{\circ}\text{K}$) used in the plume rise calculation, in the conversion from $\mu\text{g}/\text{m}^3$ to ppm, and in the conversion from on-site to standard conditions; zero or blank defaults to 293 $^{\circ}\text{K}$.

--PRESS is an option-control parameter.

0 - The concentrations printed will be for on-site conditions of pressure and temperature.

>0 - The concentrations printed will be for standard conditions (1013.2 mb and 293°K), provided the user has called for concentration in units of $\mu\text{g}/\text{m}^3$. Note that a given concentration expressed in ppm will not change with the temperature and pressure. The concentration of non-gaseous pollutants should not be called for in units of ppm.

3.1.3 Computer Run Identification (TITLE)

--TITLE is an alphabetic title of up to 80 characters which is supplied by the user. This identification label is printed on each map that is output for a given run through the program, with a line feed between columns 20 and 21. Sources are identified individually (see below); TITLE is therefore available for general identification of the analysis performed, but may be blank.

3.1.4 Program Control (GRID, MWT, DMIX, ISOR, DUPSOR, K, IUR, ICONT, DMNI, HLIFE, ISHORT)

--GRID is the required map scaling factor which scales the printed output maps to geographical reality. However, there is no variation in the size of the maps produced. This discussion of map scaling applies to printers with ten characters and six lines per inch. If a printer has a ratio that differs from 10:6, the output maps will not be of equal-area projection. A scale of kilometers is printed on each output map, and one character space always equals GRID (m). Any value of GRID may be used when the flat-plane mode is invoked. However, if the complex-terrain mode is used, GRID must remain constant for all runs of a given computer job or the receptor heights will differ from the actual ground elevations. If the output map is to be overlayed on a topographic chart having dimensionless scale ratio 1:n, then the user must specify GRID as:

$$\text{GRID (meters)} = .002538 n$$

For example, for a direct overlay of the map on a chart of scale 1:24000, GRID = 60.9 m. A user might wish to obtain better resolution (i.e., more dense receptor network) in a region of complex topography around or near a source in an area for which a topographic chart of suitable scale is not

available. In such cases the user may manually or photographically change the map size (i.e., as output by the program) to a factor p of its original size, overlay the new size map on a chart scale of 1:n to obtain receptor heights, and calculate GRID for use as input data using:

$$\text{GRID (meters)} = .002538 n p.$$

For example, if the overlay map has been reduced to $p = 1/2$ the size of a computer map, and is overlayed on a chart of scale 1:62500 to obtain receptor heights, then the user must specify the input value of GRID as 79.3. The scale of the output map from such a run is 1 inch = 793 m, or 1:31250, and the map should not be overlayed directly on the topographic chart from which the receptor heights were obtained.

--MWT determines whether output concentrations (x) are to be expressed as $\mu\text{g}/\text{m}^3$ or as ppm.

0 - Indicates that x will be in $\mu\text{g}/\text{m}^3$.

>0 - Is accepted by the program as the molecular weight of a gaseous pollutant, and the factor $0.0831 \text{ TEMP}/(\text{MWT P})$ is used to convert x to units of ppm. Users of former versions of Valley (e.g., C9M3D) should note that this is a change from those versions. This modification is the sole reason that data sets prepared for former versions may not be compatible with the requirements of the present version. Unmodified older data sets will be accepted by the present version, but may result in erroneous concentrations.

--DMIX is the required mean maximum afternoon mixing height, in meters, for long-term analyses, or the required mean mixing height for the critical period of concern for short-term analyses. The input mixing height remains constant for the short-term analyses, but is changed internally according to stability for the long-term mode. For the rural mode DMIX is in effect set to a very large value for stable cases. If plume height exceeds DMIX in the short-term mode during nonstable conditions, it is reset to DMIX.

--ISOR is the number of sources, not to exceed 50, to be evaluated during the run. Point and area sources may be intermixed.

--DUPSOR is an option control.

0 - Indicates the user must input a source data set for each run.

>0 - Indicates that a number of STAR data sets will be analyzed in turn using only one source data set.

--K is the numerical indicator of the computer peripheral unit which is to receive the output. The output format is such that when the printer is specified, scaled maps are printed.

--IUR is an option control indicating source environment.

0 - Programmed abort.

1 - Indicates urban.

2 - Indicates rural.

--ICONT is an output control.

0 - Specifies that only the sum of all source contributions is to be output.

1 - Specifies that the individual source contributions and the sum are to be output.

2 - Specifies that only the individual source contributions are to be output.

--DMNI is the night-time mixing height, required only for the urban mode of analysis. Blank or zero defaults to 100 m. This parameter is not used in the rural mode.

--HLIFE is the half-life, in hours, of a pollutant which decays exponentially with time. A zero or blank entry defaults to infinite half-life. A half-life decay should not be confused with the reduction of concentration due to dilution of the pollutant.

--ISHORT is an averaging-time control.

0 - Indicates that the meteorological and source emissions data and resulting concentrations are for a long-term period, say for a season or year.

1 - Indicates the resulting concentrations are for a 24-hour period.

3.1.5 Source Data (INAME); (QSOT, HST, TS, VS, D, VF, SHOT, SVET, SORHT, WT, GT)

--INAME is a 24-character alphabetical array available for each source for identification.

--QSOT is the required emission rate, in grams per second, of each point or area source.

--HST is the required physical height of emission, in meters, of each source. This is the stack height, vent height, etc., above ground.

--TS is the source gas exit temperature, in degrees Kelvin. If plume rise calculations are requested for a given source, and TS \leq TEMP (i.e., a cold plume), the analysis proceeds with plume rise set to zero and a warning is output.

--VS, D and VF are the source effluent exit velocity in meters per second, diameter of exit in meters, and effluent volume flow rate in cubic meters per second, respectively. Each may be input as zero or blank. However, if plume rise calculations are requested by the user (see variable GT below), either VS and D, or VF, must be greater than zero; otherwise, the analysis proceeds with plume rise set to zero, and a warning is output. VF is calculated internally when VS and D are input as non-zero.

--SHOT and SVET are the coordinates of each source, in units of the programmed grid. The location of an area source is defined by the lower left-hand (southwest) corner of the square area. The user's value of GRID determines the scale of the output map of normalized concentrations. The value of GRID (meters) corresponds to 1/10 inch on the face of the map and to one unit of measurement in the coordinate system of the map. Hence, GRID is required to calculate, as follows, the source coordinates to be input by the user:

$$\text{SHOT (horizontal coordinate)} = 460. + (\text{X}/\text{GRID})$$

$$\text{SVET (vertical coordinate)} = 60. + (\text{Y}/\text{GRID})$$

where X and Y (meters) are the east-west and north-south geographic distances, respectively, of the source from the center of the map. Y is negative if to the south of center, and X is negative if to the west of the center of the map. The center of the map lies at SHOT = 460, SVET = 60. For most analyses, the major or only source will likely be

assigned coordinates (460, 60); however, there are no restrictions on source location. There may be situations when the user may wish to obtain better spatial resolution of estimated concentrations than can be obtained by keeping the source location on the map; in such cases, the values of GRID and the source coordinates may be chosen so that the source lies well off the map, with the map representing a small area remote from the source. Receptor locations are program assigned in units of the programmed grid system.

--SORHT is the ground elevation in feet above mean sea level at the location of the source. SORHT has no meaning unless at least one receptor elevation is input as non-zero positive.

--WT is the width in meters of the source. A zero or blank entry signifies that the emissions emanate from essentially a point source. Any non-zero positive entry is interpreted as the length of a side of a square area source; the source is then evaluated using an effective point source technique. There are no restrictions on the sizes of the area sources.

--GT is the assigned fixed plume rise in meters. It is independent of wind speed; however, plume height remains a function of receptor elevation during stable conditions. If zero or blank, the program calculates plume rise via a subroutine. Hence, to evaluate a source with a known plume rise of zero, input for GT any insignificant positive number (e.g., 0.1).

3.1.6 Stability and Wind Related Data (WSA, SCFMT, SC)

--WSA is an array for assigning six wind speeds in meters per second. These speeds are applied respectively to the six frequencies of occurrence of each record in the SC data set (see below). Since the dispersion technique is not appropriate for calm conditions, the program produces zero concentration for each zero value assigned to WSA. Although extremely small wind speeds are acceptable to the program, they may not be appropriate for use with the Gaussian concept of dispersion simulation. The wind speeds usually associated with the six speed categories in the STAR decks are 0.67 2.45, 4.47, 6.93, 9.61 and 12.52 m/s.

--SCFMT is the required user-assigned format of SC and is input as a 72-character array. The program calls for successive SC records on the basis of inferred DO loops in the READ statement. Hence, SCFMT consists simply of six F codes enclosed in parenthesis, with appropriate indications of fields which should be skipped in the available SC records.

--SC is a required 96-record data set of decimal frequencies of occurrence for 576 possible combinations of wind speed, wind direction, and atmospheric stability. Data sets for long-term periods from surface observation sites may be obtained from the National Climatic Center, National Oceanic and Atmospheric Administration, Asheville, N. C. (refer to the STAR program in communications to the Center). Obtain six stability groups; they can be used in the urban or rural mode. Do not obtain the day/night classifications. The frequencies in a data set generated by STAR total about unity.

The long-term STAR data are obtained by an objective interpretation of meteorological data observed at airport weather stations. However, the probability is great that such data will not be representative of the conditions affecting transport and dispersion of pollutants in complex terrain. Even on-site meteorological measurements made at ground level have a high probability of deviating significantly from those that might be made at elevated plume height, particularly during the critical stable conditions in complex terrain. Hence, the emphasis in the development and application of the Valley Model by the EPA has been on the 24-hour average, with meteorological conditions specified objectively as is discussed in Appendix D.

The user must construct an artificial SC data set for short-term analyses to fit the conditions he wishes to evaluate. Valley assumes that the meteorology of the discrete condition represented by the i th entry in the SC array occurs during any 6 SC(i) hours of the day in this mode. For example, for a 24-hour analysis a speed category under one stability class might be assigned a frequency of 1.0 for each of the 16 directions available, with all other SC values zeroed out. In this case, with the source at the center of the map, the concentrations along any single radial could occur on the appropriate day, and the concentrations depicted along all other radials would be invalid for that day. Care must be exercised in summing contributions at a given receptor from multiple sources at different locations when utilizing the type of short-term data described in this example; one can obtain erroneous results (overestimates) by summing contributions which would not occur simultaneously with the single wind direction implied in the short-term mode. In some cases the only alternative is to execute 16 runs, using one wind direction each; often, however, the user can judge in advance which single direction will result in the maximum concentration.

3.2 PROGRAM OUTPUT

With the output unit designated as a printer by the user, the output will be discussed in the next few subsections in the order the information is printed. The program forces overflow of irrelevant data, resulting in asterisks being printed in place of a numerical value for any parameter not used in the respective analysis.

3.2.1 SC Data

The stability-wind rose data (SC) are listed by wind speed for each direction, grouped by the six stability categories. The first 20 characters of the input TITLE are included for identification. The summation of the frequencies for long-term periods (e.g., seasonal and annual) should be approximately 1.0; the short-term sum is dependent upon the intention of the user.

3.2.2 Individual Source Contribution Maps

These maps are output only when requested by the user via the input variable ICONT. Each map contains normalized concentrations at the 112 receptors which are located approximately on 16 radials (seven receptors each) at increments of 22.5° angular separation around the center of the map, beginning at north (toward page top). The decimal point of each printed concentration indicates the receptor location. The receptors along a given radial are not spaced equally, except due east and west, because of the space required for printing concentrations and the impossible matching of three coordinate systems involved (equal area for the internal grid, rectangular-integer for the printer, and 16-direction polar for the desired receptor network).

The concentrations are printed in four-digit (plus decimal point) fixed format. The program normalizes all concentrations on a given map equally, by order of magnitude, so that the maximum concentration printed contains a significant digit in the left-most position of the print area. The order-of-magnitude factor required to reinstate the output concentrations on each map to the proper units is printed on each map. For example, if the maximum concentration is 0.1328 ppm, the number 132.8 will be printed at the appropriate receptor location, and the order-of-magnitude factor 1.0-03 (meaning 10^{-3}) will appear on the map; all concentrations on that map must be multiplied by 10^{-3} .

Each source contribution map includes a good part of the information relevant to that analysis. The important exceptions are the stability-wind data and receptor heights, which are presented elsewhere in the output and discussed elsewhere in this section. The statements and labels on the maps are listed immediately below, in the order they are output. Self-explanatory output is included, but not elaborated.

--RELOCATE 2/3 INCH UP: The outermost concentration on the radial due north of center must be moved northward 2/3 inch (four printer lines) from its printed location. A similar statement applies to the outermost concentration on the south radial (requiring 2/3-inch relocation southward). Otherwise, the decimal point of the concentration value represents the position of the receptor used in the calculations.

--The source identifier (INAME) is printed.

--The run identification (TITLE) is printed, with a line feed following column 20 of the input record.

--HLIFE = ____ HRS.

--CONCTR CORRCTD TO STD COND VIA FACTOR : The concentrations presented have been converted to standard conditions (1013.2 mb, 298°K) via the factor shown. A factor of 1.0 implies no conversion.

--MAX TOWARD DEG.: Indicates the direction of the maximum concentration from the center of the map.

--NORTH TOWARD TOP

--PLOT : This is the maximum concentration appearing on the map. It can be used as an abbreviated identifier for the map.

--The center of the programmed receptor network is indicated by a decimal point, and enclosed with asterisks; the center coordinates (460, 60) are listed.

--MULTIPLY PRINTED VALUES BY 1.0 + ii TO GET CONC. IN (units). In this statement, the multiplier "1.0 + ii" must be interpreted as "10. to the power + ii," and must be applied to each concentration. The units will then be in either ppm or $\mu\text{g}/\text{m}^3$, as specified in the statement.

--SOR ELEV: The input ground elevation at the source.

--COORDX and COORDY: The input coordinates of the source.

--STK HT: The input source emission height above ground.

--Q(GM/SEC): The emission rate, in scientific notation. For example, 2.321+03 is interpreted as 2321.

--FIXED DH: The input fixed plume rise. Asterisks in place of a numerical value indicate the user elected to use plume rises computed via the subroutine.

--BRIG.E and BRIG.F: The plume rises, in meters, for stability E and F, respectively. These are the last values returned by the plume rise subroutine during the source analysis. Hence, they are the calculated rises at the last receptor evaluated, and for the last finite wind speed used.

--DMIX: The input afternoon mixing height for long-term analyses, or the fixed mixing height for short-term analyses.

--DMNI: The input nighttime mixing height for the urban environment. Zero defaults to 100 meters.

--STAR F: The sum of all the input frequencies of the stability-wind data set used in the analysis.

--WIDTH: The input width of the square area source.

--BRIGUN: The calculated plume rise factor for nonstable atmospheric conditions. Divide by wind speed in meters per second to obtain plume rise in meters at the last receptor evaluated.

--P: The input value of pressure, or the default value.

--MWT: Molecular weight of the gaseous pollutant; used in calculating concentration in ppm.

--VV MEAN WIND SPDS VV: The input wind speeds are listed on the next line of output.

--AIR T: The input ambient temperature, or the default value.

--GAS T: The input effluent temperature.

--DIAM: The input stack diameter.

--GAS V: The input effluent exit velocity.

--FLOW: The input effluent volume flow rate, or that calculated by the program, in cubic meters/second.

--A line scale of geographical distances is output.

--RURL MODE or URBN MODE: Indicates the environment option specified by the user, i.e., rural or urban.

--LONG-TERM MODE or SHRT-TERM MODE: Indicates the averaging-time mode specified by the user. SHRT-TERM is intended to represent a 24-hour period.

--SLOPING TERRAIN CONCEPT or FLAT-PLANE CONCEPT: Indicates whether the user had or had not, respectively, input at least one finite, positive value in RECHT. If none was entered, the segment for plume height adjustment during stable conditions was skipped during the analysis.

3.2.3 Map of Total Impact of All Sources

If the user has specified via ICONT that a map be printed of the total impact of all sources, a listing is first provided of all source data (except volume flow rate) and of the plume rises and plume rise factor $u\Delta h$ of each source for the last receptor and meteorological condition evaluated for each source. The program then prints a map entitled "SUM CONC DUE TO ALL SRCS"; this phrase replaces INAME, and indicates the values represent the sum of concentrations due to all sources evaluated during the run through the program. Irrelevant parameters are printed as asterisks, except that $Q = 0$. Otherwise, the format is the same as the individual source contribution maps.

3.2.4 Terrain Factor Map

A terrain-factor map is output if the user specified as non-zero any receptor elevation. The map is of basically the same format as the concentration maps. However, the height difference between the ground elevation at the first source and each receptor is output in place of the concentration. INAME is replaced in the program by the statement "GROUND ELEVATION DIFFERENCE." Also printed are the statements "NORTH TOWARD TOP. (1/10)((SOURCE HT(1))-(RECPTN HT(N))), HTS IN METERS.", and "MULTIPLY PRINTED VALUES BY 1.0 + 01 (i.e., multiply by 10) TO GET GROUND ELEV DIFF IN M." Irrelevant parameters are printed as asterisks, except $Q = 0$.

4. COMPUTER USER'S INSTRUCTIONS

4.1 INTRODUCTION

Valley is a single, batch-oriented computer program requiring card input and producing output on standard paper on a line printer. The program consists of a main program and two subroutines (see Appendix B for a program listing).

The main program calls for the input data and calculates concentrations at the 112 receptors whose locations are internally defined. The main program calls the subroutine for calculating plume rise and the subroutine for printing the output maps.

Detailed instructions required for program execution are presented in this section. It is assumed that the user has read the first three chapters of the manual and is familiar with the technical applications of the model as well as the acquisition and significance of the input data required for program execution. A test run is presented in Appendix A.

4.2 OPERATIONS

4.2.1 Description

The generalized program flow diagram given in Figure 4-1 is presented to illustrate the simple operational nature of the program. No peripheral files are required for operation of the program.

Valley is written in Standard FORTRAN and is designed to operate on a UNIVAC 1110. The program requires 56K words of memory and has an execution time of a few seconds per source.

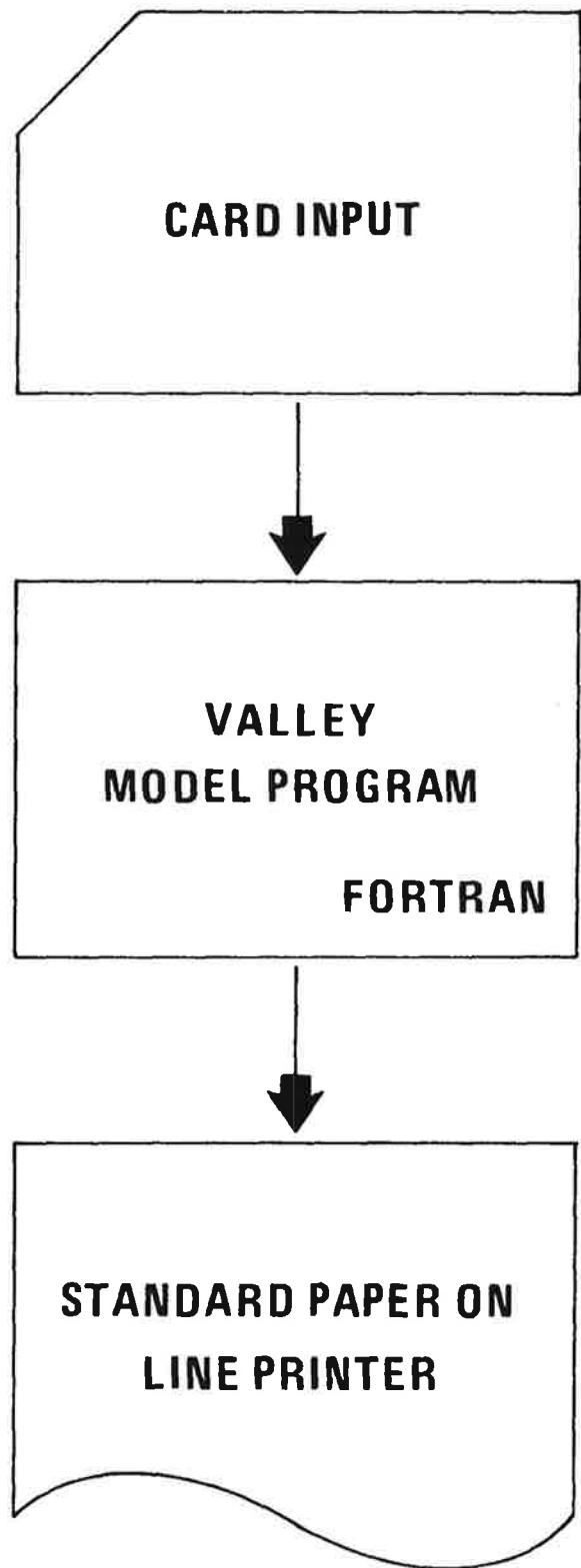


Figure 4-1. General Flow Diagram

The major functions of the program are shown in Figure 4-2. The program is used to calculate the air quality concentrations at 112 receptors resulting from as many as 50 sources of pollutant. These concentrations will be output in their geographically appropriate positions on a line printer as shown in Figure A-2.

4.2.2 Input Data

The data deck layout for the input data, including control data, is shown in Figure 4-3. Note that two cards are required to identify each source along with its stack parameters. Up to 50 sources may be input during a single run. The program also requires 16 receptor height cards for the internally specified 112 receptors. If any receptor elevation is non-zero a map depicting ground level differences between each receptor and the first source input will be output.

Special note must be taken of the Stability Class (SC) Format card and the SC cards. There are 96 SC cards required for each run. There must be six data values on each card. The definition of the data on each card is best described by the output shown in Figure A-2, except no alphabetical characters need appear on the SC data cards. A line of printout represents the data on a single SC input card. If one follows the definitions in this figure and orders the cards in the same manner as shown, the 96 SC cards (6 stabilities times 16 directions) will be properly defined and sequenced. The SC Format card referred to earlier is the FORTRAN format statement which tells the program where the six SC values are located on each card; outer parentheses must be included. Refer to Figure A-1 for an example of this card.

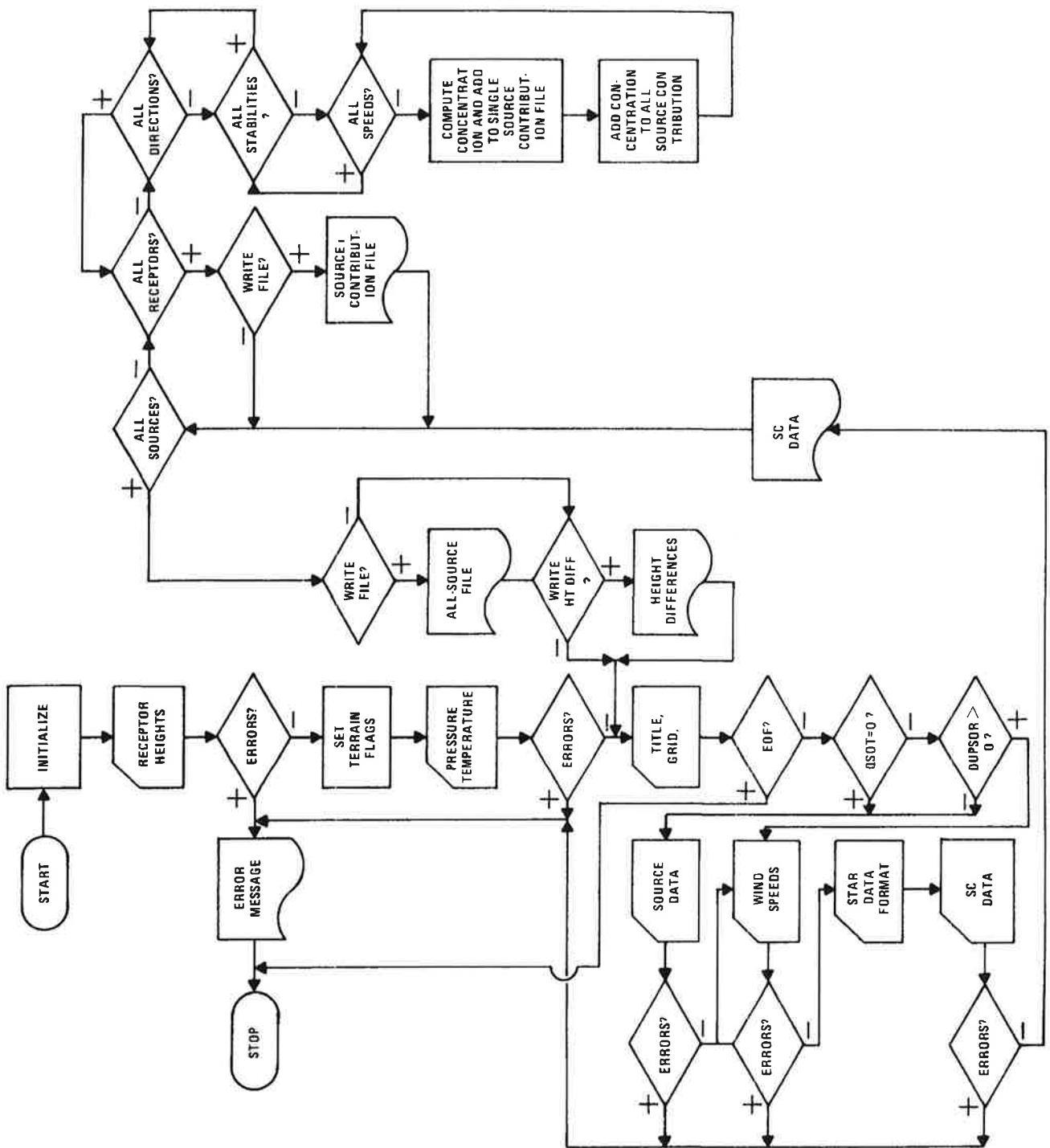


Figure 4-2. Major Program Functions

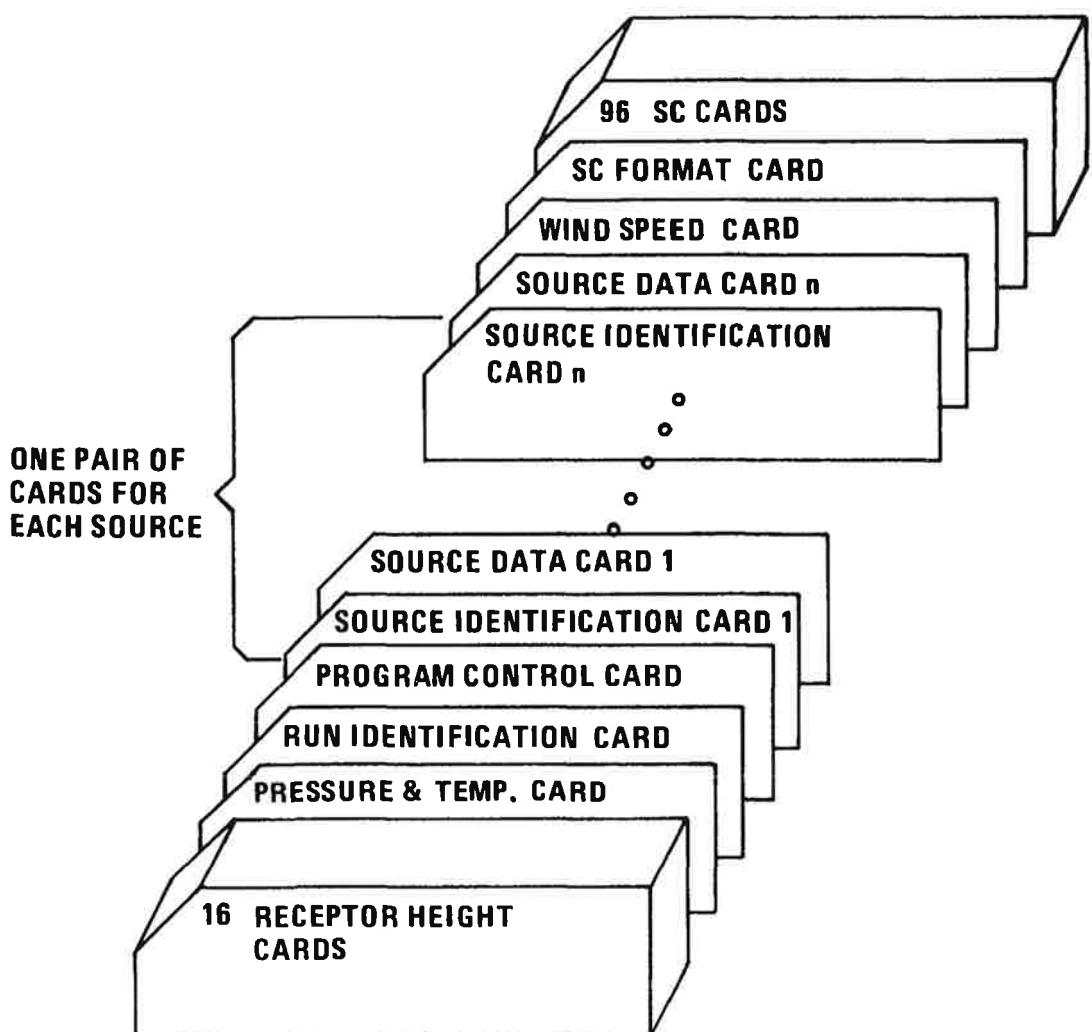


Figure 4-3. Data Deck Layout

Through proper arrangement of the input data cards the program will perform multiple model runs during one execution on the computer. This can be effected by immediately following the 96th SC card with a new Run Identification Card and all succeeding cards down to the last SC card. As many additional runs as desired may be made following this repetitive scheme. Note that the receptor height cards and pressure/temperature card are input only once per computer execution. An error-free exit from the computer system will occur only if an "end of file" card is read in place of the Run Identification Card.

For quick reference, Tables 4-1 give the punched card formats for all required input data parameters. The parameter names and descriptions are also given. Decimal points for all numeric data are implied and designated by the symbol ^ . The 96 SC data cards are not illustrated since they are usually obtained from the National Climatic Center or they are constructed by the user to fit the conditions of the analysis.

Since the input data involves many different formats of punched cards, input forms have been designed to assist the user in the preparation of the input data cards. The forms are illustrated in Figures 4-4. Note that this figure arbitrarily allows for the entry of three sources, but as many as 50 sources may be input per run. No form is presented for SC data, because the user controls the format.

4.2.3 ECL and Deck Setup

The runstream deck required for execution of the Valley Model consists of the Executive Control Language (ECL) cards, the program

TABLE 4-1
Card Input Format
(A designates implied decimal point)

RECEPTOR HEIGHT CARDS

<u>Card Col.</u>	<u>Format</u>	<u>Parameter</u>	<u>Description</u>
1 - 5	XXXXX_A	RECHT 1	Ground Level Elev. (ft.) at Receptor 1
6 - 10	XXXXX_A	RECHT 2	Ground Level Elev. (ft.) at Receptor 2
11 - 15	XXXXX_A	RECHT 3	Ground Level Elev. (ft.) at Receptor 3
16 - 20	XXXXX_A	RECHT 4	Ground Level Elev. (ft.) at Receptor 4
21 - 25	XXXXX_A	RECHT 5	Ground Level Elev. (ft.) at Receptor 5
26 - 30	XXXXX_A	RECHT 6	Ground Level Elev. (ft.) at Receptor 6
31 - 35	XXXXX_A	RECHT 7	Ground Level Elev. (ft.) at Receptor 7

PRESSURE & TEMPERATURE CARD

1 - 6	XXXXXX_A	P	Pressure (mb)
7 - 12	XXXXXX_A	TEMP	Temperature (°K)
13 - 18	XXXXXX_A	PRESS	Control Variable for Conversion to Standard Conditions

RUN IDENTIFICATION CARD

1 - 80	80A	TITLE	Alphabetic Identification
--------	-----	-------	---------------------------

TABLE 4-1 (cont.)
 Card Input Format
 (A designates implied decimal point)

PROGRAM CONTROL CARD

<u>Card Col.</u>	<u>Format</u>	<u>Parameter</u>	<u>Description</u>
1 - 5	XXXXA X	GRID	Control for Scale
6 - 12	XXXXXXXA	MWT	Molecular Weight of Gas; or Zero
13 - 18	XXXXXXA	DMIX	Mean Maximum Afternoon Mixing Depth (m)
19 - 21	XXX	ISOR	Number of Sources (<50)
22 - 24	XXX	DUPSOR	Mode of Operation
25 - 27	XXX	K	Line Printer Designator
28 - 30	XXX	IUR	Urban or Rural
31 - 33	XXX	ICONT	Output Degree
34 - 37	XXXXA	DMNI	Night DMIX for Urban Only (m)
38 - 41	XXXXA	HLIFE	Half Life of Pollutant (hr)
42 - 44	XXX	ISHORT	Option Control for Averaging Time

SOURCE IDENTIFICATION CARD

1 - 24	24 A	I NAME	Alphabetic Source Identification
--------	------	--------	----------------------------------

TABLE 4-1 (cont.)

Card Input Format

(A designates implied decimal point)

SOURCE DATA CARD

(each such card must be preceded by a Source Identification Card)

<u>Card Col.</u>	<u>Format</u>	<u>Parameter</u>	<u>Description</u>
1 - 7	XXXXXXXA	QSOT	Emission Rate (gm/s)
8 - 14	XXXXXXXA	HST	Physical Height of Stack (m)
15 - 21	XXXXXXXA	TS	Effluent Temperature (°K)
22 - 28	XXXXXXXA	VS	Effluent Velocity (m/s)
29 - 35	XXXXXXXA	D	Stack Diameter (m)
36 - 42	XXXXXXXA	VF	Volumetric Flow Rate (m ³ /s)
43 - 49	XXXXXXXA	SHOT	Easterly Coordinate of Source
50 - 56	XXXXXXXA	SVET	Northerly Coordinate of Source
57 - 63	XXXXXXXA	SORHT	Ground Elevation at Source (ft)
64 - 70	XXXXXXXA	WT	Width of Square Area Source (m)
71 - 77	XXXXXXXA	GT	Fixed Plume Rise (m)

WIND SPEED CARD

1 - 10	XXXXAXXXXX	WSA (1)	Mean Wind Speed (m/s)
11 - 20	XXXXAXXXXX	WSA (2)	Mean Wind Speed (m/s)
21 - 30	XXXXAXXXXX	WSA (3)	Mean Wind Speed (m/s)
31 - 40	XXXXAXXXXX	WSA (4)	Mean Wind Speed (m/s)
41 - 50	XXXXAXXXXX	WSA (5)	Mean Wind Speed (m/s)
51 - 60	XXXXAXXXXX	WSA (6)	Mean Wind Speed (m/s)

SC FORMAT CARD

1 - 72 72A SCFMT Stability Wind Frequency Format

Figure 4-4. Data Card Format

SOURCE IDENTIFICATION CARD									
<i>I NAME (Alphabetic source identification)</i>									
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78									
OSOT	HST	TS	VS	D	VF	SHOT	SVET	SORHT	WT
SOURCE DATA CARD									

SOURCE IDENTIFICATION CARD									
<i>I NAME (Alphabetic source identification)</i>									
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78									
OSOT	HST	TS	VS	D	VF	SHOT	SVET	SORHT	WT
SOURCE DATA CARD									

SOURCE IDENTIFICATION CARD									
<i>I NAME (Alphabetic source identification)</i>									
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78									
OSOT	HST	TS	VS	D	VF	SHOT	SVET	SORHT	WT
SOURCE DATA CARD									

Figure 4-4 (cont.)

<u>WIND SPEED CARD</u>					
WSA(1)	WSA(2)	WSA(3)	WSA(4)	WSA(5)	WSA(6)
1	2	3	4	5	6
7	8	9	10	11	12
13	14	15	16	17	18
19	20	21	22	23	24
25	26	27	28	29	30
31	32	33	34	35	36
37	38	39	40	41	42
43	44	45	46	47	48
49	50	51	52	53	54
55	56	57	58	59	60
61	62	63	64	65	66
67	68	69	70	71	72
73	74	75	76	77	78
79	80				

<u>SC FORMAT CARD</u>					
SC FMT (Stability wind frequency format)					
1	2	3	4	5	6
7	8	9	10	11	12
13	14	15	16	17	18
19	20	21	22	23	24
25	26	27	28	29	30
31	32	33	34	35	36
37	38	39	40	41	42
43	44	45	46	47	48
49	50	51	52	53	54
55	56	57	58	59	60
61	62	63	64	65	66
67	68	69	70	71	72
73	74	75	76	77	78
79	80				

Figure 4-4 (cont.)

source deck and the data input cards. The data input deck has been explained in the previous section and the program source statements can be found in Appendix B.

The ECL cards required for a compile and execute run are illustrated in Figure 4-5. If the underlined parameters on the first card are not known or understood, the ADP representative for the user's organization should be contacted. All other underlined parameters on subsequent cards may be chosen by the user at his discretion. Once the procedure of Figure 4-5 has been executed, the user then may use the procedure illustrated in Figure 4-6 for all runs using the same file name, FN., and element name, FN.E, chosen when executing the procedure in Figure 4-5.

4.2.4 Output

The output of Valley consists of a stability-wind data listing, various receptor maps, and potentially a listing of all source data used for the simulation. The receptor maps may include individual source contribution maps, a map of the total impact of all sources, and a terrain factor map. Examples of all output formats are shown in Figures A-2 of Appendix A. A simple data set for obtaining base maps that will be of use in acquiring ground elevations at receptor locations is shown in Appendix C. It is emphasized that the only lines of receptors which are equally spaced lie due east and due west of center; the only lines of receptors which do not deviate somewhat from the radials are those in the four cardinal directions.

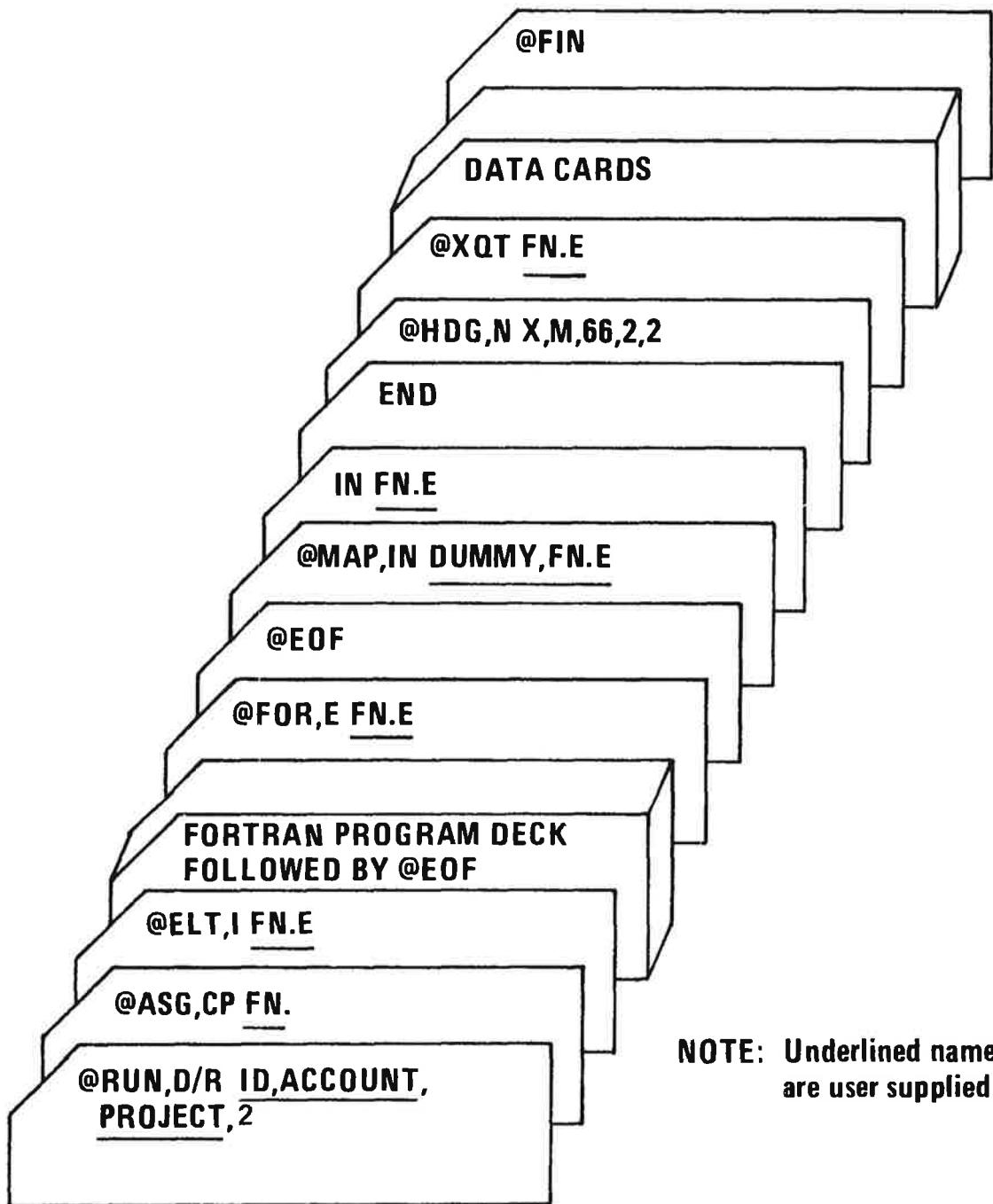
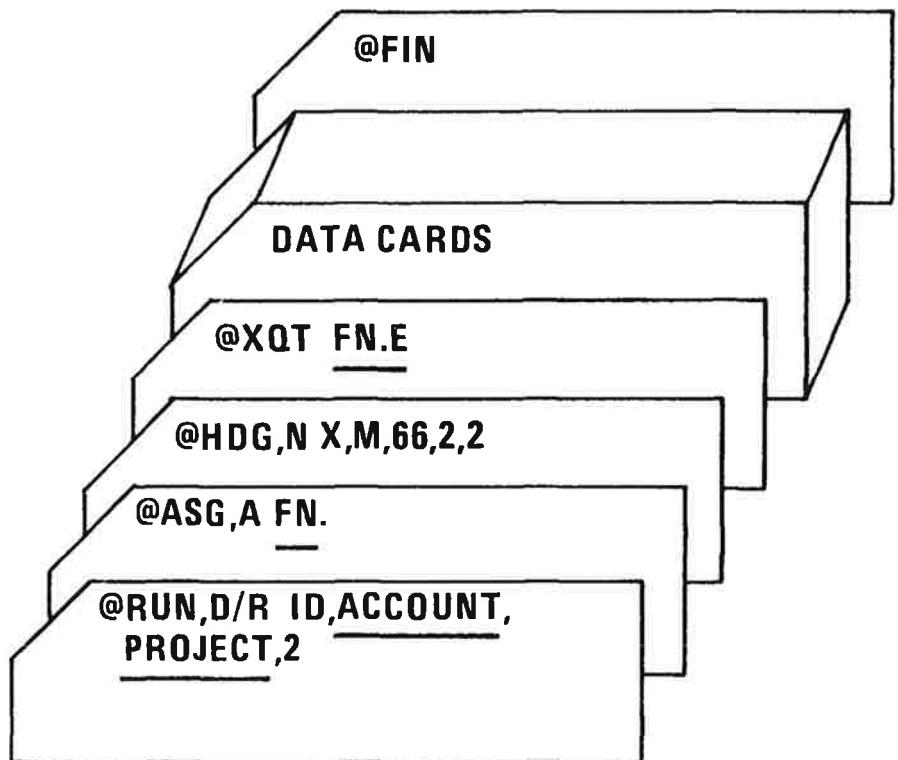


Figure 4-5. ECL Runstream for Compile and Execute



**NOTE: Underlined names are
user supplied.**

Figure 4-6. ECL Runstream for Previously Compiled Program Execution

5. REFERENCES

- Bierly, E.W., and E.W. Hewson, 1962: Some restrictive meteorological conditions to be considered in the design of stacks. J. Applied Meteorol., 1:3, 383-390.
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- _____, 1972: Discussion on chimney plumes in neutral and stable surroundings. Atmos. Envir., 6, 507-510.
- Gifford, F.A., 1961: Uses of routine meteorological observations for estimating atmospheric dispersion. Nuclear Safety, 2:4, 47-51.
- Hales, J.V., 1956: Calculated Sulfur Dioxide Concentrations for a Proposed Smelter. Intermountain Weather, Inc., Salt Lake City.
- Holzworth, G.C., 1972: Mixing Heights, Wind Speeds, and Potential for Urban Air Pollution Throughout the Contiguous United States. AP-101, EPA, Research Triangle Park, N.C.
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- Turner, D.B., 1964: A diffusion model for an urban area. J. Applied Meteorol., 3:1, 83-91.
- _____, 1970 (Rev.): Workbook of Atmospheric Dispersion Estimates. AP-26, EPA, Research Triangle Park, N.C.
- TRW, Inc., 1969: Air Quality Display Model. Prepared for NAPCA, PHS, U.S. DHEW, Washington, D.C. (Available from NTIS as PB-189-194).
- _____, 1970: Air Quality Implementation Planning Program. Prepared for NAPCA, EPA, Washington, D.C. (Available from NTIS as PB-189-299 and -300).

APPENDIX A.

TEST RUN

Consider a facility located on a broad, flat area in the countryside near the base of an extended ridge. A particular pollutant is emitted from a stack and a series of relatively low-level vents located in a 20 m x 20 m area surrounding the stack. Vent emissions are about air temperature of 283°K, and are released at very low vertical velocity about 20 m above ground at a rate of 300 g/s; the vents are treated as one area source. The stack is 75 m tall, with an internal diameter of 3.2 m ; the exit velocity is 4.8 m/s, the effluent temperature is 375°K, and the pollutant emission rate is 1200 g/s. The terrain height at the facility is 3800 ft (1158 m) above mean sea level (msl).

The major concern is for air quality on a daily basis. Hence, the Valley model is executed in the short-term (24-hour) mode, using as input stability F (moderately stable atmosphere) and 2.5 m/s for the windspeed. These conditions are assumed by the model to exist for 6 of 24 hours when the short-term mode is specified, and when the frequency of occurrence is input as 1.00.

Since the facility is arbitrarily located at the center of the output map, each line of fixed receptors (located along a given radial from center) is affected by virtually only one wind direction. The analysis for all 16 wind directions can thus be accomplished in one computer run, but each direction represents conditions for one particular day. We can assume this only because the map scale chosen

relegates the area source to essentially a point source as pertains to wind direction effects; however, the area source is still treated as a virtual (or effective) point source by the model.

The source data is input so that the area source effluents (i.e., those from vents) have a fixed plume rise of near zero. The plume rise of the stack effluent is calculated by the model.

The input data listing is shown in Figure A-1. The first column indicates the sequential card number, and is not part of the input data. Note that some records are omitted from the SC subset in the figure to conserve space; those records are blank, but all 96 SC cards are required input. Handwritten notations are added to the data listing and maps for clarification, so as to be distinguishable from the computer output.

Finite frequencies of occurrence of meteorological data have been input for only six wind directions (ENE, E, ESE, WSW, W, and WNW), and only the ground elevations for receptors affected by the sources for those directions have been input. This is sufficient input to permit comparison of the simulated terrain effects (eastward of map center) with a flat-plane situation (due west of map center), and simplifies preparation by any user desiring to duplicate the test case.

The output listing is shown, page per page, in Figure A-2. The entire SC data subset is always listed, but only the non-blank stability category is included here. The SC data are followed in turn by (1) a map of estimated ambient pollutant concentrations due to each source;

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SEQUENTIAL CARD NUMBER
CARD COLUMN 1

```
1 3867 4213 4450 4650 5040 5400 4900
2 3867 4213 4550 4900 5600 5270 4950
3 3867 4213 4500 4750 5170 5630 5200
4
5
6
7
8
9
10
11
12 3800 3800 3800 3800 3800 3800 3800
13 3800 3800 3800 3800 3800 3800 3800
14 3800 3800 3800 3800 3800 3800 3800
15
16
17 870. 283. 870.
18 TEST RUN -- S02          PARTIAL WIND ROSE FOR EASY DUPLICATI
19 60.9           2       6   2   1   3.   1
20 MAIN STACK
21 1200. 75. 375. 4.8   3.2       460.   60.   3800.
22 VENTS.(AS AREA SRC)
23 300. 20.           .           459.84 59.84 3800. 20.   .001
24 2.5
25 (6F2.1)
26
27
28 } BLANK CARDS
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
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88
89
90
91
92
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96
97
98
99
100
101
102
103
104
105
106
107 WIND DIR:
108 1. —ENE
109 1. —E
110 1. —ESE
111 1. —WSW
112 1. —W
113 1. —WNW
114 THE LAST 16 CARDS
115 ARE FOR STABILITY F
116
117
118
119
120
121
```

Figure A-1. Test Case Input Data Listing. Notations Are Handwritten to Avoid Confusion with the Data.

(2) a listing of source data; (3) a map of the total contribution due to all sources; and (4) a map of relative terrain elevations at the receptors.

Compare the patterns of concentrations with the pattern of topographic relief sketched on the output maps. Note the concentration isopleths are omitted on the lee of the ridge; calculated concentrations are not appropriate for that area. The area to the west of the facility (to the left of map center) is flat; the ridge crest is oriented north-south and lies to the east of the facility. The differences in concentration at any two radials are due primarily to the simulated effects of terrain; these effects are quite apparent, particularly for the main stack. Some of the difference, particularly for the low-level area source and near the center of the map, can also be due to the fact that receptor spacing may differ from radial to radial. The receptor locations used for the calculations are depicted by the decimal points of the seven concentrations printed along each radial. For the map scale selected, the 20 x 20 m area source representing the multiple vents lies totally within 0.025 inch of the center of the maps.

TEST RUN -- S0?

STABILITY	SPD (MPS)	WIND DIR	RRR	RRR	RRR	RRR	RRR	RRR
N	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
NNE	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
NE	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
ENE	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
E	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
EE	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
SE	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
SSE	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
S	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
SSW	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
SW	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
WSW	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
W	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
MNW	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
MNN	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
(ALL ZEROS)								

Figure A-2. Output of Test Case Run.



Figure A-2 (cont.)

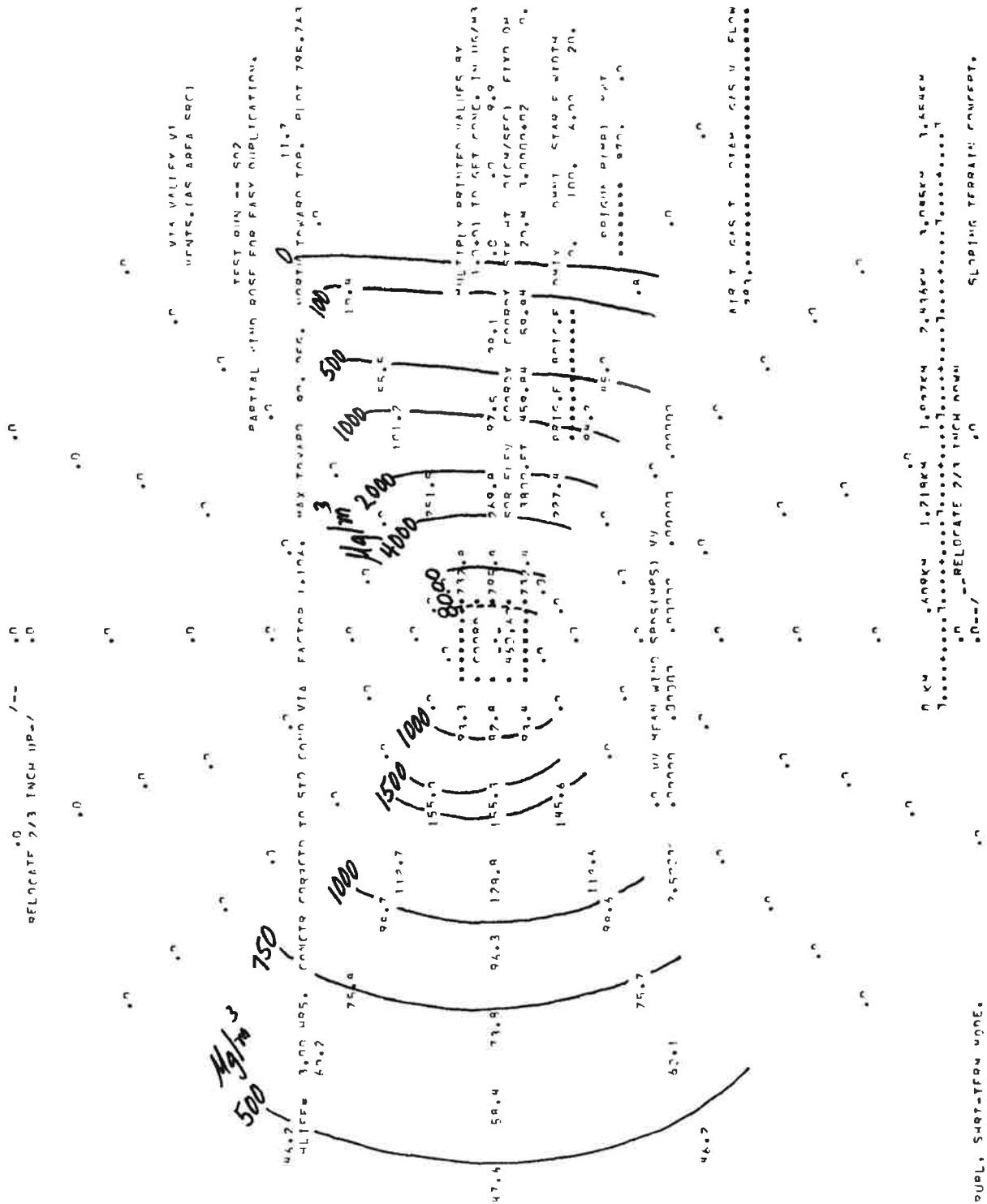


Figure A-2 (cont.)

PENTAGON BASE FOR FASST DILUTION.

SOURCE #	TEST RUN #	TEST DATE	TEST TIME	WT	EMISS RATE	FYD OH	SNR H	APERTURE	APERTURE	AIR T	GAS T	DIAH	GAS V
1	WIND STARK	4/10/91	6:07:07	75.	1.2000000000000000E+00	0.	1800.	772.0000000000000	51.	281.	175.	3.2	4.0
2	VENTS (AS AREA 5AC)	4/10/91	5:00:00	20.	0.0000000000000000E+00	0.	200.	3800.000000000000	203.

Figure A-2 (cont.)

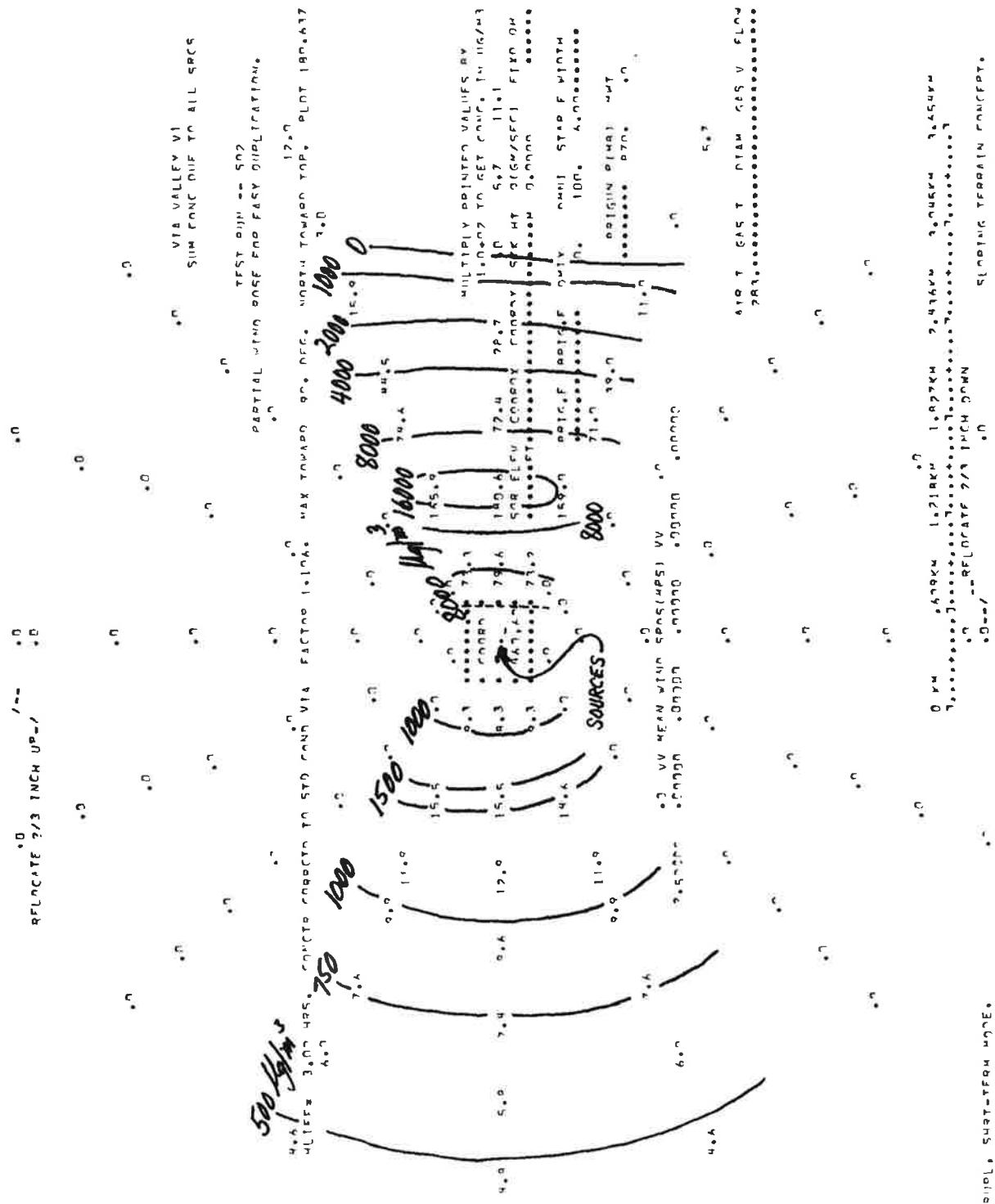


Figure A-2 (cont.)

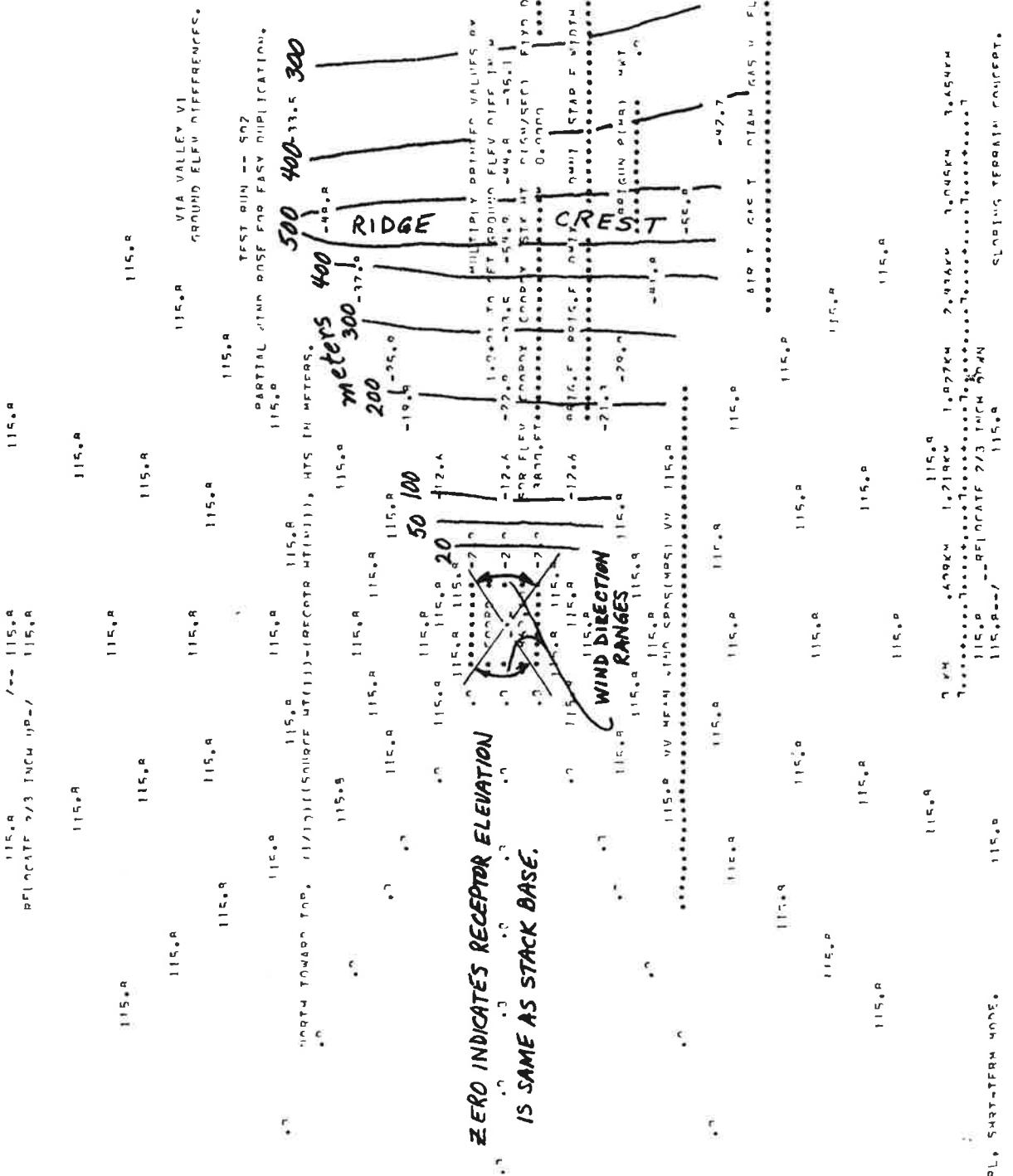


Figure A-2 (cont.)

APPENDIX B
PROGRAM LISTING

V1 - JUNE 1977. C9M3D WITH HALES/BIERLY/HEWSON EQN RATHER THAN
 CC INTERPOLATION FOR LIMITED MIXING. INPUT VARIABLE ALWT CHANGED
 CC TO MWT.
 CC C9M3D-NOV. 24-1975. C8M3D WITH FOUR RECEPTOR COORDINATES CORRECTED.
 CC CALL BRIGGS (STABLE) MOVED TO WIND SPD LOOP. BRIGE AND BRIGF NOW AREMA000500
 CC PLUME RISES (NOT PLUME RISE FACTORS).
 CC C8M3D - SEPT. 17, 1974. C7M3D WITH PLOTS PRINTED VIA SUBROUTINE.
 REAL MWT
 DIMENSION TS(50),VS(50),D(50),VF(50),DTDZ(6)
 DIMENSION DIR(16),STAB(6)
 DIMENSION INAME(300),RECHT(112),SORHT(50)
 DIMENSION TITLE(20),SCFMT(18),RHOR(112),RVER(112)
 DIMENSION SHOT(50),SVET(50),HST(50),QSOT(50),GT(50),WT(50)
 DIMENSION SC(6,16:6),A(18),B(18),C(18),WSA(6)
 DIMENSION S(112),V(112),BRIGUN(50),BRIGE(50),BRIGF(50)
 COMMON MAXVM,VMAX,VICON,MAXAM,AMAX,S,GRID,NSOR,INAME,TITLE,
 A HLIFE,STP,VXDIR,PAGE,ALWT,TFORM,IS3D,G,BRIGUN,TS,D,VS,VF,SORHT,
 B SHOT,SVET,HS,QSOT,BRIGE,BRIGF,DMIX,DMNI,STARFR,W,WSA,TEMP,IREC,
 C ISOR,GT,HST,WT,VFORM,AXDIR,IUR,ISHORT>NN,MAP,RECHT,HFCTR,K,P,MWT
 CC FIXED POTENTIAL TEMP GRADIENTS. 99 IS DUMMY.
 DATA DTDZ/99.99.99.99.0.02,0.035/
 DATA DIR / N NNE NE ENE E ESE SE SW W NW NNW //
 A SSE S SSW SW W NW NNW //
 DATA STAB / A B C D E F /
 CC RECEPATORS ARE NUMBERED CONSECUTIVELY OUTWARD ALONG EACH RADIAL.
 CC 1-7 TO NORTH. 8-14 TO NNE. 15-22 TO NNE.
 CC THE CENTER OF THE NETWORK IS AT X=460., Y=60.
 CC HORIZ COORD OF RECEPTORS FOLLOW.
 DATA RHOR/7*460.463.466.469.473.476.478.481.//
 A 465.472.477.483.488.493.498.//
 B 468.476.483.488.496.503.512.//
 C 468.476.484.492.500.508.516.//
 D 468.476.483.488.496.503.512.//
 E 465.472.477.483.488.493.498.//
 F 463.466.469.473.475.478.481.7*460.//
 G 458.454.451.447.445.442.439.//
 H 453.448.443.437.432.432.427.422.//
 I 452.444.437.432.424.417.408.//
 J 452.444.436.428.420.412.404.//
 K 452.444.437.432.424.417.408.//
 MA000100
 MA000200
 MA000300
 MA000400
 MA000500 AREMA000500
 MA000600
 MA000700
 MA000800
 MA000900
 MA001000
 MA001100
 MA001200
 MA001300
 MA001400
 MA001500
 MA001600
 MA001700
 MA001800
 MA001900
 MA002000
 MA002100
 MA002200
 MA002300
 MA002400
 MA002500
 MA002600
 MA002700
 MA002800
 MA002900
 MA003000
 MA003100
 MA003200
 MA003300
 MA003400
 MA003500
 MA003600
 MA003700
 MA003800
 MA003900
 MA004000

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L 453., 448., 443., 437., 432., 427., 422., / MA004100
M 458., 454., 451., 447., 445., 442., 439., / MA004200
CC VERT COORD OF RECEPATORS FOLLOW. MA004300
DATA RIVER/68., 75., 83., 92., 100., 108., 117., / MA004400
A 67., 73., 82., 90., 97., 103., 110., / MA004500
B 65., 72., 77., 83., 88., 93., 98., / MA004600
C 63., 66., 70., 72., 75., 78., 82., 7*60., / MA004700
D 57., 53., 50., 48., 45., 42., 38., / MA004800
E 55., 48., 43., 37., 32., 27., 22., / MA004900
F 53., 47., 38., 30., 23., 17., 10., / MA005000
G 52., 45., 37., 28., 20., 12., 3., / MA005100
H 55., 47., 38., 30., 23., 17., 10., / MA005200
I 53., 48., 43., 37., 32., 27., 22., / MA005300
J 57., 53., 50., 48., 45., 42., 38., / MA005400
K 7*60., 63., 66., 70., 72., 75., 78., 82., / MA005500
L 67., 72., 77., 83., 88., 93., 98., / MA005600
M 65., 73., 82., 90., 97., 103., 110., / MA005700
N A,B,C ARE FACTORS FOR COMPUTING SIGZ. MA005800
DATA A/.0010, .0476, .119, .2, .61, .52, .6, .33, .6, .001, .0476, .119, .187, / MA005900
A .1345, .362, .1742, .1426, .1233, .0804, .06, .0434, . B/1.89, .1.11, .915, / MA006000
B .45, .15, .14, .1.89, .1, .11, .915, .755, .745, .55, .936, .922, .905, .881, / MA006100
C .854, .814, .0, C/9, .6, .2, .0, -25.5, -126., -75.9, .6, .2, .0, -1.4, -1.1, -2.7, / MA006200
D 6*0., / MA006300
MA006400
109 FORMAT(1H0,1I0,7F10.5)
113 FORMAT(20A4)
IN=5
IREC=112
QSOT(1)=0*
HFCTR=0.3048
MAP•NE•0 MEANS ELEV CHART WILL BE PRINTED (PROVIDED RCPTR ELEV•NE•0) MA006500
MAPE=1
MA006600
MA006700
MA006800
MA006900
MA007000
MA007100
MA007200
MA007300
MA007400
MA007500
MA007600
MA007700
MA007800
MA007900
MA008000
CC <<<<<< DATA IN >>>>>>
CC READ RCPTR GRND ELEV (INPUT AS ZEROS FOR FLAT PLANE ANALYSIS)
CC RECHT - RECEPTOR HEIGHTS, IN FT MSL FOR COMPATABILITY WITH USGS MAPS MA007400
READ(IN,74,ERR =3901) (RECHT(I),I=1,112)
74 FORMAT(7F5.0,45X)
SUM=0•0
IS3D IS INDEX FOR WRITING LAST LITERAL IN PLOTS. IS3D=1 FOR FLAT PLNEM
DO 76 I=1,112

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    SUM=SUM+RECHT(1)
    CONTINUE
    IF(SUM.NE.0.0) GO TO 77
  76

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SUM=SUM+RECHT(I)
CONTINUE
IF(SUM.NE.0.0) GO TO 77
IS3D=1
MAP=0
CC <<<<<< DATA IN >>>>>>>
CC 77 READ(IN,79,ERR=3903) P,TEMP,PRESS
CC 79 FORMAT(3F6.0)
P IS AMBIENT AIR PRESSURE (MB) USED IN CONV. CHI TO STANDARD
COND. OR TO PPM. ZERO DEFAULTS TO 960.
TEMP IS AIR TEMP (DEG K) USED FOR PLUME RISE CALC AND FOR
CONV. CHI TO STANDARD COND. ZERO DEFAULTS TO 293.
PRESS IS A CONTROL - IF EQ. 0, CHI IS AT AMBIENT COND.
IF NE. 0, CHI IS AT STD. COND.
1000 CONTINUE
YFORM=1.
AMAX=0.
IF(MAP.EQ.2) MAP=0
CC <<<<<< DATA IN >>>>>>>
CC TITLE = LITERAL FOR I.D. OF DATA THRU NEXT SC DECK. TITLE IS OUT-
CC PUTTED IN ITS ENTIRETY, WITH LINE FEED AFTER COLUMN 20.
CC READ(IN,113,END=3900) TITLE(I),I=1,20
CC <<<<<< DATA IN >>>>>>
CC READ(IN,73,ERR=3905) GRID,MWT,DMIX,ISOR,DUPSOR,K,IUR,ICONT,DMNI,
A HLIFE,ISHORT
73 FORMAT(F5.1,F7.0,F6.0,5I3,2F4.0,I3)
GRID = IN METERS. EQUIV TO ONE PRINT SPACE ON OUTPUTTED PLOT.
FOR PLOT SCALE= USE GRID=
61.
1/24000 158.7
1/62500
PRINTER LINE SPACING MUST BE SET AT (NORMAL) 6 LINES PER INCH
TO OBTAIN EQUAL AREA MAP.
DMIX = MEAN MAXIMUM AFTERNOON MIXING DEPTH (METERS).
DMNI = NIGHT DMIX FOR URBAN ONLY. DMNI IS USED ONLY IN THE
URBAN CASE (M).
ISOR = NMBR OF SRCS TO BE READ FOR THIS RUN THRU PROGRAM.
DUPSOR = 0 INDICATES THAT SOURCE PARAMETERS ARE NOT APPLICABLE TO EACMA011700
TIME PERIOD. THUS, SOURCE CARDS MUST PRECEDE EACH SC() DECM011800
>0 INDICATES THAT ONLY ONE SET OF (NISOR) SOURCE CARDS MA011900
IS NEEDED FOR ALL THE SC DECKS.

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CC MWT=0 FOR UG/M3.
CC = MOLECULAR WEIGHT OF GAS WHEN UNITS OF PPM ARE DESIRED (G/MOLE).
CC PROGRAM CONVERTS TO PPM VIA FACTOR 8.31E+04*TEMP/(MW*T*P).
CC TEMP - AMBIENT TEMP. (DEG. A).
CC MW - MOLECULAR WT OF GAS.
CC P - AMBIENT PRESSURE (MILLIBARS).
CC K - OUTPUT MACHINE DESIGNATOR ... 6 FOR 360 PRINTER.
CC IUR = 1 FOR URBAN
CC IUR = 2 FOR RURAL
CC ICNT = 0 OUTPUTS ONLY SUM OF CHI FOR ALL SOURCES
CC = 1 OUTPUTS IMPACT OF INDIVIDUAL SOURCES, & SUM.
CC = 2 OUTPUTS ONLY THE IMPACT OF INDIVIDUAL SOURCES
CC HLIFE - HALF LIFE OF POLLUTANT (HOURS). DEFAULT VALUE IS INFINITE.
CC ISHORT = 0 FOR LONGTERM CHI.
CC = 1 FOR 24-HR CHI. BY ASSUMING THE SC CONDTN EXISTS FOR 6 OF TMA013500
CC = 24 HRS. A SPECIAL 24-HR SC DECK IS REQD. (ISHORT= MA013600
CC ISHORT+1 INTERNALLY TO FACILITATE INDEXING FOR WRITE) MA013700
MA013800
CC ISHORT=ISHORT+1
IF (MWT.EQ.1000000.) WRITE(K,3119)
3119 FORMAT(' VALLEY DIAGNOSTIC. CHECK MWT VALUE OF 1000000.')
IF (IUR.EQ.1.OR.IUR.EQ.2) GO TO 3122
WRITE(K,3121) IUR
3121 FORMAT(' IUR HAS ILLEGAL VALUE OF ,I5,, SO TERMINATE RUN.')
GO TO 3900
3122 IF (DMNI.EQ.0.) DMNI=100.
IF (QSOT(1).EQ.0.) GO TO 3111
IF (DUPSOR.NE.0.) GO TO 3112
CC <<<<< DATA IN >>>>>>
3111 READ(IN,106,ERR=3907) (INAME(6*IL-5),INAME(6*IL-4),INAME(6*IL-3),
AINAME(6*IL-2),INAME(6*IL-1),INAME(6*IL),QSOT(IL),HST(IL),TS(IL),
BVS(IL),D(IL),VF(IL),SHOT(IL),SVET(IL),SORHT(IL),
C WT(IL),GT(IL),IL=1,ISOR)
106 FORMAT(6A4/11F7.0)
CC INAME - LITERAL I.D. OF EMISSION SOURCES. PRINTED IN OUTPUT.
CC QSOT - EMISSION RATE (GM/SEC).
CC HST - PHYSICAL HEIGHT OF STACK. (METERS)
CC TS - EFFLUENT TEMPERATURE (DEG K) TS, VS, D, & VF CAN BE
CC VS - EFFLUENT VELOCITY (MPS) BLANK WHEN GT > 0.
CC D - STACK DIAMETER (M)
CC VF - VOLUMETRIC FLOW RATE (CU M PER SEC). COMPUTED INTERNALLY IF
MA012100
MA012200
MA012300
MA012400
MA012500
MA012600
MA012700
MA012800
MA012900
MA013000
MA013100
MA013200
MA013300
MA013400
MA013500
MA013600
MA013700
MA013800
MA013900
MA014000
MA014100
MA014200
MA014300
MA014400
MA014500
MA014600
MA014700
MA014800
MA014900
MA015000
MA015100
MA015200
MA015300
MA015400
MA015500
MA015600
MA015700
MA015800
MA015900
MA016000

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ENTERED AS ZERO, AND VS AND D ARE GIVEN.
 SHOT - HORIZ COORD OF SOURCE. 460.0 FOR CENTER OF NETWORK.
 SVET - VERT COORD OF SOURCE. 60.0 FOR CENTER OF RADIAL NETWORK.
 EACH UNIT OF THE COORDINATES IS EQUIVALENT TO THE LENGTH OF GRID. MA016400
 COORDINATES FOR AREA SOURCE ARE AT THE LOWER LEFT-HAND CRNR OF AREA. MA016500
 THIS IS THE SOUTHWEST CORNER.
 SORHT - GRND ELEV AT SOURCE (FEET.)
 WT - WIDTH OF SQUARE AREA SOURCE (M). ZERO FOR POINT SOURCES.
 GT - FIXED PLUME RISE (M). UNCHANGED THRUOUT CALCULATIONS, EXCEPT
 FOR TERRAIN ELEVATION EFFECTS. BRIGGS IS CALCULATED ONLY IF GT=0. MA017000
 PLUME RISE IS CALCULATED OR USER ASSIGNED FOR ALL SOURCES.
 3112 CONTINUE
 CC <<<<<< DATA IN >>>>>>
 CC READ IN CLASS-AVERAGE WIND SPEEDS (MPS)
 READ(IN,7,ERR=3909) (WSA(I),I=1,6)
 7 FORMAT(6F10.6)
 IF(WSA(1)*GT.99.) GO TO 3900
 CC <<<<<< DATA IN >>>>>>
 READ(IN,2) SCFMT
 2 FORMAT(18A4)
 CC SCFMT IS FORTRAN FORMAT FOR SC DECK.
 CC ##### EXAMPLE (8X,F5.0,F5.0,F5.0,F5.0,42X) OR (6F8.0)
 CC <<<<<< DATA IN >>>>>>
 READ(IN,SCFMT,ERR=3911) ((SC(M,N,J),J=1,6),N=1,16),M=1,6)
 CC SC IS STABILITY, DIRECTION, SPEED ROSE DATA I.E., STAR DECK.
 CC FOR LONG-TERM SC DECK, FREQUENCIES NORMALLY TOTAL ABOUT 1.00.
 CC SUM THE STAR FREQUENCIES FOR PRINTOUT.
 STARFR =0.0
 DO 3313 J=1,6
 DO 3313 N=1,16
 DO 3313 M=1,6
 STARFR =STARFR +SC(M,N,J)
 3313 CONTINUE
 CC LIST STABILITY, DIR, SPD FREQUENCIES.
 WRITE(K,3116)(TITLE(I),I=1,5)
 3116 FORMAT('1'//'/20X,5A4)
 WRITE(K,3117)(WSA(J),J=1,6)
 3117 FORMAT('/T13,SPD(MPS),2X,6(F6.3,2X),* STABILITY WIND DIR')
 DO 3120 M=1,6
 WRITE(K,3118) (STAB(M),DIR(N),SC(M,N,J),J=1,6),N=1,16

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3118 FORMAT('0.,(T4,A4,T14,A4,T21,6F8.4)')
3120 CONTINUE
CC S(M) IS IMPACT OF ALL SOURCES AT RCPTR M.
DO 1110 M=1,112
 1110 S(M)=0.0
    CC CALCULATE ALWT(PPM OR UG/M3), AND STP(STD OR AMBIENT COND.).
    IF(MWT.NE.0) GO TO 3220
    CC CHI TO BE IN UG/M3.
    ALWT=1000000.
    IF(PRESS.EQ.0.) GO TO 3225
    CC UG/M3 TO BE AT STD. COND.
    IF(P.EQ.0.) P=960.
    PRESS=P
    STP=1013.2*TEMP/(PRESS*298.)
    GO TO 3230
    CC CHI TO BE IN PPM.
3220 IF(P.EQ.0.) P=960.
    IF(TEMP.EQ.0.) TEMP=293.
    ALWT=8.31E04*TEMP/(MWTR*P)
3225 STP=1.0
    CC LOOP ON SOURCE
3230 DO 97 IL=1,ISOR
    VMAX=0.
    BRIGUN(IL)=1.E 10
    BRIGE(IL)=1.E 10
    BRIGF(IL)=1.E 10
    NSOR=IL
    COMPUTE COORD OF CENTER OF SOURCE, POINT OR AREA.
    SHOR=SHOT(IL)+WT(IL)/(2*GRID)
    SVER=SVER(IL)+WT(IL)/(2*GRID)
    HSE=HST(IL)
    QSO=QSOT(IL)
    CC QSO IS QRTRD FOR SHORT TERM TO CONVERT 6-HR MEAN TO 24-HR MEAN.
    CC ASSUMES STEADY STATE FOR 6 HOURS.
    IF(ISSHORT.EQ.2) QSO=QSOT(IL)/4.0
    GEGT(IL)
    W=WT(IL)
    SET FLAG ONCE FOR EACH SOURCE, TO SKIP BRIGGS WHEN EFFLUENT CHARACTERISTICS ARE NOT GIVEN BY USER. PRINT WARNING. OR, WHEN FIXED DELTA H IS INPUT.
    CC
    CC

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IZBRIGE=1          MA024100
IF(GT.0.0)GO TO 499  MA024200
TOTAL=YF(IL)+VS(IL)+D(IL)  MA024300
IF(TOTAL.GT.0.0.AND.TS(IL).GE.TEMP) GO TO 500  MA024400
BRIGUN(IL)=0.0  MA024500
BRIGE(IL)=0.0  MA024600
BRIGF(IL)=0.0  MA024700
MMME=6*(IL-1)  MA024800
WRITE(K,498)NSOR,(INAME(MMM+MM),MME1,6)  MA024900
498 FORMAT('1'//////////T45,'WARNING -- RE SOURCE',I4,I4,I6A4/
A 45X,'PLUME RISE FACTORS SET TO 0.0 BECAUSE /45X,'EFFLUENT FACTORS
B ARE NOT SPECIFIED BY USER.')  MA025000
MA025100
500 IZBRIGE=0  MA025200
CC Loop ON RECEPTOR  MA025300
DO 115 M=1,IREC  MA025400
115 V(M) IS IMPACT OF SOURCE IL ON RCPTR M.  MA025500
V(M)=0.0  MA025600
NDIR1=1  MA025700
NDIR2=16  MA025800
IF(W.GT.0.0) GO TO 510  MA025900
CC LIMIT APPLICABLE WIND SECTORS TO TWO FOR POINT SOURCES(VIA IPP)
XDIFF=SHOT(IL)-RHOR(M)  MA026000
YDIFF=SVET(IL)-RVER(M)  MA026100
PLACE LOWER LIMIT ON PT-SRC/RCPTR DISTANCE(20M).  MA026200
MA026300
CC PLACEMENT OF WIND SECTOR  MA026400
SRDIS=GRID*SQRT(XDIFF**2+YDIFF**2)  MA026500
IF(SRDIS.LT.20.)GO TO 115  MA026600
NDIR1=IFIX(ATAN2(XDIFF,YDIFF)/0.3927)+1  MA026700
IF(XDIFF.LT.0.0)NDIR1=NDIR1+1  MA026800
NDIR2=NDIR1+1  MA026900
MA027000
CC Loop ON WIND DIRECTION  MA027100
510 DO 96 NDIR1,NDIR2  MA027200
NEND  MA027300
IF(N.EQ.17) N=1  MA027400
CC Loop ON STABILITY  MA027500
DO 98 LOOK=1,7  MA027600
CC Loop ON WIND SPEED  MA027700
DO 99 J=1,6  MA027800
H=G+HS  MA027900
CC SKIP TO 9 WHEN APPLICABLE DIR AND STBLTY VRBLS ARE ALREADY COMPUTED. MA028000

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IF(J.GT.1) GO TO 9
CC SKIP TO 132 WHEN APPLICABLE DIR VRLBS ARE ALREADY COMPUTED.
CC IF(LOOK.GT.1) GO TO 132
ACTUAL START OF CALCULATIONS BASED ON ITERATION OF WIND DIRECTION.
BB = N
RAD = (BB-1.0) * .3927
BSIN= SIN (RAD)
BCOS=COS (RAD)
XP IS DISTANCE (VECTOR WITH SIGN) FROM RCPTR TO ACTUAL SRC.
XP=GRID*((SVER-RVER(M))*BCOS+(SHOR-RHOR(M))*BSIN)
WHEN RCPTR TO PT SRC DIST IS SMALL, GO TO NEXT RCPTR.
IF(XP.LT.10 AND W.EQ.0.0) GO TO 115
X IS DWNWND DIST FROM PT SRC OR VIRTUAL PT SRC TO RCPTR.
X = XP + W*.393
IF RCPTR IS UPWIND OF SOURCE, GO TO NEXT DIR.
IF(XP+W/2.) > 96.96.4
Y IS CROSSWIND DISTANCE RCPTR TO SECTOR CENTERLINE AT DSTNC X.
Y=ABS( GRID*((SVER-RVER(M))*BSIN-(SHOR-RHOR(M))*BCOS))
CX IS SECTOR WIDTH AT DSTNC X.
CX = .393 * X
IS RCPTR AFFECTED BY SECTOR.
ARG 2 IS FRACTION OF SECTOR WINDS AFFECTING RCPTR FOR GIVEN SOURCE.
MA030100
MA030200
MA030300
MA030400
MA030500
MA030600
MA030700
MA030800
MA030900
MA031000
MA031100
MA031200
MA031300
MA031400
MA031500
MA031600
MA031700
MA031800
MA031900
MA032000
ARG2 = (CX-Y)/CX
IF(W.GT.0.0) GO TO 121
IF(SHOR.NE.460.OR.SVER.NE.60.) GO TO 13
IF PT SRC AT CENTR (460,60) ARG2 SAYS WHICH LONE SECTOR IS REQUIRED.
DELETE 2 STMNTS ABOVE AND 3 BELOW IF RCPTRS OTHER THAN ON THE 16 RADIALS ARE ADDED AS MODIF., AND ADD 'IF(W.EQ.0.)GOTO13' AT 36+001MA030900
IF(ARG2.LT.0.5) GO TO 96
ARG2=1.0
GO TO 13
121 IF((W/2.)-ABS(XP))122,122,1225
122 IF(W=.393*XP)13,13,123
Q IS FRACTION OF AREA SRC WHICH AFFECTS RCPTR. FOR PT SRC, Q=1.
RECEPTOR INSIDE SOURCE AREA.
1225 Q=(.1965*(X-2.04*W)**2)/W**2
XP =.707*(XP+W/2.)
X=2.0*XP
FOR AREA SRC LIMIT RCPTR-TO VIRTUAL PT SRC DIST TO MIN OF 100 M TO

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CC   AVOID ARITHMETIC BLOWUP.
CC   IF(X.LT.100.) X=100.
CC   IF AREA SRC DOES NOT AFFECT RCPTR, GO TO NEXT DIRECTION.
CC   IF(Y-(W/2.+0.5)) 131,131,96
CC   RECEPTOR OUTSIDE SOURCE AREA, BUT 'NEAR' IT.
123 Q=(.393*X-W)/W
     XP=SQR((XP*XP)+(W*W/4))
     X=2.*XP
     IF(X.LT.100.) X=100.
     IF(Y-(W/2.+.393*X)) 131,131,96
CC   CONTRIBUTION OF POINT SOURCE OR DISTANT AREA SOURCE IS 0=1.
13  Q=1.
CC   PLUME RISE FCTRS ARE COMPUTED ONCE PER SOURCE-RECEPTOR FOR
CC   NONSTABLE.
131 IF((ISBRIGHT+IZBRIGHT).LT.2)GO TO 132
     ISBRIGHT=0
     XXP=XP/1000.
     IT=4
     CALL BEH072(DUM1,DUM2,DUM3,DUM4,DUM5,DUM6,BRIGHT,HST(IL),
*    TS(IL),VS(IL),D(IL),VF(IL),IT,1.0,XXP,DTDZ(IL),TEMP,P)
     BRIGUN(IL)=BRIG
132 GO TO (1310,1311),IUR
     XXP=XP/1000.
     IT=4
     CALL BEH072(DUM1,DUM2,DUM3,DUM4,DUM5,DUM6,BRIGHT,HST(IL),
*    TS(IL),VS(IL),D(IL),VF(IL),IT,1.0,XXP,DTDZ(IL),TEMP,P)
     BRIGUN(IL)=BRIG
1310 GO TO (362,363,364,367,366,365,98),LOOK
1311 GO TO (362,363,364,367,368,369,370),LOOK
     DM=1.5*DMIX
     FREQ=1.
     L=1
     LLL=1
     GO TO 22
363 DM=DMIX
     FREQ=1.
     L=2

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      GO TO 22
      DM=DMIX
      FREQ=1.
      L=3
      GO TO 22
      DM=DMNI
      FREQ=1.
      L=5
      GO TO 22
      IF(ISSHORT.EQ.2) GO TO 98
      DM=(DMIX+DMNI)/2.
      FREQ=.40
      L=4
      GO TO 22
      DM=DMIX
      FREQ=.60
      IF(ISSHORT.EQ.2) FREQ=1.0
      L=4
      GO TO 22
      DM=DMIX
      FREQ=.40
      L=4
      GO TO 22
      DM=DMIX/2.
      FREQ=.40
      L=4
      GO TO 22
      FREQ=1.
      DM=10000.
      L=5
      LLL=2
      GO TO 22
      FREQ=1.
      DM=10000.
      L=6
      KKK=L
      CC REVERT TO ORIGINAL DMIX WHEN SHORT-TERM AND NONSTABLE.
      IF(ISSHORT.EQ.2.AND.LLL.EQ.1) DM=DMIX
      IF(IUR.EQ.1.AND.LOOK.GE.6)L=4
      CC COMPUTE SIGMA Z AS F(DISTANCE,STABILITY).
      LLE=L
      IF(XP.LT.1000.) LL=LL+6
      IF(XP.LT.100.) LL=LL+6
      MA036100
      MA036200
      MA036300
      MA036400
      MA036500
      MA036600
      MA036700
      MA036800
      MA036900
      MA037000
      MA037100
      MA037200
      MA037300
      MA037400
      MA037500
      MA037600
      MA037700
      MA037800
      MA037900
      MA038000
      MA038100
      MA038200
      MA038300
      MA038400
      MA038500
      MA038600
      MA038700
      MA038800
      MA038900
      MA039000
      MA039100
      MA039200
      MA039300
      MA039400
      MA039500
      MA039600
      MA039700
      MA039800
      MA039900
      MA040000

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SIGI=50. HS
 IF(LL.GT.1.OR.SIGI.LT.1.0) SIGI=0.0
 SIGMA IS INCREASED FOR ALL LOW-LEVEL SRCS Xcpt FOR RUR-URB STABLE.
 IF(SIGI.GT.30.) SIGI=30.
 SIGZ=SQRT((A(LL)*ABS(XP)**B(LL)+C(LL))**2+SIGI**2)

ACTUAL START OF CALCULATIONS BASED ON ITERATION OF SPEED CLASS
 9 FESC(KKK,N,J)
 IF(KKK.EQ.5.AND.IUR.EQ.1) FESC(S,N,J) + SC(6,N,J)
 WS=WSA(J)
 IF(F.EQ.0.0.OR.WS.EQ.0.0) GO TO 99

WINDSP=WS
 IF(G.NE.0.0) GO TO 15
 IF(L.LT.5) GO TO 14

BEH072 RETURNS DELTA H (BRIG) FOR STABLE E OR F, FOR EACH WIND SPD.
 FOR WIND SPD = WS.
 CALL BEH072(DUM1,DUM2,DUM3,DUM4,DUM5,BRIG,HST(IL),
 * TS(IL),VS(IL),D(IL),VF(IL),L,WS,XXP,DTDZ(IL),TEMP,P)
 IF(L.EQ.5) BRIGE(IL)=BRIG
 IF(L.EQ.6) BRIGF(IL)=BRIG
 HFHS+BRIG
 GO TO 15

14 H=HS+BRIGUN(IL)/WS
 15 CONTINUE

FOR ALL SHORT TERM NONSTABLE, LIMIT H TO DM. RECALL FOR SHORT-TERM
 RURAL, DM(STBL)>>H.
 IF(ISHORT.EQ.2.AND.LLL.EQ.1.AND.H.GT.DM) H=DM
 GO TO NEXT SPEED IF PLUME ABOVE LID.
 IF(H.GT.DM) GO TO 99
 IF(LLL.EQ.1.OR.SUM.EQ.0.0.OR.H.LE.10.0) GO TO 3488,
 THRU 3490, ESTABLISH HT OF PLUME CNTRLNE ABOVE RCTPTR.
 STABLE
 DELEV=(SORHT(IL)-RECHT(M))*HFCTR

CC PLHT IS UNADJUSTED PLUME HT AT RECEPTOR.
 3410 PLHT=H+DELEV

3420 IF(PLHT.GT.10.0) GO TO 3491
 CC ATTENUATE CONC TO ZERO AT 400M ABOVE ORIG PLUME CNTRLINE.
 IF(PLHT.LT.-400.0) GO TO 99
 WS=WS*(400.0/(401.+PLHT))

SET MIN PLUME HT AT 10M ABOVE RCPTTR FOR STABLE ONLY, IF TERRAIN USED
 IF(PLHT.LT.10.0) PLHT=10.

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CC PLHT IS NOW THE ADJUSTED PLUME HEIGHT AT THE RECEPTOR.
CC GO TO 3491
CC UNSTABLE
3488 PLHT=H
3491 H=PLHT
      ARG1=(-5*H*H)/(SIGZ*SIGZ)
      CC ARG1.LT.-40. ((I.E., EXP(ARG1).LT.4.0E-16)) IS INSIGNIFICANT.
      IF (ARG1.LT.-40.) GO TO 99
      ARG1=EXP(ARG1)
      ARG1FR=0.0001*ARG1
      RATHER THAN INTERPOLATING FOR LID REFLECTION AS IN C9M3D, USE
      TURNER (WADE) EQN 5.14 FOR HOMOGENEOUS MIX, AND HALES-BIERLY-HEWSON
      EQN (TURNER EQN 5.8, BUT FOR SECTOR) FOR SHORTER DISTANCES.
      XD=EX
      AJ=0.
      IF(SIGZ.GT.(2.*DM))GO TO 75
      NO INVERSION ALOFT FOR STABLE (GO TO 68)
      IF(L.GE.5)GO TO 68
      NONSTABLE METEO CONDITIONS. HALES-BIERLY-HEWSON.
      DO 65 NJ=1,5
      DUM1=2*NJ*DM
      DUM2=EXP(-.5*((H-DUM1)/SIGZ)**2)
      A +EXP(-.5*((H-DUM1)/SIGZ)**2)
      IF(DUM2,GT.ARG1FR)GO TO 65
      AJ=AJ+DUM2
      GO TO 68
65 AJ=AJ+DUM2
68 C3=2.03*FREQ*Q*F*ARG2*(ARG1+AJ)/(WS*XD*SIGZ)
      GO TO 78
      FULLY MIXED IN VERTICAL
75 C3=2.55*FREQ*Q*F*ARG2/(DM*WS*XD)
78 CONTINUE
      C4=C3*QSO*ALWT*STP
      DISTANCE TO VIRTUAL SOURCE IS EXCLUDED, FROM HLIFE CALCULATION.
      IF(HLIFE.NE.0.0) C4=C4*EXP(-(XP/WINDSP)*0.693/(3600.*HLIFE))
      V(M)=V(M)+C4
      V IS THE IMPACT OF SOURCE AT RECEPTOR M.
      99 CONTINUE
98 CONTINUE
96 CONTINUE

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CC VMAX IS MAX VALUE OF ALL V'S COMPUTED FOR GIVEN SOURCE.
  IF(V(M).LT.VMAX) GO TO 1140
  VMAX=V(M)
  MAXV=M

CC S IS THE SUM OF IMPACTS OF ALL SOURCES AT RECEPTOR M.
1140 S(M)=S(M)+V(M)
  IF(S(M).LT.AMAX) GO TO 115
  MAXAM=M

CC AMAX IS MAX VALUE OF S(M) IN PLOT TO BE PRINTED.
  AMAX=S(M)

115 CONTINUE
  IF(ICONT.EQ.0) GO TO 97
  CC SET FLAG TO INDICATE FLOW ROUTE THRU PLOTTING SUBROUTINE.
  NN=1
  CALL EBPLT1
  97 CONTINUE
  IF(ICONT.EQ.2) GO TO 971
  NN=0
  CALL EBPLT1
  971 IF(MAP.NE.1) GO TO 1000
  CC SET FLAG TO INDICATE FLOW ROUTE THROUGH PLOTTING SUBROUTINE.
  NN=2
  CALL EBPLT1
  GO TO 1000
  WRITE(6,3902) I
3901 FORMAT('0<< ERROR IN READ RCPTR HTS. CARD',I4)
  GO TO 3915
  WRITE(6,3904)
3903 FORMAT('0<< ERROR IN READ P,TEMP')
  GO TO 3915
  WRITE(6,3906)
3905 FORMAT('0<< ERROR IN READ GRID')
  GO TO 3915
  WRITE(6,3908) IL
3907 FORMAT('0<< ERROR IN READ SOURCE, CARD',I4)
  GO TO 3915
  WRITE(6,3910)
3909 FORMAT('0<< ERROR IN READ WSA')
  GO TO 3915
  WRITE(6,3912) M,N,J
3911

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3912 FORMAT('0<<< ERROR IN READ SC, STABILITY',I2,'DIR',I3,'SPD',I2)
3915 WRITE(6,3916)
3916 FORMAT('0<<< CHECK OVERALL ORDER OF DATA CARDS BEFORE CHECKING!
      A'          DATA ON CARD REFERRED TO ABOVE //'
      BTERMINATED DUE TO READ FORMAT ERROR (NOT BECAUSE OF DATA CHECK)',I2)
3900 CONTINUE
      CALL EXIT
END
```

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SUBROUTINE EBPLT1
CC   IS GEARED TO WRITE OUTPUT PLOTS OF CONCENTRATION AND HEIGHT
CC   DIFFERENCES. IT IS CALLED WITH FLAG NN SET TO ONE OF 3 VALUES.....
CC   0 - WRITE THE SUM OF ALL CONTRIBUTIONS, AND WRITE A HEIGHT
CC   DIFFERENCE BEFORE RETURN IF IMAP.EQ.1.
CC   1 - WRITE THE CONTRIBUTION OF ONLY ONE SOURCE.
CC   2 - WRITE ONLY THE HEIGHT DIFFERENCE MAP.
DIMENSION SHOT(50),SVET(50),HST(50),QSOT(50),GT(50),WT(50)
DIMENSION TS(50),VS(50),Q(50),VF(50),RECHT(112)
DIMENSION VERBL(12),URBRUR(2),THREED(12)
DIMENSION INAME(300),SORHT(50),TERM(2),SCALE(6),TITLE(20),WSA(6)
DIMENSION S(112),V(112),BRIGUN(50),BRIGF(50)
COMMON MAXVM,VMAX,VICONT,MAXAM,AAMAX,S,GRID,NSOR,INAME,TITLE,
A HLIFE,STP,VXDIR,PAGE,ALWT,TFORM,IS3D,G,BRIGUN,TS,D,VS,VF,SORHT,
B SHOT,SVET,HS,QSOT,BRIGF,DMIX,DMNI,STARFR,W,WSA,TEMP,IREC,
C ISOR,GT,HST,WT,VFORM,AXDIR,IUR,ISHORT,NN,MAP,RECHT,HFCTR,K,P,MWT
DATA VERBL/'SUM ','CONC','DUE ','TO ','ALL ','SRCS','
A 'GROU','IND E ','LEV ','DIFF','EREN','CES','/
DATA URBRUR/'URBN','RURL ','TERM/','LONG ','SHRT','/
DATA THREED/'FLAT','-PLA','NE C ','ONCE','PT ',''
A 'SLOP','ING ','TERR','AIN ','CONC','EPT ','/
810 FORMAT('1',T39,F5.1,T56,'--',T60,F5.1,T81,F5.1/T34,'RELOCATE 2/3PL002200
A INCH UP-/,T60,F5.1//T42,F5.1'
B T78,F5.1//T60,F5.1/T22,F5.1,T98,F5.1/T45,F5.1,T76,F5.1//'
C T27,F5.1,T93,F5.1,VIA VALLEY V1//T60,F5.1,T102,6A4/
D T47,F5.1,T73,F5.1/T32,F5.1,T88,F5.1//'
E T100,5A4/T65,15A4/T37,F5.1,T60,F5.1,T83,F5.1/T8,F5.1,T51,F5.1,T69PL002700
F ,F5.1,T112,F5.1)PL002800
PL002900
FORMAT(A(T17,F5.1,T103,F5.1/T43,F5.1,T77,F5.1/T24,F5.1,T60,F5.1,T96,F5.1/
B T54,F5.1,T66,F5.1/T32,F5.1,T48,F5.1,T72,F5.1,T88,F5.1/T37,F5.1,
C T83,F5.1/T60,F5.1/T44,F5.1,4X,F5.1,5X,F5.1,8X,F5.1/
D T58,F5.1,T65,F5.1,T52,F5.1,
E T59,9('**'),T68,F5.1,T99,'MULTIPLY PRINTED VALUES BY ')
103 FORMAT(T59,* COORD *,T99,1PE8.1,' TO GET CONC. IN UG/M3')
PL003400
PL003500
FORMAT(T59,* COORD *,T99,1PE8.1,' TO GET CONC. IN PPM')
PL003600
PL003700
811 FORMAT(T4,7(F5.1,3X),T59,*-* T68,6(F5.1,3X),F5.1/
A T59,* 460,60*,T76,SOR ELEV - COORDX COORDY STK HT Q(GM/SEC)
B FIXD DH')PL003800
PL003900
812 FORMAT(T52,F5.1,T59,9(*),T68,F5.1,T76,F6.0,IFT',F8.2,F7.0, PL004000

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A 'M.' '1PE10.4,4X,0PF6.0/ T58,F5.1,T65   'F5.1/T44,F5.1,T53,F5.1,
B T63,F5.1,T76,F5.1,T84   'BRIG.E BRIG.F DMIX  DMNI  STAR F WIDTHPL004200
C '/T60,F5.1,T84,F6.0,F8.0,F7.0,F8.0,F7.2,F7.0,T37,F5.1,T83,F5.1/
D T32,F5.1,T48,F5.1,T72,F5.1,T88,F5.1,T12X, 'BRIGUN P(MB) MWT/,PL004300
E T54, F5.1,T66,F5.1,T103,F8.0,F6.0,F6.1/T24,F5.1,T60,F5.1,PL004400
F T96,F5.1/T43,F5.1' VV MEAN WIND SPDS (MPS) VV ,T77,F5.1,PL004500
G T17,F5.1,T34,6F9.5,T103,F5.1/T8,F5.1,PL004600
H T51,F5.1,T69,F5.1,T112,F5.1/T37,F5.1,T60,F5.1,T83,F5.1,PL004700
I T97, 'AIR T GAS T DIAM, GAS V FLOW' /T95,2F7.0,2F7.1,F6.1/
J T32,F5.1,T88,F5.1/T47,F5.1,T73,F5.1/T60,F5.1/T27,F5.1,T93,PL005000
K F5.1/T45,F5.1,T75,F5.1/T22,F5.1,T98,F5.1/T60,F5.1,PL005100
L T42,F5.1,T78,F5.1/T56,'0 KM',3X,F7.3,5('KM ',F7.3),0 KM',PL005200
M T56,6('J...+...')/1/1/T60,F5.1,PL005300
N T68,'--RELOCATE 2/3 INCH DOWN',/T5,A4,'',A4,'-TERM MODE.',PL005400
O T39,F5.1,T60,F5.1,'--/1,T81,F5.1,T100,6A4)PL005500
MM=NN+1
GO TO(971,10,3800),MM
10 AXVM=(MAXVM+6)/7
VXDIR=(AXVM-1.)*22.5
IF (VMAX.GE.100000.) VFORM=0.001
IF (VMAX.LT.100000.) VFORM=0.01
IF (VMAX.LT.10000.) VFORM=0.1
IF (VMAX.LT.1000.) VFORM=1.
IF (VMAX.LT.100.) VFORM=10.
IF (VMAX.LT.10.) VFORM=100.
IF (VMAX.LT.1.) VFORM=1000.
IF (VMAX.LT.0.1) VFORM=10000.
IF (VMAX.LT.0.01) VFORM=100000.
IF (VMAX.LT.0.001) VFORM=1000000.
VFORM AND AFORM SCALE ALL CONCENTR. VALUES. ALL VALUES ARE SCALED
BY THE SAME FACTOR ON A GIVEN PLOT SO THAT THE
MAX VALUE ON PLOT IS LEFT-JUSTIFIED IN F5.1, AND UNITS
ARE PROPERLY IDENTIFIED IN OUTPUT. THUS, THE SCALING FACTOR CAN
BE CHANGED FROM PLOT TO PLOT.
DO 835 I=1,IREC
V(I)=V(I)*VFORM
835 CONTINUE
TFORM=1.0/VFORM
PAGE=VMAX*VFORM
TFORM IDENTIFIES IN PRINT STMNT THE UNITS OF CHI PRINTED ON GRAPH.

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GO TO 1153
971 AXAM=(MAXAM+6)/7
      AXDIR=(AXAM-1)*22.5
      IF(AXAM.GE.100000.) AFORM=0.001
      IF(AXAM.LT.100000.) AFORM=0.01
      IF(AXAM.LT.10000.) AFORM=0.1
      IF(AXAM.LT.1000.) AFORM=1.0
      IF(AXAM.LT.100.) AFORM=10.
      IF(AXAM.LT.10.) AFORM=100.
      IF(AXAM.LT.1.) AFORM=1000.
      IF(AXAM.LT.0.1) AFORM=10000.
      IF(AXAM.LT.0.01) AFORM=100000.
      IF(AXAM.LT.0.001) AFORM=1000000.
DO 840 I=1,IREC
      S(I)=S(I)*AFORM
CONTINUE
840 TFORM=1.0/(AFORM)
PAGE=AMAX*AFORM
1153 DO 805 I=1,6
      R=I
      SCALE(I)=R*GRID* 0.01
805 CONTINUE
IF(INN.EQ.0) GO TO 11538
CC WRITE IN MAP FORM THE EFFECTS OF AN INDIVIDUAL SOURCE.
INSOR
      WRITE(K,810) V(112),V(7),V(14),
      A V(6),V(11),V(13),V(5),V(105),
      B V(21),V(110),V(12),V(104),V(20),V(4),INAME(6*I,-5),INAME(6*I,-4),
      C ,INAME(6*I,-3),INAME(6*I,-2),INAME(6*I,-1),INAME(6*I),
      D V(109),V(11),V(103),V(19),
      E (TITLE(I),I=1,5),(TITLE(I),I=6,20),V(102),V(3),V(18),V(98),V(108),PL011100
      F ,V(10),V(28),
      IF(HLIFE.EQ.0.0) HLIFE=999.99
      WRITE(K,803) HLIFE,STP,VXDIR,PAGE
803 FORMAT(T10,'HLIFE=',F5.2,'HRS.',CONCTR CORRCTD TO STD COND VIA PL011500
      AFACTOR,F6.3,'MAX TOWARD',F5.0,'DEG. NORTH TOWARD TOP.',PL011600
      BF8.3)
      IF(HLIFE.EQ.999.99) HLIFE=0.0
      WRITE(K,8102) V(97),V(27),
      A V(101),V(17),V(96),V(2),V(26),V(9),V(107),V(100),V(95),V(100),V(16),
      PL012000

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B V(26),V(94),V(24),V(1),V(93),V(99),V(8),V(23),V(106),V(15),
C V(92),V(22) PL012100
C IF(ALWT-1000000.)1141,1142,1141 PL012200
1141 WRITE(K,104) TFORM PL012300
GO TO 11421 PL012400
1142 WRITE(K,103) TFORM PL012500
PL012600
11421 CONTINUE PL012700
WRITE(K,811) V(91),V(90),V(89),V(88),V(87),V(86),V(85),
A (V(M),M=29,35) PL012800
IIB=IS3D PL012900
IIE=IS3D+5 PL013000
IF(G.EQ.0.0) G=1.E 10 PL013100
IF(BRIGUN(NSOR).EQ.0.0) BRIGUN(NSOR)=1.E 10 PL013200
IF(TS(NSOR).EQ.0.0) TS(NSOR)=1.E 10 PL013300
IF(D(NSOR).EQ.0.0) D(NSOR)=1.E 10 PL013400
IF(VS(NSOR).EQ.0.0) VS(NSOR)=1.E 10 PL013500
IF(VF(NSOR).EQ.0.0) VF(NSOR)=1.E 10 PL013600
IF(VF(NSOR).EQ.0.0) VF(NSOR)=1.E 10 PL013700
WRITE(K,812) V(78),V(36),SORHT(NSOR),SHOT(NSOR),SVET(NSOR),HS,
A QSOT(NSOR),G,V(64),V(43),V(79),V(71),V(50),V(37),
B V(57),BRIGF(NSOR),BRIGF(NSOR),DMIX,DMN1,STARFR,W,V(80),V(38),
C V(81),V(72),V(44),V(39),V(65),V(51),BRIGUN(NSOR),P,MWT,V(82),
D V(58),V(40),V(73),V(45),V(83),V(41),V(84),V(66),
E V(52),V(42),V(74),V(59),V(46),TEMP,TS(NSOR),D(NSOR),VS(NSOR),
F VF(NSOR),V(75),V(47),V(67),V(53),V(60),V(76),V(48),
G V(68),V(54),V(77),V(49),V(61),V(69),V(55),(SCALE(N1),N1=1,6),
H V(62),URBRUR(IUR),TERM(TISHORT),V(70),V(63),V(56),(THREED(I),
I I=IIB,IIE) PL014700
PL014800
RETURN PL014900
11538 DO 11537 I=1,ISOR PL015000
CC OVERFLOW INAPPLICABLE VARIABLES FOR PRINTING. PL015100
IF(GT(I).EQ.0.0) GT(I)=1.E10 PL015200
IF(TS(I).EQ.0.0) TS(I)=1.E 10 PL015300
IF(D(I).EQ.0.0) D(I)=1.E 10 PL015400
IF(VS(I).EQ.0.0) VS(I)=1.E 10 PL015500
IF(VF(I).EQ.0.0) VF(I)=1.E 10 PL015600
11537 CONTINUE PL015700
WRITE(K,111)(TITLE(I),I=1,20),PAGE PL015800
WRITE(K,112) PL015900
A (IL,INAME(6*IL-5),INAME(6*IL-4),INAME(6*IL-3),INAME(6*IL-2), PL016000

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B INAME(6*IL-1),INAME(6*IL),SHOT(IL),SVET(IL),HST(IL),QSOT(IL),
C GT(IL),WT(IL),SORHT(IL),BRIGUN(IL),BRIGE(IL),BRIGF(IL),
D TEMP,TS(IL),D(IL),VS(IL),IL=1,ISOR)
111 FORMAT('1',
A   6X,20A4/' SOURCE DATA. PLOT 'F7.3 /6X,' SOURCE NAME',10XPL016500
B   ' COORDX COORDY STK HT EMISS RATE FIXD DH SOR W SOR H BRIGPL016600
C   UN BRIGE BRIGF AIR T GAS T DIA M GAS V')
112 FORMAT(
1X,I2,I2,I1X,6A4,F7.2,F7.2,F8.0,1X,1PE10.4,0PF9.0,F7.0,
A F7.0,F8.0,2F7.0,2X,F4.0,3X,F4.0,1X,F5.1,F5.1)
PL016800
PL016900
PL017000
PL017100
PL017200
PL017300
PL017400
PL017500
PL017600
PL017700
PL017800
PL017900
PL018000
PL018100
PL018200
PL018300
PL018400
PL018500
PL018600
PL018700
PL018800
PL018900
PL019000
PL019100
PL019200
PL019300
PL019400
PL019500
PL019600
PL019700
PL019800
PL019900
PL020000

CC OVERFLOW SOURCE HT (SHT) BEFORE WRITING SUM OF ALL SOURCE CONTRIBUTNSPL017100
SHT=1.E+20
PL017200
CC OVERFLOW IRRELEVANT PRMTRS(XCPT Q) FOR WRITING SUM AND HDIFF
11539 QSO=0.0
DUM=1.E+20
IB=IVER
IE=IVER+5
CC WRITE IN MAP FORM THE SUM OF EFFECTS OF ALL SOURCES.
CC OR, IF S() ARRAY HAS BEEN LOADED WITH HT DIFFS, WRITE THEM.
WRITE(K,810) S(112),S(7),S(14),
A S(6),S(111),S(13),S(5),S(105),
B S(21),S(110),S(12),S(104),S(20),S(4),(VERBL(I),I=IB,IE),
C S(109),S(11),S(103),S(19),
D (TITLE(I),I=1,5),(TITLE(I),I=6,20),S(102),S(3),S(18),S(98),S(108)PL018400
E ,S(10),S(28)
IF(MAP.EQ.2) GO TO 809
IF(HLIFE.EQ.0.0) HLIFE=999.99
WRITE(K,803) HLIFE,STP,ADIR,PAGE
IF(HLIFE.EQ.999.99) HLIFE=0.0
809 IF(MAP.EQ.2) WRITE(K,8101)
8101 FORMAT(T20,NORTH TOWARD TOP.
A), HTS IN METERS.')
WRITE(K,8102) S(97),S(27),
A S(101),S(17),S(96),S(2),S(26),S(107),S(9),S(95),S(100),S(16),
B S(25),S(94),S(24),S(1),S(93),S(99),S(8),S(23),S(106),S(15),
C S(92),S(22)
IF(MAP.EQ.2) GO TO 11515
IF(ALWT-1000000.0)1151,1152,1151
1151 WRITE(K,104) TFORM
GO TO 11521

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PL020100
PL020200
PL020300
PL020400
PL020500
PL020600
PL020700
PL020800
PL020900
PL021000
PL021100
PL021200
PL021300
PL021400
PL021500
PL021600
PL021700
PL021800
PL021900
PL022000
PL022100
PL022200
PL022300
PL022400
PL022500
PL022600
PL022700
PL022800
PL022900
PL023000
PL023100
PL023200
PL023300
PL023400
PL023500
PL023600
PL023700
PL023800
PL023900
PL024000
PL024100

1152 WRITE(K,103) TFORM
GO TO 11521
11515 WRITE(K,11517) TFORM
11517 FORMAT(T59,* COORD *,T86,1PE8.1, TO GET GROUND ELEV DIFF IN M)
CONTINUE
11521 IIB=IS3D
IIE=IS3D+5
WRITE(K,811) S(91),S(90),S(89),S(88),S(87),S(86),S(85),
A (S(M),M=29,35)
WRITE(K,812) S(78),S(36),SHT,DUM,DUM,QSO,DUM,
A S(64),S(43),S(79),S(71),S(50),S(37),
B S(57),DUM,DUM,DMIX,DMNI,STARFR,DUM,
C S(80),S(38),S(81),S(72),S(44),S(39),S(65),S(51),DUM,P,MWT,S(82),
D S(58),S(40),S(73),S(45),S(83), (WSA(I),I=1,6),
E S(41),S(84),S(66),S(52),S(42),S(74),S(59),S(46),TEMP,DUM,DUM,
F DUM,S(75),S(47),S(67),S(53),S(60),S(76),S(48),
G S(68),S(54),S(77),S(49),S(61),S(69),S(55),(SCALE(N1),N1=1,6),
H S(62),URBRUR(IUR),TERM(ISHORT),S(70),S(63),S(56),(THREED(I),
I I=IIB,IIF)
IF (MAP.NE.1) RETURN
CC PREPARE TO WRITE HEIGHT MAP
3800 CONTINUE
MAP=2
PAGE=PAGE-100.
DO 3810 I=1,IREC
S(I)=((SORHT(I)-RECHT(I))*HFCTR)/10.
TFORM=10.0
3810 CONTINUE
CC OVERFLOW IRRELEVANT VRBLS FOR WRITING HDIFF MAP
3811 WSA(I)=10000.
DO 3811 I=1,6
SHT=SORHT(I)
STARFR=1.E+10
IVER=7
DMIX=1.E+10
DMNI=1.E+10
P=1.E+10
TEMP=1.E+10
MWT=1.E+10
GO TO 11539
END

```

SUBROUTINE BEH072 (HF, HX, HMW, F, DELHX, DISTF, DELHX, TS, VS, D, VF, BE000100
 1 KST, U, X, DTHDZ, T, P) BEH072 (BRIGGS EFFECTIVE HEIGHT) OCTOBER 1972
 THIS DIFFERS FROM THE AUGUST 1972 VERSION IN STATEMENT 24, + 1:BE000400
 THE CONSTANT 2.4 PREVIOUSLY WAS 2.9, AND IN STATEMENT 27: BE000500
 THE CONSTANT 3.1459 PREVIOUSLY WAS 2.4. *
 D. B. TURNER, RESEARCH METEOROLOGIST, MODEL DEVELOPMENT BRANCH, BE000600
 DIVISION OF METEOROLOGY, ENVIRONMENTAL PROTECTION AGENCY, BE000700
 ROOM 314B, NCHS BUILDING, RTP, PHONE (919) 549-8411 EXT 4564 BE000800
 MAILING ADDRESS: DM, EPA, RESEARCH TRIANGLE PARK, NC 27711 BE001000
 * ON ASSIGNMENT FROM NATIONAL OCEANIC AND ATMOSPHERIC
 ADMINISTRATION, DEPARTMENT OF COMMERCE. BE001100
 FROM A SINGLE SOURCE IS BASED ON: BE001200
 THIS VERSION OF BRIGGS EFFECTIVE HEIGHT TO CALCULATE PLUME RISE BE001300
 1) BRIGGS, GARY A.: 1971: SOME RECENT ANALYSES OF PLUME RISE BE001400
 OBSERVATION. PP 1029 - 1032 IN PROCEEDINGS OF THE SECOND BE001500
 INTERNATIONAL CLEAN AIR CONGRESS, EDITED BY H. M. ENGLUN BE001600
 AND W. T. BEERY. ACADEMIC PRESS, NEW YORK.
 2) BRIGGS, GARY A.: 1972: DISCUSSION ON CHIMNEY PLUMES IN BE001700
 NEUTRAL AND STABLE SURROUNDINGS. ATMOS. ENVIRON. 6, 507 BE001800
 - 510. (JUL 72). BE001900
 BE002000
 OUTPUT VARIABLES ARE: HF FINAL EFFECTIVE PLUME HEIGHT (METERS)
 HX EFFECTIVE PLUME HEIGHT FOR DISTANCE X (METERS)
 HMW HEAT OUTPUT OF SOURCE (MW) BE002400
 F BUOYANCY FLUX (M**4/SEC**3) BE002500
 DELHF FINAL PLUME RISE (METERS) BE002600
 DISTF DISTANCE OF FINAL PLUME RISE FROM SOURCE (KM) BE002700
 DELHX PLUME RISE AT DISTANCE X (METERS) BE002800
 BE002900
 INPUT VARIABLES ARE: HP PHYSICAL STACK HEIGHT (METERS)
 TS STACK GAS TEMPERATURE (DEG K) BE003100
 VS STACK GAS EXIT VELOCITY (M/SEC) BE003200
 D INSIDE STACK DIAMETER (METERS) BE003300
 VF STACK GAS VOLUMETRIC FLOW RATE (M**3/SEC) BE003400
 KST STABILITY (CLASS). SEE PAGE 209 OF PASQUILL, BE003500
 ATMOSPHERIC DISPERSION. CLASSES DEFINED BY... BE003600
 1 IS PASQUILL STABILITY CLASS A BE003700
 2 IS PASQUILL STABILITY CLASS B BE003800
 3 IS PASQUILL STABILITY CLASS C BE003900
 BE004000

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```

C   4 IS PASQUILL STABILITY CLASS D          BE004100
C   5 IS PASQUILL STABILITY CLASS E          BE004200
C   6 IS PASQUILL STABILITY CLASS F          BE004300
C   U WIND SPEED (M/SEC)                      BE004400
C   X DTHDZ POTENTIAL TEMPERATURE LAPSE RATE (DEG K/METER) BE004500
C   T AMBIENT AIR TEMPERATURE (DEG K)          BE004600
C   P AMBIENT AIR PRESSURE (MB)                BE004700
C   THANKS TO DALE COVENTRY FOR HIS HELPFUL DISCUSSION ON BE004800
C   PROGRAMMING PLUME RISE, TO ROGER THOMPSON FOR THE COMMENT BE004900
C   CARDS, AND TO RUSS LEE WHO REVISED THIS ACCORDING TO REFERENCE BE005000
C   BE005100
C   IF(T)1,1,2 BE005200
C   T = 0. MEANS NO AMBIENT TEMPERATURE GIVEN. USE T = 293. BE005300
C   1 T = 293. BE005400
C   2 IF(P)3,3,4 BE005500
C   P = 0. MEANS NO AMBIENT AIR PRESSURE GIVEN. USE P = 960. BE005600
C   3 P = 960. BE005700
C   4 IF(VF)5,5,6 BE005800
C   VF = 0.785398*VS*D*D BE005900
C   THE CONSTANT 0.785398 = PI/4 BE006000
C   5 F = 3.12139*VF*(TS-T)/TS BE006100
C   THE CONSTANT 3.12139 IS THE ACCELERATION DUE TO GRAVITY / PI. BE006200
C   HMW = 0.00011217*F*P BE006300
C   THE CONSTANT 0.00011217 = PI TIMES THE SPECIFIC HEAT OF AIR AT BE006400
C   CONSTANT PRESSURE (0.24 CAL/GM*DEG K) TIMES MOLECULAR WEIGHT BE006500
C   OF AIR (28.96 GM/GM MOLE) DIVIDED BY IDEAL GAS CONSTANT BE006600
C   (0.0831 MB*M**3/GM.MOLE*DEG K) AND ACCELERATION DUE TO GRAVITY BE006700
C   (9.80616 M/SEC*SEC) AND THEN MULTIPLIED BY (4.1855E-06 MW/CAL BE006800
C   PER SEC) TO CONVERT THE ANSWER TO MEGAWATTS. BE006900
C   GO TO APPROPRIATE BRANCH FOR STABILITY CONDITION GIVEN. BE007000
C   IF UNSTABLE OR NEUTRAL GO TO 7, IF STABLE GO TO 20. BE007100
C   GO TO (7,7,7,20,20) KST BE007200
C   DETERMINE APPROPRIATE FORMULA FOR CALCULATING XST, DISTANCE AT BE007300
C   WHICH TURBULENCE BEGINS TO DOMINATE. THE FORMULA USED DEPENDS BE007400
C   UPON BUOYANCY FLUX. STATEMENTS 8 AND 9 ARE EQUATION (7). BE007500
C   BE007600
C   BE007700
C   BE007800
C   BE007900
C   BE008000
C
C   IF(F=55.*8,9,9
C   XST=14.*F**.625
C   GO TO 10
C   XST=34.*F**.4
C
C   7
C   8
C   9

```

```

10 DISTF=3.5*XST
C DELHF=1.6*F*0.333333*DISTF*0.666667/U
C IF(X)29,29,32
C   IF X = 0.0, CALCULATE FINAL RISE ONLY, IF X IS GREATER THAN
C     0.0, CALCULATE RISE FOR DISTANCE = X ALSO.
C
C 32 XM = 1000.*X
C   XM IS X IN METERS.
C
C STATEMENT 14 IS EQUATION (6), REFERENCE 1.
C
C 14 DELHX = 1.6*F**0.333333*XM**0.666667/U
C   IF(DELHX.GT.DELHF)DELHX=DELHF
C   GO TO 30
C
C 20 IF(DTHDZ)21,21,24
C   IF DTHDZ IS NEGATIVE OR ZERO ASSIGN TO IT A VALUE OF 0.02 OR
C     0.035 IF STABILITY IS SLIGHTLY STABLE OR STABLE, RESPECTIVELY. BE009400
C   GO TO (7,7,7,22,23),KST
C
C 21 DTHDZ = 0.02
C
C 22 DTHDZ = 0.02
C   GO TO 24
C
C 23 DTHDZ = 0.035
C
C 24 S = 9.80616*DTHDZ/T
C   THE CONSTANT 9.80616 IS THE ACCELERATION DUE TO GRAVITY.
C   S IS A STABILITY PARAMETER.
C   CALCULATE PLUME RISE ACCORDING TO EQUATION (4), REFERENCE 1.
C
C DHA = 2.4*(F/(U*S))**0.333333
C   CALCULATE PLUME RISE BY EQUATION (5), REFERENCE 1 FOR LIGHT
C   WIND CONDITIONS ACCORDING TO MORTON, TAYLOR, AND TURNER.
C
C DELHF = 5.0*F**0.25/S**0.375
C   IF(DHA-DELHF) 25,25,27
C
C 25 DELHF = DHA
C   DISTANCE TO FINAL PLUME RISE IS GIVEN BY THE FOLLOWING
C
C 26 DISTF = 3.14159*U/S**0.5
C   IF X = 0.0, CALCULATE FINAL RISE ONLY, IF X IS GREATER THAN
C     0.0, CALCULATE RISE FOR DISTANCE = X ALSO.
C   IF X IS ZERO OR LESS, GO TO 29 AND SET PLUME RISE AND DIST. TO
C     MAXIMUM PLUME RISE EQUAL TO ZERO.
C
C 27 XM = 1000.*X
C   XM IS X IN METERS.
C
C IF XM IS GREATER THAN THE DISTANCE TO THE POINT OF FINAL PLUME
C RISE, SET PLUME RISE EQUAL TO FINAL PLUME RISE, OTHERWISE,
C CALCULATE PLUME RISE FROM EQUATION (6), REFERENCE 1.

```

IF (XM-DISTF)14,14,28

28 DELHX = DELHF

GO TO 30

29 DELHX = 0.

GO TO 31

C 30 HX = HP + DELHX
CALCULATE EFFECTIVE HEIGHT AT DISTANCE X.

C 31 HF = HP + DELHF
CALCULATE FINAL EFFECTIVE HEIGHT.

DISTF = DISTF/1000.
RETURN

END

BE012100
BE012200
BE012300
BE012400
BE012500
BE012600
BE012700
BE012800
BE012900
BE013000
BE013100
BE013200
BE013300

APPENDIX C
SIMPLE ACQUISITION OF BASE MAPS

The following data set will produce three maps that can be used for transferring the fixed receptor sites of the program to their geographical locations on topographical charts for acquiring terrain elevations at the receptors.

<u>CARD</u>	<u>DATA</u>
1-18	blank
19	col. 1-3: 10. col. 21: 3 col. 27: [user's printer code] col. 30: 2 col. 33: 1
20-26	blank
27	col. 1-7: (6F1.0)
28-123	blank
124	end-of-file or finish

APPENDIX D
EVALUATION OF THE VALLEY MODEL

by

Edward W. Burt and Herschel H. Slater

This paper, with appendix, is contained in the Preprint Volume for the Joint AMS/APCA Conference on Applications of Air Pollution Meteorology, November 29-December 2, 1977. Salt Lake City, Utah

EVALUATION OF THE VALLEY MODEL

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*On Assignment from the National Oceanic
and Atmospheric Administration

1. BACKGROUND

The large non-ferrous smelters in the West posed a particularly difficult problem for air pollution control agencies when State Implementation Plans were being evaluated in 1972 and thereafter. They were known to be large emitters of sulfur dioxide (SO_2) and particulate matter and suspected to be substantial emitters of metals of some toxicity (e.g., arsenic, lead, mercury). Their rates of emissions were not well established. Contaminants were emitted from different processes in different ways at different heights and at different times. The smelters were generally isolated and located in areas of complex, mountainous terrain. Their effluents were dispersed and transported, initially at least, by local wind systems determined largely by the orientation and configuration of the nearby terrain, thermal radiation and the synoptic weather situation. None of the smelter locations had meteorological data available which adequately represented the dispersion and transport factors. Finally, ambient air quality data which were representative of the maximum impact of the smelters on the surrounding air environment did not exist.

2. METEOROLOGICAL RATIONALE

Meteorologists attached to the Office of Air Quality Planning and Standards, EPA, were asked to estimate the likely impact of the smelters on ambient air quality. Several of them had a number of years experience estimating the impact of point sources on ambient air quality, forecasting the weather in the mountainous West, and conducting field sampling studies around large point sources, some of which were in complex terrain. A consensus of their judgments, based on their considerable experience and training in dispersion meteorology, indicated that a smelter located in proximity to terrain features in the western mountains would likely cause frequent and greatest threats to

an ambient air quality standard under a particular set of meteorological circumstances. The threat was considered to be greatest on days with a fanning plume. It was judged that the greatest threat to the ambient air quality standards was likely to occur on nearby elevated terrain during inversion conditions with light winds. In these circumstances the plumes from smelters were observed to level-off shortly above stack top and to flow toward, around or over elevated terrain in ribbons or sheets.

Due to the complexity of the terrain, there were large uncertainties in the representativeness of the available meteorological data. Similarly, the magnitude, height and timing of the emissions were poorly specified. Further, the short-term 24-hr primary standard for SO_2 was most likely the controlling standard. The 3-hr secondary standard for SO_2 did not apply to the evaluation of the Plans at the time, because attainment dates were not specified. A computer program used in an earlier study in complex terrain by EPA (1972a) was modified to represent the short-term impact of polluting facilities, and to include the plume rise formulations recommended by Briggs (1971). The program became known as the Valley Model [EPA (1977)].

Careful review of upper air summaries of wind speeds and stability aloft for the western portion of the U.S. provided a basis for the choice of weather parameters to be used in the analyses undertaken by EPA (1972b). The Briggs plume rise calculations showed that the heights of the smelter plumes in stable air would not exceed 400 m above stack base for the conditions evaluated. Wind speeds of 2.5 mps, ± 1 mps, occurred at 300 meters above ground one-third or more of the time at most western upper air observing sites. On an annual basis, ground-based inversions occur in the morning in the Rocky Mountain area over 75% of the time. Most

of them are at least 250 meters deep [EPA (1973)]. The critical wind speed was chosen to be 2.5 mps. The vertical dispersion coefficient was selected to represent moderately stable circumstances. The smelter plumes were assumed to be constrained horizontally by the terrain and terrain influenced flow and to be uniformly distributed horizontally in a 22.5 degree pie-shaped sector. It was arbitrarily assumed that the plume centerline (with respect to the vertical) would not approach nearer than 10 meters to a terrain feature. Based on peak-to-mean concentrations derived from the work of Montgomery, et al. (1971) and later supported by Mills and Stern (1975) and by Martin and Reaves (1977), the 24-hr estimate was assumed to be one-fourth the shorter-term estimate. This may be interpreted as an indication that the plume affects an area for 6 hr, not necessarily continuous, of a 24-hr period. Finally, the half life of SO_2 was assumed to be 3 hr.

It was expected that the estimates derived by the technique would provide a reasonable estimate of the threat to the 24-hr ambient air quality standard for SO_2 ; i.e., the second highest SO_2 concentration that would occur during a year. The analytical routine was not proposed as a rigorous mathematical description of the physical circumstances which pertain to flow about a terrain feature.

3. COMPARISONS OF ESTIMATED AND OBSERVED DATA

The model was expected to provide estimates of maximum credible threats to 24-hr standards. It was not intended for short-term, day-by-day or hour-by-hour comparisons between estimated and observed concentrations. It is only appropriate to compare estimates of the model with maximum concentrations observed at locations near the height of an elevated stabilized plume. However observed air quality data which enable an unqualified comparison with estimated concentrations in complex terrain situations are difficult to acquire. Past studies suffer from two shortcomings: limited duration, and a limited number of monitoring sites. The data in Table 1 compare the estimated and the highest and second highest observed 24-hr SO_2 concentrations at sites on elevated terrain near large emission sources. All sites were at heights above the stack tops and near the estimated plume heights expected during light wind, stable meteorological conditions.

The monitoring at the Crusher, Phelps Mine and Jones Ranch sites was performed under the auspices of the EPA. The data are stored in the EPA AEROS data bank. The Lake Point data were furnished by Heaney (1975, 1976), of the Kennecott Copper Corporation. The Navajo data are available in a report by Rockwell International, Inc. et al. (1975). Only the Navajo Generating Station emissions were well documented.

The Crusher and Lower Lake Point sites were located on the steep slopes of the Oquirrh Mountains. The bearings of the sites from the source differ by 125° . Data were also furnished EPA

Table 1. The Estimated and the Highest and Second Highest Observed 24-Hr SO_2 Concentrations in the Vicinity of Large Sources Located in Complex Terrain.

Site	Source	Site- Source Dist. (km)	Period	Concentration*		
				Est.	Observed	
				Max	2nd High	
Crusher	Garfield Smelter, Utah	6.4	4/15/73- 1/31/75	2480	2564	2473
			2/1/74- 1/31/75	2480	6130	3130
Lower Lake Pt	Garfield Smelter, Utah	4.5	3/8/75- 12/16/75	1.18	2.66	1.20
			1/1-25/76	1.18	2.71	2.14
#106	Navajo Gen Stn, Arizona	22.8	10/1/74- 2/17/75	36	32	19
#107	Navajo Gen Stn, Arizona	23.2	10/1/74- 2/17/75	25	30	15
Phelps Mine	Morenci Smelter, Arizona	4.7	1975	15490	2547	2416
Jones Ranch	Miami Smelter, Arizona	2.9	1974	8610	2042	1760
			1975	8610	2642	1548

*Concentrations in $\mu\text{g}/\text{m}^3$, except those underscored are in ppm.

from another site called Upper Lake Point which was within 1 km of Lower Lake Point but 250 meters higher in elevation. The maximum observed 24-hr concentration at Upper Lake Point during the period cited was only 0.02 ppm (vs. 2.71 ppm at Lower Lake Point), apparently as a result of a stratified atmosphere. The calculated value for Upper Lake Point was similarly small.

Navajo sites #106 and #107 were located at the top of the Vermillion Cliffs in northern Arizona, west of the Navajo Generating Station. The Cliffs face the facility and are extremely steep. Some of the terrain between the Cliffs and the generating station dips significantly below the stack bases. Several other samplers at the top of the Cliffs and elsewhere at comparable elevations, as well as in a network of sites on the sloping plain on which the power plant is located, did not record such high values of concentration. Site #106 was at the southern end of the line of samplers on the Cliffs, and recorded the highest concentration during the study.

Some air quality data from near a Montana smelter were expected to be reasonably representative of the circumstances to which the analytical procedure was designed to apply. Unfortunately, the data were found to contain uncertainties which could not be resolved.

4. OTHER OBSERVATIONS

Some observations exist which can be used only qualitatively to indicate that stable, elevated plumes can approach very close to elevated terrain as is assumed in the Valley Model. Hewson and Gill (1944) depict concentrations of SO_2 across the Columbia River Valley near Trail, B.C., Canada; the measurements were obtained by aircraft down-valley of a smelter, and depict well-defined smelter plume centers not infrequently lying very near the mountainside.

Scorer (1973) cites observations in three countries of stable elevated plumes either visually impinging on mountainsides or causing damage to vegetation on mountainsides.

The high quality data of Start, Dickson, and Wendell (1973) are often cited as evidence that dispersion rates observed over flat terrain during moderately stable conditions result in overestimates of 1-hr concentrations by a factor of 15 when applied in the complex terrain of Huntington Canyon, Utah. This conclusion is drawn from four 30- to 60-minute ground-level tracer releases, and ground-level sampling, made during a 48-hr period. However, the ratios of concentrations estimated using the bivariate Gaussian formulation (with the flat-terrain dispersion rate) to the maximum concentration observed at each sampling arc (distances 2.12, 2.8, 4.2, and 6.2 km) are 0.95, 1.1, 2.6, and 1.0; this is a very good relationship, considering the limited tests. The Valley Model uses the concept that the average vertical dispersion coefficients for flat terrain can be used for calculating the upper limit of concentrations in complex terrain, but the model results cannot be compared directly with these Huntington Canyon data because of the differences in averaging times and the brevity of the field study.

5. CONCLUSIONS

At four of six sites on mountainous terrain near the height that plumes from major facilities stabilize, it has been shown that the Valley Model provides maximum 24-hr SO_2 concentration estimates which are within a factor of two of the second-highest observed concentrations. It is concluded that the Valley Model is a useful screening procedure for identifying potential threats to the 24-hr ambient air quality standard for SO_2 in complex terrain.

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16. ABSTRACT The Valley Model is a steady-state, univariate Gaussian plume dispersion model designed for multiple point- and area-source applications. It calculates pollutant concentrations for each frequency designated in an array defined by six stabilities, 16 wind directions, and six wind speeds for 112 program-designated receptor sites on a radial grid of variable scale. The output concentrations are appropriate for either a 24-hour or annual period, as designated by the user. The model contains the concentration equations, the Pasquill-Gifford vertical dispersion coefficients and the Pasquill stability classes, as given by Turner. Plume rise is calculated according to Briggs. Plume height is adjusted according to terrain elevation for stable cases. Technical details of the program are presented, with descriptions of data requirements. Flow diagrams and input data forms are presented. Four appendices include a complete test-case analysis, a complete program listing and a paper in which estimated and observed data are compared at several sites for 24-hour periods during which the upper limits of concentrations were observed.			
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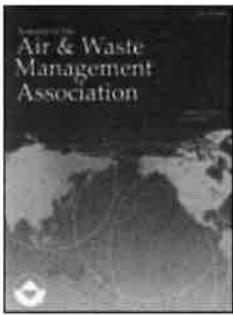
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Ammonium Nitrate, Nitric Acid, and Ammonia Equilibrium in Wintertime Phoenix, Arizona

John G. Watson , Judith C. Chow , Fred W. Lurmann & Stefan P. Musarra

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Ammonium Nitrate, Nitric Acid, and Ammonia Equilibrium in Wintertime Phoenix, Arizona

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Sonoma Technology, Inc.
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A secondary aerosol equilibrium model, SEQUILIB, is applied to evaluate the effects of emissions reductions from precursor species on ambient concentrations during the winter in Phoenix, Arizona. The model partitions total nitrate and total ammonia to gas-phase nitric acid and ammonia and to particle-phase ammonium nitrate. Agreement between these partitions and ambient measures of these species was found to be satisfactory. Equilibrium isopleths were generated for various ammonium nitrate concentrations corresponding to high and low humidity periods which occurred during sampling. These diagrams show that ammonia is so abundant in Phoenix that massive reductions in its ambient concentrations would be needed before significant reductions in particulate ammonium nitrate would be observed. When total nitrate is reduced by reductions in its nitrogen oxides precursor, proportional reductions in particulate nitrate are expected. Many of the complex reactions in SEQUILIB do not apply to Phoenix, and its ability to reproduce ambient data in this study does not guarantee that it will be as effective in areas with more complex chemistry. Nevertheless, the nitrate chemistry in SEQUILIB appears to be sound, and it is a useful model for addressing the difficult apportionment of secondary aerosol to its precursors.

PM_{10} (particles with aerodynamic diameters less than or equal to 10 micrometers (μm)) and $\text{PM}_{2.5}$ (particles with aerodynamic diameters less than or equal to $2.5 \mu\text{m}$) consist of both primary and secondary particles. Primary particles are those which are directly emitted by sources. These particles undergo few changes between source and receptor, and the atmospheric concentrations are, on average, proportional to the quantities which are emitted. Secondary particles are those which form in the atmosphere from gases which are directly emitted by sources. Sulfate, nitrate, ammonium, and hydrogen ions are the most common components of secondary particles in the atmosphere. These particles result from emissions of sulfur dioxide (SO_2), oxides of nitrogen (NO_x), and ammonia (NH_3) gases. The ambient concentrations of these secondary particles are not necessarily proportional to quantities of emissions since the rates at which they form and their gas/particle equilibria may be controlled by factors other than the concentration of the precursor gas. Reactive organic gases are also precursors to secondary particles,¹ though knowledge of these processes

is much less than that for inorganic species. This paper limits itself to the inorganic components of secondary aerosol.

The Chemical Mass Balance (CMB) receptor model^{2,3} is commonly used to estimate the contributions of primary particles to their sources and to quantify the chemical compounds which constitute secondary particles (e.g., sulfuric acid, ammonium bisulfate, ammonium sulfate, ammonium nitrate, sodium nitrate). The CMB model, by itself, does not attribute these secondary compounds to sources of their precursor gases. The reason is that compounds such as secondary ammonium nitrate originate from nitrogen oxides (primarily emitted by motor vehicle and stationary combustion sources) and ammonia (primarily emitted by agricultural operations such as fertilizing and animal husbandry). The CMB does not determine which of these precursors needs to be reduced to attain reductions in the particulate nitrate.

While sulfate levels are high in many parts of the eastern U.S., ammonium nitrate has been found to be the major secondary component of suspended particles in urban areas of the western U.S. Gray et al.⁴ found ammonium nitrate contributions to PM_{10} as high as $124 \mu\text{g}/\text{m}^3$ at Rubidoux, California during 1986. Chow et al.⁵ also found ammonium nitrate contributions exceeding $110 \mu\text{g}/\text{m}^3$ at Rubidoux and neighboring sites in 1988. Chow et al.⁶ found region-wide occurrences of ammonium nitrate as high as $79 \mu\text{g}/\text{m}^3$ throughout California's San Joaquin Valley during the winter of 1988-1989. The wintertime 1987-1988 SCENIC Denver⁷ visibility study found ammonium nitrate contributions as high as $28 \mu\text{g}/\text{m}^3$ and contributions to light extinction as high as

Implications

Secondary aerosol ammonium nitrate is often a significant contributor to PM_{10} standard exceedances in urban areas. It is not generally known, however, whether emissions reductions of ammonia or oxides of nitrogen (NO_x) are needed to reduce the ambient concentrations of this compound. The method described here for Phoenix, Arizona, can be applied in other areas to determine which of the precursors limit the formation of ammonium nitrate. Emissions reduction strategies can be better targeted toward ammonia and NO_x sources with this information.

180 Mm⁻¹ (a large fraction of total extinction in the Denver Brown Cloud). Ammonium nitrate absorbs water as the relative humidity increases, thereby enhancing its light scattering efficiency.

This paper illustrates a method for estimating the effects of precursor emissions reductions on the secondary ammonium nitrate contribution to PM₁₀ calculated by CMB source apportionment. The Sectional Equilibrium (SEQUILIB) model of Pilinis and Seinfeld⁸ is used to estimate the fractions of total ammonia (gaseous ammonia plus particulate ammonium) and total nitrate (gaseous nitric acid plus particulate nitrate) which are in the gas and particle phases. These fractions are compared with ambient measurements of ammonia, nitric acid, and ammonium nitrate to evaluate the validity of this model for application in Phoenix, Arizona, during the fall and winter of 1989 and 1990. With validity established, isopleths of constant ammonium nitrate concentrations as a function of total ammonia and total nitrate concentrations are generated for typical temperatures and relative humidities. These isopleths can be used to estimate whether reductions in nitrogen oxides (the precursor of nitric acid) or ammonia emissions will be most effective in reducing particulate nitrates.

Characteristics of Phoenix, Arizona

The Phoenix metropolitan area is an inland city in the desert of central Arizona. It covers over 500 square kilometers and has a population exceeding two million people. The urbanized area is surrounded by and interspersed with large tracts of irrigated farmland to the south and west, with desert to the north and east. Large dairy farms are located southwest of the urban area. Phoenix is located in the Salt River Valley at an elevation of 330 m above mean sea level and is bordered on the east and northeast by the McDowell, Goldfield, and Superstition Mountains and on the west and southwest by the Sierra Estrella and White Tank Mountains. The spaces between these ranges are occupied by large, flat desert areas.

Total annual emissions in this area are estimated to be ~45,000 tons/year of PM₁₀, ~55,000 tons/year of nitrogen oxides (NO_x, expressed as equivalent nitrogen dioxide), ~6,000 tons/year of sulfur dioxide, and ~90,000 tons/year of volatile organic compounds (expressed as equivalent methane) during 1989.⁹ The major source of sulfur dioxide within the urban area is motor vehicles with about twice as much coming from gasoline-powered vehicles as from diesel-powered vehicles. The major emitters of NO_x are mobile sources with light-duty vehicles being the most abundant contributors. Aircraft and trains are also significant NO_x emitters. Five natural gas-fired power plants account for nearly 20 percent of the total NO_x emissions on an annual basis. Most of these are peaking plants which do not continuously emit NO_x. These plants rarely operate during the winter when energy demands for air conditioning are low.

No estimates of ammonia emissions exist for Phoenix. The Arizona Livestock Board listed 28 licensed feedlots in and around Phoenix with herds ranging from 500 to 10,000 head during 1989. The Arizona Office of the Dairy Commission identifies over 150 dairies located in Maricopa County. Bloyd et al.,¹⁰ in their summary of agricultural statistics in Arizona, show over 200,000 head of cattle, 40,000 sheep, and 11,000 hogs and pigs in Maricopa County during 1988. Adriano et al.¹¹ estimate an ammonia emissions factor on the order of 40 kg/cow/year. Assuming a 200,000 cow population, this yields annual ammonia emissions on the order of 9,000 tons/year from livestock alone. Ammonia from other sources such as human beings, domestic animals, cultural production, waste water treatment, and fertilizing have not been estimated. This livestock emissions estimate is at least on the same order as the SO₂ and NO_x emissions documented by Chow et al.⁹

There are no major industrial emitters of secondary aerosol precursors in the metropolitan area, although smelter and coal-

fired power plants in Arizona are large sulfur dioxide emitters. Watson et al.¹² show average PM_{2.5} sulfate concentrations in downtown Phoenix of ~1.5 µg/m³, which are comparable to those found at sampling sites upwind of the city center. Watson et al.¹² also recorded average particulate nitrate concentrations of ~4 µg/m³, with maxima of nearly 20 µg/m³ during periods of high humidity after rain storms.

Because of the relative simplicity of its sources and the overwhelming importance of nitrate aerosol and its precursors relative to sulfate aerosol and its precursors, Phoenix provides a good test case for the application of newly developed aerosol equilibrium models. If these models cannot explain the gas/particle partitioning in a relatively simple situation such as Phoenix, they should not be expected to succeed in areas which have a complex mixture of acidic sulfates and marine aerosols.

Secondary Particle Formation

Chemical transformation and equilibrium processes for inorganic secondary aerosols are affected by meteorological and chemical variables. Lurmann et al.¹³ and Lurmann¹⁴ summarize the different pathways from gas to particle. Calvert and Stockwell¹⁵ have studied the gas-phase chemistry. Stelson and Seinfeld,¹⁶⁻¹⁸ Russell et al.,¹⁹ Russell and Cass,^{20,21} Bassett and Seinfeld,^{22,23} Saxena et al.,²⁴ Pilinis and Seinfeld,⁸ Wexler et al.,^{25,26} Mozukewich,²⁷ and Tanner and Harrison²⁸ provide the best explanations of the equilibrium between gas and particle species in polluted environments.

Sulfur dioxide gas changes to particulate sulfate through gas- and aqueous-phase transformation pathways. In the gas-phase pathway, sulfur dioxide reacts with hydroxyl radicals in the atmosphere to form hydrogen sulfite, which in turn reacts rapidly with oxygen and small amounts of water vapor to become sulfuric acid (H₂SO₄) gas. Sulfuric acid gas, which has a low vapor pressure, nucleates in the presence of water vapor to form sulfuric acid droplets. Sulfuric acid gas also condenses on existing particles. These acidic particles are neutralized by ammonia gas to become ammonium bisulfate or ammonium sulfate. Though there are other gas-phase pathways, this one with the hydroxyl radical is usually dominant. Calvert and Stockwell¹⁵ show a wide range of gas-to-particle (SO₂ to SO₄²⁻) transformation rates from less than 0.01 percent/hr to about 5 percent/hr of the sulfur dioxide concentration. The transformation rate appears to be controlled more by the presence or absence of the hydroxyl radical and competing reactions of other gases than by the sulfur dioxide concentration. Hydroxyl radical concentrations are related closely to photochemistry, therefore gas-phase sulfur dioxide transformation rates are highest during daytime and drop to less than 0.1 percent/hr at night.¹⁵

When fog or clouds are present, sulfur dioxide can be dissolved in a droplet where it experiences aqueous reactions which are much faster than gas-phase reactions. When ozone and hydrogen peroxide are dissolved in the droplet, the sulfur dioxide is quickly oxidized to sulfuric acid. When ammonia is also dissolved in the droplet, the sulfuric acid is neutralized forming ammonium sulfate. As relative humidity decreases below 100 percent (i.e., the fog or cloud evaporates), the sulfate particle consists of a small droplet which includes a portion of liquid water. As the relative humidity further decreases below 70 percent, the droplet evaporates and a small, solid sulfate particle remains. The reactions within the fog droplets occur quickly, and the rate is controlled by the solubility of the precursor gases. Aqueous transformation rates of sulfur dioxide to sulfate are 10 to 100 times faster than gas-phase rates.

Nitrate chemistry is more complicated than sulfate chemistry. The primary emission, nitrogen oxide, converts to nitrogen dioxide, primarily via a reaction with ozone. Nitrogen dioxide is

depleted by several pathways: (1) it can change back to nitrogen oxide in the presence of ultraviolet radiation; (2) it can change to short-lived radical species (e.g., O₃, NO₃, N₂O₅); (3) it can form organic nitrates such as peroxyacetyl nitrate (PAN); or (4) it can oxidize to form nitric acid. All of these products are invisible gases which do not affect particulate concentrations or visibility. The major pathway to nitric acid is by reacting with the same hydroxyl radicals which transform sulfur dioxide to sulfuric acid. Nitric acid is deposited from the atmosphere fairly rapidly; but, in the presence of sufficient ammonia, it is neutralized to particulate ammonium nitrate. While ammonium sulfate is a relatively stable compound, ammonium nitrate is not. Its equilibrium with gaseous ammonia and nitric acid is strongly influenced by temperature and relative humidity. Russell et al.¹⁹ show that lower temperatures and higher relative humidities favor the particulate phase of ammonium nitrate. Calvert and Stockwell¹⁵ show a wide range of conversion rates for nitrogen dioxide to nitric acid (NO₂ to NO₃⁻), ranging from less than 1 percent/hr to 90 percent/hr. Though they vary throughout a 24-hour period, these rates are significant during both daytime and nighttime hours. This is in contrast to the gas-phase sulfate chemistry which is most active during daylight hours. Nitrate is also formed by aqueous-phase reactions in fogs and clouds. The principal source of aqueous-phase nitrate is dissolved nitric acid and ammonium nitrate aerosol. Though ground fogs were not observed in Phoenix during these experiments, several frontal passages and thunderstorms occurred during which gaseous precursors might be entrained into low-level clouds.

The complexity and uncertainty inherent in these gas-to-particle transformations do not mean that emissions reductions of precursor gases such as sulfur dioxide and nitrogen oxides should be ignored as pollution control measures for PM₁₀. Certainly, if there were no sulfur dioxide or nitrogen oxides in the environment, there would be no ammonium sulfate or ammonium nitrate particles. It is equally true that if there were no ammonia and no hydroxyl radicals, the concentrations of sulfate and nitrate particles would probably be lower (though other pathways not described would surely produce some of these particles). This complexity makes the apportionment to sources of secondary sulfate and nitrate highly imprecise.

SEQUILIB Model

The SEQUILIB model⁸ consists of thermodynamic equilibrium relationships which describe the behavior of the nitric acid (HNO₃), nitrate (NO₃⁻), ammonia (NH₃), ammonium (NH₄⁺), sulfate (SO₄²⁻), chloride (Cl⁻), sodium (Na⁺), and water chemical system. The version of the model discussed here is that presented by Pilinis and Seinfeld.⁸ The SEQUILIB authors have subsequently improved the model formation and input parameters to accommodate a wider range of applications. These changes do not significantly affect the results reported here.

The inputs to the SEQUILIB model are ambient temperature, relative humidity, total nitrate (HNO₃ + NO₃⁻), total ammonia (NH₃ + NH₄⁺), size-resolved sulfate, and size-resolved chloride (NaCl + MgCl₂ + KCl + CaCl₂) concentrations. The model outputs are the equilibrium gas-phase concentrations of nitric acid, ammonia, and hydrochloric acid (HCl). Additional outputs are particulate ammonium nitrate (NH₄NO₃), other non-volatile nitrate expressed as sodium nitrate (NaNO₃), ammonium, and liquid water concentrations. The model can be used either with or without size-resolved data, and not all of the species included in it are important in every urban area.

The SEQUILIB reactions couple the nitrate/ammonia/sulfate chemical system. Sulfate and nitrate compete for the available ammonia. However, ammonia is preferentially scavenged by sulfate, rather than nitrate, to form ammonium sulfate and ammonium bisulfate. Significant amounts of ammonium nitrate are formed only when the total ammonia exceeds the sulfate by a factor of two or more (on a mole basis). In an ammonia-limited environment, reducing ammonium sulfate concentrations by one molecule might increase ammonium nitrate concentrations up to two molecules. The ammonia that is not scavenged by sulfate is often referred to as "free ammonia."

The most important SEQUILIB component for Phoenix is the combination of nitric acid and ammonia which forms ammonium nitrate. The equilibrium constant for this reaction is both relative humidity (RH) and temperature dependent.¹⁸ Formation of ammonium nitrate is favored under conditions of high relative humidity and low temperature. Aqueous ammonium nitrate forms at or above the relative humidity of deliquescence (RHD) which is above 62 percent at 25°C. Solid ammonium nitrate forms below the relative humidity of deliquescence. The amount of solid ammonium nitrate is determined from the amount above the equilibrium concentration of nitric acid and free ammonia. The relative humidity of deliquescence has an inverse temperature dependence as described by Stelson and Seinfeld.¹⁶ SEQUILIB also includes pathways for the dissolution of nitric acid into the liquid water of wetted aerosols; the direct dissolution of nitric acid is important only at high (>90 percent) relative humidities. High relative humidities are rare in Phoenix, even after rain storms.

Another pathway for the formation of nitrate aerosol consists of the reactions that convert sodium chloride to hydrochloric acid and thermally stable nitrates such as sodium nitrate.^{8,20,29,30} These reactions are believed to be the principal source of coarse particle (2.5 to 10 µm) nitrate, and they occur when sodium chloride (from sea salt, road sanding, or dry lake beds) is an abundant atmospheric constituent. Marine air is not present in Phoenix, and Chow et al.³¹ showed that sodium concentrations are always at or near detection limits (<0.1 µg/m³). This pathway is not significant in Phoenix.

SEQUILIB assumes that sulfuric acid formed in the gas phase rapidly nucleates, condenses on existing aerosol surfaces, and reacts with available ammonia. The model assumes that chemical equilibrium is rapidly established with the existing ammonia, ammonium, nitrate, other salts, and water. The sulfur salts may be in a fully or partially saturated solution, depending on the relative humidity, temperature, and availability of ammonia. Generally, ammonium sulfate and other sulfate end-products are solids below 40 percent relative humidity (at 25°C). These salts exhibit hysteresis wherein an aqueous solution can exist in a supersaturated state below the relative humidity of deliquescence.³² The sulfate output by SEQUILIB is identical to the input value because under ambient conditions, there is no partitioning between gaseous sulfuric acid and particulate sulfate; the mixture is exclusively sulfate due to the low vapor pressure of sulfuric acid. After a sufficient reaction time, sulfate is always present as a particle of sulfuric acid, ammonium bisulfate (NH₄HSO₄), or completely neutralized ammonium sulfate ((NH₄)₂SO₄). Watson et al.¹² show that the sulfate in Phoenix is balanced by the ammonium, so all of the sulfate is in the form of ammonium sulfate. Sulfate levels are low in Phoenix, and much of this sulfate probably originates outside of the urban area and is neutralized en route from the major industrial sulfur emitters in other parts of Arizona. The sulfuric acid and ammonium sulfate chemistry in SEQUILIB are not important to this situation.

Model Input Data

Filter pack samples were obtained from 10/30/89 to 1/21/90 twice per day between 0600 and 1200 (morning sample) and between 1300 and 1900 (afternoon sample) MST. Samples were taken on the roof of the Industrial Commission of Arizona (ICA) Building (40 m above ground level, 370 m above mean sea level)

located on 8th Ave. and Washington St. in downtown Phoenix. This site is in the center of the urban area and of the haze cloud as it is seen from locations north and south of the city. Precise locations of this and other sampling sites are specified by Watson et al.¹².

Two sequential filter samples based on the design of Chow et al.³³ were operated side-by-side to obtain measurements of particulate ammonium, sulfate, nitrate, gaseous ammonia, sulfur dioxide, and nitric acid. Each sampler drew a flow rate of 113 l/min through Bendix 240 cyclones ($2.5 \mu\text{m}$ at 50 percent cutpoint) into a plenum where the filter packs were located. Solenoid valves controlled by a timer switched the flow among the filter packs to acquire the morning and afternoon samples at flow rates of 20 l/min. The remaining flow needed to maintain the inlet cutpoint was drawn through a makeup air sampling port.

One sampling system was completely coated with PFA Teflon to minimize the absorption of gaseous nitric acid on sampler surfaces. Two filter packs in this unit simultaneously sampled at flow rates of 20 l/min. One filter pack contained a stack of potassium carbonate and citric acid impregnated cellulose-fiber filters to absorb sulfur dioxide and ammonia gases, respectively. These filters were preceded by a Teflon-coated glass-fiber filter to remove particles. The second pack contained a prewashed nylon filter to collect total nitrate (gaseous nitric acid plus particulate nitrate). The potassium carbonate impregnated filters and nylon filters were extracted and analyzed for sulfate and nitrate by ion chromatography. The citric acid impregnated filters were extracted and analyzed for ammonium by automated colorimetry.

The second sampling system contained oxidized aluminum denuder tubes, after the uncoated inlet, to remove gaseous nitric acid from the air stream. The filter stack consisted of a quartz-fiber filter followed by a nylon filter downstream. The extract from the quartz-fiber filter was submitted to ion chromatographic analysis for chloride, nitrate, and sulfate, and to automated colorimetric analysis for ammonium; the extract from the nylon filter was submitted to ion chromatographic analysis for nitrate. The nylon filter allows the magnitude of volatilized particulate nitrate to be determined and added to the nitrate measurement on the front filter to obtain total particulate nitrate.

Hourly measurements of temperature and relative humidity were also acquired at this site using a Campbell 207 temperature and relative humidity probe interfaced with a Campbell Scientific 21X data logger.

For input to the SEQUILIB model, six-hour average temperature and relative humidity were calculated for the periods corresponding to the filter samples. The model was applied in the "single size cut" mode. The total nitrate inputs to the model were obtained from the non-denuded nylon filter taken from the Teflon-coated sampler. The total ammonia inputs to the model were obtained from the PM_{2.5} ammonium and ammonia gas data and an ammonium equivalent corresponding to the nitrate on the nylon backup filter. The measured PM_{2.5} sulfate and chloride concentrations were also used as model inputs. Sodium concentrations were not measured but were assumed to be zero based on pilot study values measured by Chow et al.³¹ The chloride concentrations and the estimated sodium concentrations were low and insignificant with respect to the partitioning of relevant species.

SEQUILIB Comparisons to Measurements

The calculated nitric acid, particulate nitrate, ammonia, and particulate ammonium concentrations are compared with measured values in Figures 1 through 4. As shown in Figures 1 and 2, SEQUILIB estimates average $1 \mu\text{g}/\text{m}^3$ less than measured concentrations for nitric acid and $1 \mu\text{g}/\text{m}^3$ more than measured concentrations for particulate nitrate. The average nitric acid concentrations were fairly low ($2.7 \mu\text{g}/\text{m}^3$). In several cases, the calculated nitric acid concentrations were less than the lower quantifiable limits of the measurement system even though the measurements detected nitric acid which exceeded these limits. As shown in Figure 1, the agreement between the measured and calculated nitric acid concentrations is better for the afternoon samples than for the morning samples. The agreement is also better for high values than for low values.

SEQUILIB calculates an average of $5.4 \mu\text{g}/\text{m}^3$ of particulate nitrate, while an average of $4.3 \mu\text{g}/\text{m}^3$ was measured. The calculated particulate nitrate values track the measured values reasonably well in Figure 2. With regard to partitioning, the model allocates the total nitrate primarily to particulate nitrate (actually, ammonium nitrate), whereas, the measurements show slightly smaller amounts of particulate nitrate and larger amounts of nitric acid.

Average SEQUILIB estimates for ammonia are $8.8 \mu\text{g}/\text{m}^3$, which compares well with the average measured concentration of $9.1 \mu\text{g}/\text{m}^3$. Figure 3 shows that the model estimates compare well with the measured ammonia concentrations. The ammonia concentrations at the ICA site were fairly high compared to other

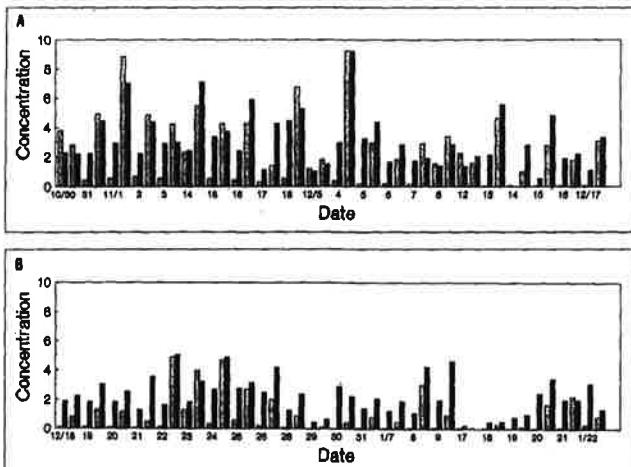


Figure 1. Comparison of calculated (shaded bar) and measured (solid bar) nitric acid concentrations ($\mu\text{g}/\text{m}^3$) in Phoenix from (a) October 30, 1989 to December 17, 1989 and (b) December 18, 1989 to January 22, 1990. The sampling times were 0600 to 1200 MST and 1300 to 1900 MST. The date label is centered under the morning sample.

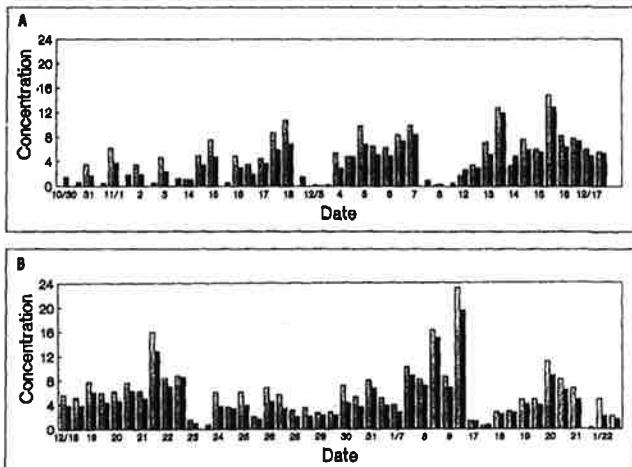


Figure 2. Comparison of calculated (shaded bar) and measured (solid bar) PM_{2.5} nitrate concentrations ($\mu\text{g}/\text{m}^3$) in Phoenix from (a) October 30, 1989 to December 17, 1989 and (b) December 18, 1989 to January 22, 1990. The sampling times were 0600 to 1200 MST and 1300 to 1900 MST. The date label is centered under the morning sample.

urban areas. The measurements and the model show an excess of free ammonia in most cases.

SEQUILIB estimates an average particulate ammonium concentration of $2.0 \mu\text{g}/\text{m}^3$, while an average of $1.7 \mu\text{g}/\text{m}^3$ was measured. The measured values include the ammonium which is presumed to have evaporated from the front filter, and corresponds to the volatilized nitrate which was captured on the nylon backup filter. The particulate ammonium concentrations are fairly low, about a factor of five lower than the gaseous ammonia concentrations. The average absolute differences between the calculated and measured ammonium and ammonia concentrations are comparable ($\pm 0.4 \mu\text{g}/\text{m}^3$ on the average); however, the relative percent difference in the ammonium estimates is much larger because the concentrations are much lower.

Figure 5 compares the nitric acid and ammonia concentration product with the theoretical equilibrium constant.^{16,17} Since the equilibrium constant for ammonium nitrate is a function of both relative humidity and temperature, Figure 5 compares the observed and theoretical concentration products as a function of inverse temperature for various relative humidity regimes. Most of the measurements were obtained when six-hour average relative humidities were less than 50 percent, and these points (the solid triangles) should correspond to the solid line. Figure 5 shows that few of the products correspond to this line. The observed concentration products range from a factor of 10 below the theoretical values to a factor of 100 greater than the theoretical values. The poorest agreement is for the small number of samples obtained during high relative humidities. The deviation of these products from the theoretical line is much larger than the estimated factor of two for the uncertainty in the equilibrium constant.

A number of researchers have performed similar evaluations of the ammonium nitrate equilibrium constant. Doyle et al.,³⁴ Grosjean,³⁵ Harrison and Pio,³⁶ Hildemann et al.,³⁷ Chang et al.,³⁸ and Lewin et al.³⁹ obtained reasonably good agreement with the theoretical values, while Stelson et al.,⁴⁰ Cadle et al.,⁴¹ Tanner,⁴² Anlauf et al.,⁴³ Jacob et al.,⁴⁴ and Allen et al.⁴⁵ found significant deviations from theoretical estimates and, in some cases, a consistent bias. The amount of scatter in Figure 5 is consistent with that reported by several other studies.^{43,45}

The discrepancies could be a result of deficiencies in both the measurements and the model. There are significant variations in the ambient temperature and relative humidity during the six-hour

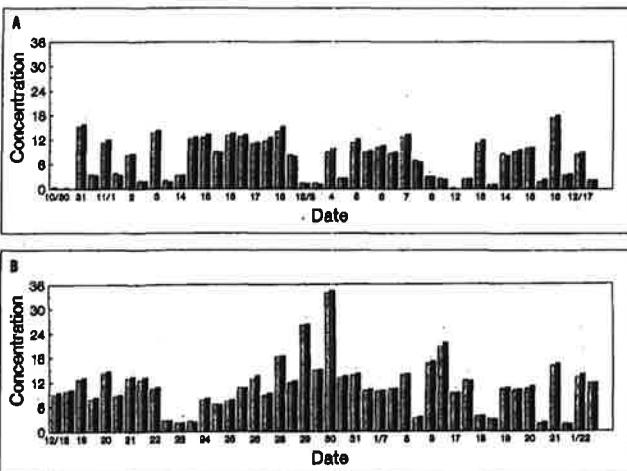


Figure 3. Comparison of calculated (shaded bar) and measured (solid bar) ammonia concentrations ($\mu\text{g}/\text{m}^3$) in Phoenix from (a) October 30, 1989 to December 17, 1989 and (b) December 18, 1989 to January 22, 1990. The sampling times were 0600 to 1200 MST and 1300 to 1900 MST. The date label is centered under the morning sample.

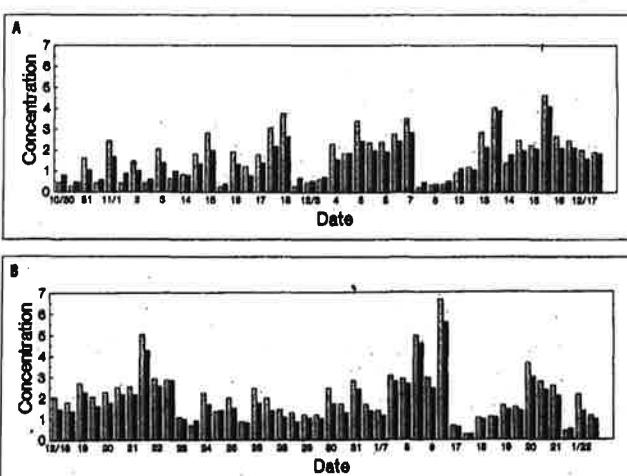


Figure 4. Comparison of calculated (shaded bar) and measured (solid bar) $\text{PM}_{2.5}$ ammonium concentrations ($\mu\text{g}/\text{m}^3$) in Phoenix from (a) October 30, 1989 to December 17, 1989 and (b) December 18, 1989 to January 22, 1990. The sampling times were 0600 to 1200 MST and 1300 to 1900 MST. The date label is centered under the morning sample.

sampling intervals. In Figure 5, a shift of ± 0.05 along the horizontal axis corresponds to an average temperature change of $\sim 5^\circ\text{C}$. Ambient temperatures varied by more than 5°C over each sampling period. The majority of points in Figure 5 lie within ± 0.05 of the theoretical line.

Figures 6 and 7 show how the modeled concentrations for the morning of 12/26/89 (a dry period) and the morning of 12/30/89 (a high humidity period) change with relative humidity and temperature. The SEQUILIB-calculated concentrations of nitrate, ammonia, and ammonium are quite stable with respect to temperature and relative humidity variations. However, the nitric acid and water concentrations change significantly as relative humidity increases, and the nitric acid concentration responds significantly to variations in temperature. Under these conditions, nitric acid is the least abundant species. The large variations in the equilibrium constant and relative humidity are reflected in the sensitivity of the nitric acid concentration to small changes in temperature and relative humidity. There are also 5 to 15 percent uncertainties in the measurements.

Lower bound concentration estimates were calculated using the lowest temperature and relative humidity observed in the sampling period with 90 percent of the observed total nitrate and ammonia, and 110 percent of the observed sulfate. Measurement

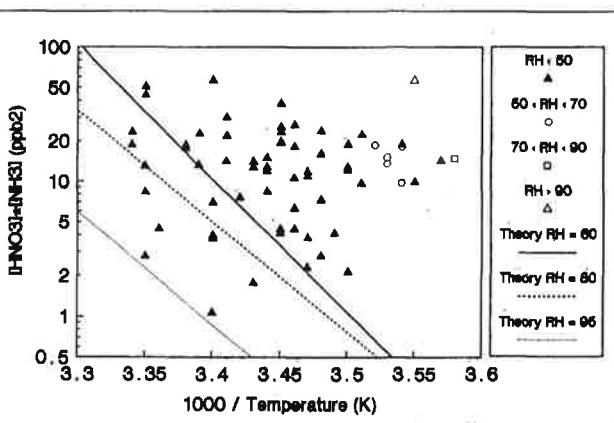


Figure 5. Comparison of theoretical (solid and dashed lines) and measured (triangles and circles) product of nitric acid and ammonia with inverse temperature.

precisions for these species were on the order of ± 10 percent. Upper bound concentrations were calculated using the highest temperature and relative humidity observed in the sampling period with 110 percent of the observed total nitrate and ammonia, and 90 percent of the observed sulfate. The conditions on the mornings of 12/26/89 and 12/30/89 were employed because they had comparable nitrate levels yet very different relative humidities (30 percent versus 90 percent).

Under these conditions, the calculated particulate nitrate changes by less than ± 10 percent with respect to its mean, while gaseous ammonia changes by slightly greater than ± 10 percent with respect to its mean. However, the effect of the same variations in SEQUILIB input data on nitric acid and the $[\text{HNO}_3][\text{NH}_3]$ product is much larger. For the high relative humidity and ammonia-rich conditions of 12/30/89, the ~ 10 percent variations in model inputs result in a factor of 450 difference in the $[\text{HNO}_3][\text{NH}_3]$ product. For the other two cases, the lower and upper bound $[\text{HNO}_3][\text{NH}_3]$ products differ by a factor of three. The high sensitivity of the $[\text{HNO}_3][\text{NH}_3]$ product to measurement uncertainty and variations in temperature and relative humidity explains the large amount of scatter exhibited in Figure 5 for these cases. Measurements under these conditions cannot be used to verify the nitrate/ammonia equilibrium constants.

Another uncertainty is associated with coarse-particle nitrate. While the chloride and sodium levels were very low in wintertime Phoenix, there may be some ammonium nitrate on particles larger than $2.5 \mu\text{m}$. The measurement approach assumed that the majority of particulate nitrate occurs in the $\text{PM}_{2.5}$ size fraction, and particulate nitrate was not measured in the coarse particle fraction. Since the majority of the coarse particle mass was accounted for by primary source contributions,¹² this assumption is probably valid for the purposes of this study. None of the primary source profiles contained more than a few percent abundance for nitrate. However, theory suggests that nitric acid is in equilibrium with all aerosol nitrate, not just the $\text{PM}_{2.5}$ portion. The biases between calculated and measured values described earlier might be reduced through measurement of the particulate nitrate in size ranges exceeding $2.5 \mu\text{m}$.

As do all models, SEQUILIB makes several assumptions which do not entirely comply with the real world. It assumes the

gas, liquid, and solid phases are in perfect chemical equilibrium. Wexler and Seinfeld⁴⁶ have shown that at lower temperatures and/or for larger particles, the equilibrium assumption may not hold because the time scales for mass transport are too large for ammonium salts. SEQUILIB assumes values for the relative humidity of deliquescence based on those for the pure salts. There is evidence that the relative humidity of deliquescence of mixed salts may be significantly lower than those for pure salts.²⁵ SEQUILIB assumes values for a limited number of thermodynamic parameters. The thermodynamics of real atmospheres may require more parameters, and the actual values may differ from those which are assumed.

Effects of Precursor Reductions on Ammonium Nitrate Concentrations

This study was not intended to develop or evaluate models, but to apply them. Although gas/particle conversion and equilibrium theory and modeling are still under development, the SEQUILIB model embodies the essential physics and chemistry of the system being measured in Phoenix. The evaluation of its performance in Phoenix shows that under ammonia-rich conditions, SEQUILIB underestimates gaseous nitric acid and slightly overestimates particulate nitrate and ammonium concentrations. Much of this bias can be attributed to the measurement uncertainty of the input concentrations and to changes in temperature and relative humidity over the six-hour sampling periods. The sample-to-sample calculated partitioning between gaseous nitric acid and ammonia, and particulate ammonium nitrate, follows the measured partitioning quite well even with changes of more than a factor of 10 in concentration from one sample to the next. This gives credence to the use of SEQUILIB calculations for evaluating the effects of ammonia and nitric acid reductions on particulate ammonium nitrate concentrations contributing to the urban haze.

Ambient ammonium nitrate aerosol concentrations can be reduced by decreasing emissions of nitrogen oxides (the major precursor of nitric acid) and/or ammonia. In order to provide guidance for strategy development, nitrate isopleth diagrams were generated using the SEQUILIB model with varying inputs for total nitrate and total ammonia at $0.5 \mu\text{g}/\text{m}^3$ increments for the conditions on the mornings of 12/26/89 and 12/30/89. The mea-

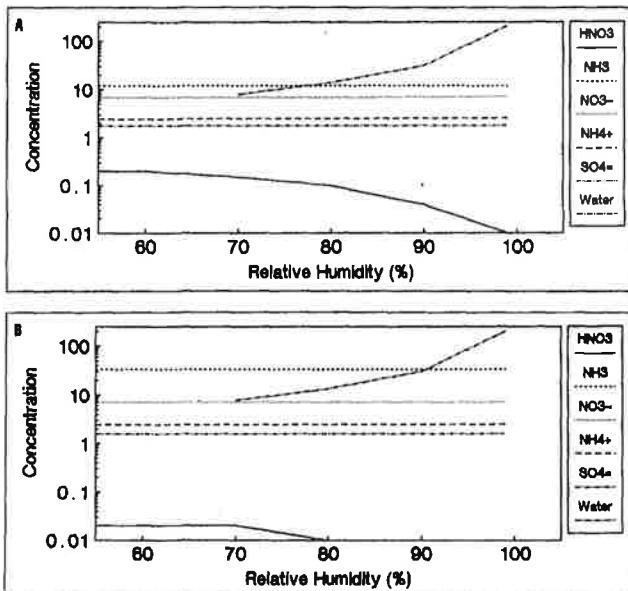


Figure 6. Sensitivity of the calculated gas and aerosol concentrations ($\mu\text{g}/\text{m}^3$) to changes in relative humidity for the conditions observed between 0600 and 1200 MST on (a) December 26, 1989 and (b) December 30, 1989.

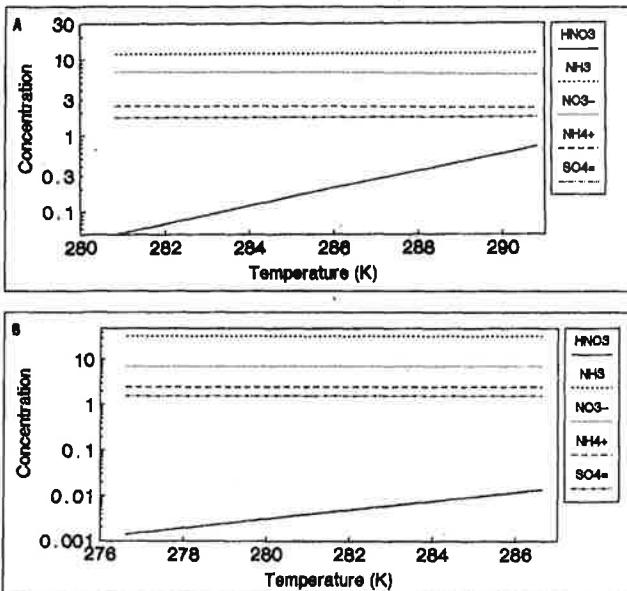


Figure 7. Sensitivity of the calculated gas and aerosol concentrations ($\mu\text{g}/\text{m}^3$) to changes in temperature for the conditions observed between 0600 and 1200 MST on (a) December 26, 1989 and (b) December 30, 1989.

sured sulfate concentrations, nitrate concentrations, temperature, and relative humidity were used for all model runs. The diagrams, shown in Figures 8 and 9, plot model outputs by applying polynomial fits to the model outputs for specific particulate ammonium nitrate concentrations. These figures illustrate how particulate ammonium nitrate concentrations vary with changes in the total nitrate and total ammonia concentrations. The design values on the diagrams correspond to the measured concentrations on these days. The observed total nitrate concentration was about $7 \mu\text{g}/\text{m}^3$ in both cases, however, the total ammonia was considerably higher for the moist conditions on 12/30/89 ($36 \mu\text{g}/\text{m}^3$) than for the dry conditions on 12/26/89 ($14 \mu\text{g}/\text{m}^3$).

The diagrams can be used to explore the implications of control strategies. For example, what would be the effects of 50 percent reductions in the total nitrate (from nitrogen oxides) and ammonia concentrations? For the dry case, Figure 8 shows that a 50 percent reduction in total nitrate (nitric acid and ammonium nitrate) decreases particulate nitrate by 53 percent. Reducing total ammonia by 50 percent with no concomitant reduction of total nitrate would decrease particulate nitrate by only ~5 percent. Reducing both total nitrate and total ammonia by 50 percent would reduce particulate nitrate by ~50 percent — similar to that of the total nitrate reduction by itself.

For the moist case in Figure 9, a 50 percent reduction in total nitrate would decrease particulate nitrate by ~50 percent. A 50 percent reduction in total ammonia would not detectably change the particulate nitrate concentration. Reducing total nitrate and total ammonia by 50 percent would reduce the particulate nitrate by ~50 percent.

These diagrams show that due to the ammonia-rich conditions at this site, reduction in total nitrate (which results from reducing oxides of nitrogen precursors) is likely to be much more effective in reducing the particulate ammonium nitrate which affects PM_{10} and visibility than equivalent reductions in ammonia.

Although the ammonium nitrate equilibrium constant is not known precisely, and the system may not be in perfect equilibrium, the reactions are sufficiently well-known to characterize the behavior in the ammonia-rich and nitrate-rich conditions. Changes

in the scarce reactant will have much more effect on the product species than changes in the abundant reactant. Thus, reductions in oxides of nitrogen emissions that reduce nitric acid formation (which may require corresponding reductions in reactive organic gas emissions taking part in the production of nitric acid) are likely to be effective in reducing the ammonium nitrate levels in the Phoenix area.

Conclusions

This paper has shown how, in a relatively simple situation such as Phoenix, Arizona, a secondary equilibrium aerosol model can be used to evaluate the effects of emissions reductions from precursor species on ambient concentrations. Using this model, it was shown that ammonia was so abundant in Phoenix during the winter of 1989-1990 that massive reductions in its ambient concentrations would be needed before significant reductions in particulate ammonium nitrate would be observed. When total nitrate is reduced, however, by reductions in its oxides of nitrogen precursors, proportional reductions in particulate nitrate are expected.

Many of the complex reactions in the SEQUILIB model^a do not apply to Phoenix, and its ability to reproduce ambient data in this study does not guarantee that it will be as effective in areas with more complex chemistry. Nevertheless, the nitrate chemistry in SEQUILIB appears to be sound, and it is a useful model for addressing the difficult apportionment of secondary aerosol to its precursors.

Acknowledgments

This work was sponsored by the Arizona Department of Environmental Quality as part of the Phoenix Urban Haze Study. The authors are grateful to Dennis Haase of Visibility Services, Inc. who operated the field sampling site; to Barbara Hinsvark, Sandra Chandra, Bridget Ball, Glenda Hargrove, Cliff Frazier, and Lyle Pritchett for chemical analysis; Kimberly Snow and Dana Dondoro for manuscript preparation; and Dr. William Pierson for technical review. The conclusions of this research are those of the authors and do not necessarily reflect the position or policies of the project sponsor.

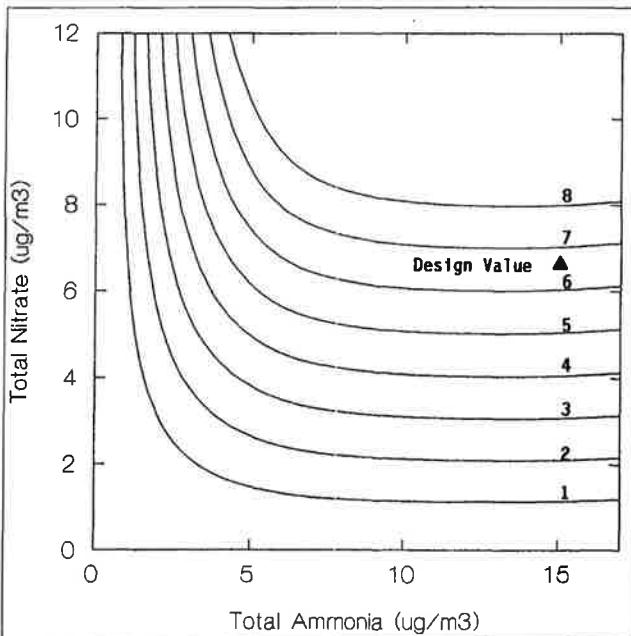


Figure 8. Particulate nitrate isopleths for low relative humidity conditions on the morning of December 26, 1989. The number on each isopleth is the ammonium nitrate concentration in $\mu\text{g}/\text{m}^3$. Design value corresponds to the total nitrate and total ammonia measured on this sample.

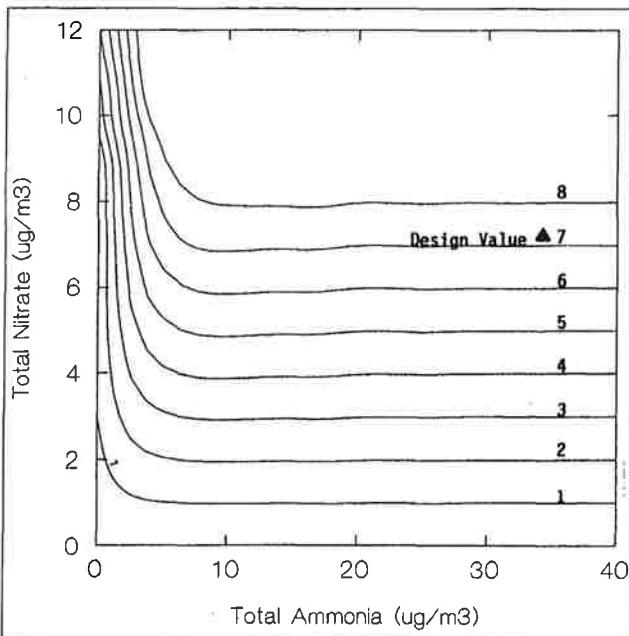


Figure 9. Particulate nitrate isopleths for high relative humidity conditions on the morning of December 30, 1989. The number on each isopleth is the ammonium nitrate concentration in $\mu\text{g}/\text{m}^3$. The design value corresponds to the total nitrate and total ammonia measured on this sample.

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proposed changes to be made to the existing approved plan, where applicable.

(d) The requirements of paragraphs 2.1(e)–2.1(h) shall not apply to plans submitted for parallel processing.

2.3.2. The exceptions granted in paragraph 2.3.1 shall apply only to EPA's determination of proposed action and all requirements of paragraph 2.1 shall be met prior to publication of EPA's final determination of plan approvability.

3.0. GUIDELINES

The EPA requests that the State adhere to the following voluntary guidelines when making plan submissions.

3.1 All Submissions

(a) The State should identify any copyrighted material in its submission, as EPA does not place such material on the web when creating the E-Docket for loading into the Federal Document Management System (FDMS).

(b) The State is advised not to include any material considered Confidential Business Information (CBI) in their SIP submissions. In rare instances where such information is necessary to justify the control requirements and emissions limitations established in the plan, the State should confer with its Regional Offices prior to submission and must clearly identify such material as CBI in the submission itself. EPA does not place such material in any paper or web-based docket. However, where any such material is considered emissions data within the meaning of Section 114 of the CAA, it cannot be withheld as CBI and must be made publicly available.

3.2 Paper Plan Submissions

(a) The EPA requires that the submission option of submitting one paper plan must be accompanied by an electronic duplicate of the entire paper submission, preferably as a word searchable portable document format (PDF), at the same time the paper copy is submitted. The electronic duplicate should be made available through email, from a File Transfer Protocol (FTP) site, from the State Web site, on a Universal Serial Bus (USB) flash drive, on a compact disk, or using another format agreed upon by the State and Regional Office.

(b) If a state prefers the submission option of submitting three paper copies and has no means of making an electronic copy available to EPA, EPA requests that the state confer with its EPA Regional Office regarding additional guidelines for submitting the plan to EPA.

[55 FR 5830, Feb. 16, 1990, as amended at 56 FR 42219, Aug. 26, 1991; 56 FR 57288, Nov. 8, 1991; 72 FR 38793, July 16, 2007; 80 FR 7340, Feb. 10, 2015]

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APPENDIX W TO PART 51—GUIDELINE ON AIR QUALITY MODELS

PREFACE

a. Industry and control agencies have long expressed a need for consistency in the application of air quality models for regulatory purposes. In the 1977 Clean Air Act (CAA), Congress mandated such consistency and encouraged the standardization of model applications. The *Guideline on Air Quality Models* (hereafter, *Guideline*) was first published in April 1978 to satisfy these requirements by specifying models and providing guidance for their use. The *Guideline* provides a common basis for estimating the air quality concentrations of criteria pollutants used in assessing control strategies and developing emissions limits.

b. The continuing development of new air quality models in response to regulatory requirements and the expanded requirements for models to cover even more complex problems have emphasized the need for periodic review and update of guidance on these techniques. Historically, three primary activities have provided direct input to revisions of the *Guideline*. The first is a series of periodic EPA workshops and modeling conferences conducted for the purpose of ensuring consistency and providing clarification in the application of models. The second activity was the solicitation and review of new models from the technical and user community. In the March 27, 1980, *FEDERAL REGISTER*, a procedure was outlined for the submittal to the EPA of privately developed models. After extensive evaluation and scientific review, these models, as well as those made available by the EPA, have been considered for recognition in the *Guideline*. The third activity is the extensive on-going research efforts by the EPA and others in air quality and meteorological modeling.

c. Based primarily on these three activities, new sections and topics have been included as needed. The EPA does not make changes to the guidance on a predetermined schedule, but rather on an as-needed basis. The EPA believes that revisions of the *Guideline* should be timely and responsive to user needs and should involve public participation to the greatest possible extent. All future changes to the guidance will be proposed and finalized in the *FEDERAL REGISTER*. Information on the current status of modeling guidance can always be obtained from the EPA's Regional Offices.

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1.0 INTRODUCTION

a. The *Guideline* provides air quality modeling techniques that should be applied to State Implementation Plan (SIP) submittals and revisions, to New Source Review (NSR), including new or modifying sources under Prevention of Significant Deterioration (PSD),^{1,2,3} conformity analyses,⁴ and other air quality assessments required under EPA regulation. Applicable only to criteria air pollutants, the *Guideline* is intended for use by the EPA Regional Offices in judging the adequacy of modeling analyses performed by the EPA, by state, local, and tribal permitting authorities, and by industry. It is appropriate for use by other federal government agencies and by state, local, and tribal agencies with air quality and land management responsibilities. The *Guideline* serves to identify, for all interested parties, those modeling techniques and databases that the EPA considers acceptable. The *Guideline* is not intended to be a compendium of modeling techniques. Rather, it should serve as a common measure of acceptable technical analysis when supported by sound scientific judgment.

b. Air quality measurements⁵ are routinely used to characterize ambient concentrations of criteria pollutants throughout the nation but are rarely sufficient for characterizing the ambient impacts of individual sources or demonstrating adequacy of emissions limits for an existing source due to limitations in spatial and temporal coverage of ambient monitoring networks. The impacts of new sources that do not yet exist, and modifications to existing sources that have yet to be implemented, can only be determined through modeling. Thus, models have become a primary analytical tool in most air quality assessments. Air quality measurements can be used in a complementary manner to air quality models, with due regard for the strengths and weaknesses of both analysis techniques, and are particularly useful in assessing the accuracy of model estimates.

c. It would be advantageous to categorize the various regulatory programs and to apply a designated model to each proposed source needing analysis under a given program. However, the diversity of the nation's topography and climate, and variations in source configurations and operating characteristics dictate against a strict modeling "cookbook." There is no one model capable of properly addressing all conceivable situations even within a broad category such as point sources. Meteorological phenomena associated with threats to air quality standards are rarely amenable to a single mathematical treatment; thus, case-by-case analysis and judgment are frequently required. As modeling efforts become more complex, it is increasingly important that they be di-

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rected by highly competent individuals with a broad range of experience and knowledge in air quality meteorology. Further, they should be coordinated closely with specialists in emissions characteristics, air monitoring and data processing. The judgment of experienced meteorologists, atmospheric scientists, and analysts is essential.

d. The model that most accurately estimates concentrations in the area of interest is always sought. However, it is clear from the needs expressed by the EPA Regional Offices, by state, local, and tribal agencies, by many industries and trade associations, and also by the deliberations of Congress, that consistency in the selection and application of models and databases should also be sought, even in case-by-case analyses. Consistency ensures that air quality control agencies and the general public have a common basis for estimating pollutant concentrations, assessing control strategies, and specifying emissions limits. Such consistency is not, however, promoted at the expense of model and database accuracy. The *Guideline* provides a consistent basis for selection of the most accurate models and databases for use in air quality assessments.

e. Recommendations are made in the *Guideline* concerning air quality models and techniques, model evaluation procedures, and model input databases and related requirements. The guidance provided here should be followed in air quality analyses relative to SIPs, NSR, and in supporting analyses required by the EPA and by state, local, and tribal permitting authorities. Specific models are identified for particular applications. The EPA may approve the use of an alternative model or technique that can be demonstrated to be more appropriate than those recommended in the *Guideline*. In all cases, the model or technique applied to a given situation should be the one that provides the most accurate representation of atmospheric transport, dispersion, and chemical transformations in the area of interest. However, to ensure consistency, deviations from the *Guideline* should be carefully documented as part of the public record and fully supported by the appropriate reviewing authority, as discussed later.

f. From time to time, situations arise requiring clarification of the intent of the guidance on a specific topic. Periodic workshops are held with EPA headquarters, EPA Regional Offices, and state, local, and tribal agency modeling representatives to ensure consistency in modeling guidance and to promote the use of more accurate air quality models, techniques, and databases. The workshops serve to provide further explanations of *Guideline* requirements to the EPA Regional Offices and workshop materials are issued with this clarifying information. In addition, findings from ongoing research programs, new model development, or results

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from model evaluations and applications are continuously evaluated. Based on this information, changes in the applicable guidance may be indicated and appropriate revisions to the *Guideline* may be considered.

g. All changes to the *Guideline* must follow rulemaking requirements since the *Guideline* is codified in appendix W to 40 Code of Federal Regulations (CFR) part 51. The EPA will promulgate proposed and final rules in the *FEDERAL REGISTER* to amend this appendix. The EPA utilizes the existing procedures under CAA section 320 that requires the EPA to conduct a Conference on Air Quality Modeling at least every 3 years (CAA 320, 42 U.S.C. 7620). These modeling conferences are intended to develop standardized air quality modeling procedures and form the basis for associated revisions to this *Guideline* in support of the EPA's continuing effort to prescribe with "reasonable particularity" air quality models and meteorological and emission databases suitable for modeling National Ambient Air Quality Standards (NAAQS)⁶ and PSD increments. Ample opportunity for public comment will be provided for each proposed change and public hearings scheduled.

h. A wide range of topics on modeling and databases are discussed in the *Guideline*. Section 2 gives an overview of models and their suitability for use in regulatory applications. Section 3 provides specific guidance on the determination of preferred air quality models and on the selection of alternative models or techniques. Sections 4 through 6 provide recommendations on modeling techniques for assessing criteria pollutant impacts from single and multiple sources with specific modeling requirements for selected regulatory applications. Section 7 discusses general considerations common to many modeling analyses for stationary and mobile sources. Section 8 makes recommendations for data inputs to models including source, background air quality, and meteorological data. Section 9 summarizes how estimates and measurements of air quality are used in assessing source impact and in evaluating control strategies.

i. Appendix W to 40 CFR part 51 contains an appendix: Appendix A. Thus, when reference is made to "appendix A" in this document, it refers to appendix A to appendix W to 40 CFR part 51. Appendix A contains summaries of refined air quality models that are "preferred" for particular applications; both EPA models and models developed by others are included.

2.0 OVERVIEW OF MODEL USE

a. Increasing reliance has been placed on concentration estimates from air quality models as the primary basis for regulatory decisions concerning source permits and emission control requirements. In many situations, such as review of a proposed new

source, no practical alternative exists. Before attempting to implement the guidance contained in this document, the reader should be aware of certain general information concerning air quality models and their evaluation and use. Such information is provided in this section.

2.1 Suitability of Models

a. The extent to which a specific air quality model is suitable for the assessment of source impacts depends upon several factors. These include: (1) The topographic and meteorological complexities of the area; (2) the detail and accuracy of the input databases, i.e., emissions inventory, meteorological data, and air quality data; (3) the manner in which complexities of atmospheric processes are handled in the model; (4) the technical competence of those undertaking such simulation modeling; and (5) the resources available to apply the model. Any of these factors can have a significant influence on the overall model performance, which must be thoroughly evaluated to determine the suitability of an air quality model to a particular application or range of applications.

b. Air quality models are most accurate and reliable in areas that have gradual transitions of land use and topography. Meteorological conditions in these areas are spatially uniform such that observations are broadly representative and air quality model projections are not further complicated by a heterogeneous environment. Areas subject to major topographic influences experience meteorological complexities that are often difficult to measure and simulate. Models with adequate performance are available for increasingly complex environments. However, they are resource intensive and frequently require site-specific observations and formulations. Such complexities and the related challenges for the air quality simulation should be considered when selecting the most appropriate air quality model for an application.

c. Appropriate model input data should be available before an attempt is made to evaluate or apply an air quality model. Assuming the data are adequate, the greater the detail with which a model considers the spatial and temporal variations in meteorological conditions and permit-enforceable emissions, the greater the ability to evaluate the source impact and to distinguish the effects of various control strategies.

d. There are three types of models that have historically been used in the regulatory demonstrations applicable in the *Guideline*, each having strengths and weaknesses that lend themselves to particular regulatory applications.

i. Gaussian plume models use a "steady-state" approximation, which assumes that

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over the model time step, the emissions, meteorology and other model inputs, are constant throughout the model domain, resulting in a resolved plume with the emissions distributed throughout the plume according to a Gaussian distribution. This formulation allows Gaussian models to estimate near-field impacts of a limited number of sources at a relatively high resolution, with temporal scales of an hour and spatial scales of meters. However, this formulation allows for only relatively inert pollutants, with very limited considerations of transformation and removal (*e.g.*, deposition), and further limits the domain for which the model may be used. Thus, Gaussian models may not be appropriate if model inputs are changing sharply over the model time step or within the desired model domain, or if more advanced considerations of chemistry are needed.

ii. Lagrangian puff models, on the other hand, are non-steady-state, and assume that model input conditions are changing over the model domain and model time step. Lagrangian models can also be used to determine near- and far-field impacts from a limited number of sources. Traditionally, Lagrangian models have been used for relatively inert pollutants, with slightly more complex considerations of removal than Gaussian models. Some Lagrangian models treat in-plume gas and particulate chemistry. However, these models require time and space varying concentration fields of oxidants and, in the case of fine particulate matter (PM_{2.5}), neutralizing agents, such as ammonia. Reliable background fields are critical for applications involving secondary pollutant formation because secondary impacts generally occur when in-plume precursors mix and react with species in the background atmosphere.^{7,8} These oxidant and neutralizing agents are not routinely measured, but can be generated with a three-dimensional photochemical grid model.

iii. Photochemical grid models are three-dimensional Eulerian grid-based models that treat chemical and physical processes in each grid cell and use diffusion and transport processes to move chemical species between grid cells.⁹ Eulerian models assume that emissions are spread evenly throughout each model grid cell. At coarse grid resolutions, Eulerian models have difficulty with fine scale resolution of individual plumes. However, these types of models can be appropriately applied for assessment of near-field and regional scale reactive pollutant impacts from specific sources^{7,10,11,12} or all sources.^{13,14,15} Photochemical grid models simulate a more realistic environment for chemical transformation,^{7,12} but simulations can be more resource intensive than Lagrangian or Gaussian plume models.

e. Competent and experienced meteorologists, atmospheric scientists, and analysts are an essential prerequisite to the success-

ful application of air quality models. The need for such specialists is critical when sophisticated models are used or the area has complicated meteorological or topographic features. It is important to note that a model applied improperly or with inappropriate data can lead to serious misjudgments regarding the source impact or the effectiveness of a control strategy.

f. The resource demands generated by use of air quality models vary widely depending on the specific application. The resources required may be important factors in the selection and use of a model or technique for a specific analysis. These resources depend on the nature of the model and its complexity, the detail of the databases, the difficulty of the application, the amount and level of expertise required, and the costs of manpower and computational facilities.

2.1.1 Model Accuracy and Uncertainty

a. The formulation and application of air quality models are accompanied by several sources of uncertainty. "Irreducible" uncertainty stems from the "unknown" conditions, which may not be explicitly accounted for in the model (*e.g.*, the turbulent velocity field). Thus, there are likely to be deviations from the observed concentrations in individual events due to variations in the unknown conditions. "Reducible" uncertainties¹⁶ are caused by: (1) Uncertainties in the "known" input conditions (*e.g.*, emission characteristics and meteorological data); (2) errors in the measured concentrations; and (3) inadequate model physics and formulation.

b. Evaluations of model accuracy should focus on the reducible uncertainty associated with physics and the formulation of the model. The accuracy of the model is normally determined by an evaluation procedure which involves the comparison of model concentration estimates with measured air quality data.¹⁷ The statement of model accuracy is based on statistical tests or performance measures such as bias, error, correlation, etc.^{18,19}

c. Since the 1980's, the EPA has worked with the modeling community to encourage development of standardized model evaluation methods and the development of continually improved methods for the characterization of model performance.^{16,18,20,21,22} There is general consensus on what should be considered in the evaluation of air quality models; namely, quality assurance planning, documentation and scrutiny should be consistent with the intended use and should include:

- Scientific peer review;
- Supportive analyses (diagnostic evaluations, code verification, sensitivity analyses);
- Diagnostic and performance evaluations with data obtained in trial locations; and

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- Statistical performance evaluations in the circumstances of the intended applications.

Performance evaluations and diagnostic evaluations assess different qualities of how well a model is performing, and both are needed to establish credibility within the client and scientific community.

d. Performance evaluations allow the EPA and model users to determine the relative performance of a model in comparison with alternative modeling systems. Diagnostic evaluations allow determination of a model capability to simulate individual processes that affect the results, and usually employ smaller spatial/temporal scale data sets (*e.g.*, field studies). Diagnostic evaluations enable the EPA and model users to build confidence that model predictions are accurate for the right reasons. However, the objective comparison of modeled concentrations with observed field data provides only a partial means for assessing model performance. Due to the limited supply of evaluation datasets, there are practical limits in assessing model performance. For this reason, the conclusions reached in the science peer reviews and the supportive analyses have particular relevance in deciding whether a model will be useful for its intended purposes.

2.2 Levels of Sophistication of Air Quality Analyses and Models

a. It is desirable to begin an air quality analysis by using simplified and conservative methods followed, as appropriate, by more complex and refined methods. The purpose of this approach is to streamline the process and sufficiently address regulatory requirements by eliminating the need of more detailed modeling when it is not necessary in a specific regulatory application. For example, in the context of a PSD permit application, a simplified and conservative analysis may be sufficient where it shows the proposed construction clearly will not cause or contribute to ambient concentrations in excess of either the NAAQS or the PSD increments.²³

b. There are two general levels of sophistication of air quality models. The first level consists of screening models that provide conservative modeled estimates of the air quality impact of a specific source or source category based on simplified assumptions of the model inputs (*e.g.*, preset, worst-case meteorological conditions). In the case of a PSD assessment, if a screening model indicates that the increase in concentration attributable to the source could cause or contribute to a violation of any NAAQS or PSD increment, then the second level of more sophisticated models should be applied unless appropriate controls or operational restrictions are implemented based on the screening modeling.

c. The second level consists of refined models that provide more detailed treatment of physical and chemical atmospheric processes, require more detailed and precise input data, and provide spatially and temporally resolved concentration estimates. As a result, they provide a more sophisticated and, at least theoretically, a more accurate estimate of source impact and the effectiveness of control strategies.

d. There are situations where a screening model or a refined model is not available such that screening and refined modeling are not viable options to determine source-specific air quality impacts. In such situations, a screening technique or reduced-form model may be viable options for estimating source impacts.

i. Screening techniques are differentiated from a screening model in that screening techniques are approaches that make simplified and conservative assumptions about the physical and chemical atmospheric processes important to determining source impacts, while screening models make assumptions about conservative inputs to a specific model. The complexity of screening techniques ranges from simplified assumptions of chemistry applied to refined or screening model output to sophisticated approximations of the chemistry applied within a refined model.

ii. Reduced-form models are computationally efficient simulation tools for characterizing the pollutant response to specific types of emission reductions for a particular geographic area or background environmental conditions that reflect underlying atmospheric science of a refined model but reduce the computational resources of running a complex, numerical air quality model such as a photochemical grid model.

In such situations, an attempt should be made to acquire or improve the necessary databases and to develop appropriate analytical techniques, but the screening technique or reduced-form model may be sufficient in conducting regulatory modeling applications when applied in consultation with the EPA Regional Office.

e. Consistent with the general principle described in paragraph 2.2(a), the EPA may establish a demonstration tool or method as a sufficient means for a user or applicant to make a demonstration required by regulation, either by itself or as part of a modeling demonstration. To be used for such regulatory purposes, such a tool or method must be reflected in a codified regulation or have a well-documented technical basis and reasoning that is contained or incorporated in the record of the regulatory decision in which it is applied.

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2.3 Availability of Models

a. For most of the screening and refined models discussed in the *Guideline*, codes, associated documentation and other useful information are publicly available for download from the EPA's Support Center for Regulatory Atmospheric Modeling (SCRAM) Web site at <https://www.epa.gov/scram>. This is a Web site with which air quality modelers should become familiar and regularly visit for important model updates and additional clarifications and revisions to modeling guidance documents that are applicable to EPA programs and regulations. Codes and documentation may also be available from the National Technical Information Service (NTIS), <http://www.ntis.gov>, and, when available, is referenced with the appropriate NTIS accession number.

3.0 PREFERRED AND ALTERNATIVE AIR QUALITY MODELS

a. This section specifies the approach to be taken in determining preferred models for use in regulatory air quality programs. The status of models developed by the EPA, as well as those submitted to the EPA for review and possible inclusion in this *Guideline*, is discussed in this section. The section also provides the criteria and process for obtaining EPA approval for use of alternative models for individual cases in situations where the preferred models are not applicable or available. Additional sources of relevant modeling information are: the EPA's Model Clearinghouse²³ (section 3.3); EPA modeling conferences; periodic Regional, State, and Local Modelers' Workshops; and the EPA's SCRAM Web site (section 2.3).

b. When approval is required for a specific modeling technique or analytical procedure in this *Guideline*, we refer to the "appropriate reviewing authority." Many states and some local agencies administer NSR permitting under programs approved into SIPs. In some EPA regions, federal authority to administer NSR permitting and related activities has been delegated to state or local agencies. In these cases, such agencies "stand in the shoes" of the respective EPA Region. Therefore, depending on the circumstances, the appropriate reviewing authority may be an EPA Regional Office, a state, local, or tribal agency, or perhaps the Federal Land Manager (FLM). In some cases, the *Guideline* requires review and approval of the use of an alternative model by the EPA Regional Office (sometimes stated as "Regional Administrator"). For all approvals of alternative models or techniques, the EPA Regional Office will coordinate and shall seek concurrence with the EPA's Model Clearinghouse. If there is any question as to the appropriate reviewing authority, you should contact the EPA Regional Office modeling contact (<https://www3.epa.gov/ttn/scram/>

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guidance_cont_regions.htm), whose jurisdiction generally includes the physical location of the source in question and its expected impacts.

c. In all regulatory analyses, early discussions among the EPA Regional Office staff, state, local, and tribal agency staff, industry representatives, and where appropriate, the FLM, are invaluable and are strongly encouraged. Prior to the actual analyses, agreement on the databases to be used, modeling techniques to be applied, and the overall technical approach helps avoid misunderstandings concerning the final results and may reduce the later need for additional analyses. The preparation of a written modeling protocol that is vetted with the appropriate reviewing authority helps to keep misunderstandings and resource expenditures at a minimum.

d. The identification of preferred models in this *Guideline* should not be construed as a determination that the preferred models identified here are to be permanently used to the exclusion of all others or that they are the only models available for relating emissions to air quality. The model that most accurately estimates concentrations in the area of interest is always sought. However, designation of specific preferred models is needed to promote consistency in model selection and application.

3.1 Preferred Models

3.1.1 Discussion

a. The EPA has developed some models suitable for regulatory application, while other models have been submitted by private developers for possible inclusion in the *Guideline*. Refined models that are preferred and required by the EPA for particular applications have undergone the necessary peer scientific reviews²⁴⁻²⁵ and model performance evaluation exercises²⁶⁻²⁷ that include statistical measures of model performance in comparison with measured air quality data as described in section 2.1.1.

b. An American Society for Testing and Materials (ASTM) reference²⁸ provides a general philosophy for developing and implementing advanced statistical evaluations of atmospheric dispersion models, and provides an example statistical technique to illustrate the application of this philosophy. Consistent with this approach, the EPA has determined and applied a specific evaluation protocol that provides a statistical technique for evaluating model performance for predicting peak concentration values, as might be observed at individual monitoring locations.²⁹

c. When a single model is found to perform better than others, it is recommended for application as a preferred model and listed in

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appendix A. If no one model is found to clearly perform better through the evaluation exercise, then the preferred model listed in appendix A may be selected on the basis of other factors such as past use, public familiarity, resource requirements, and availability. Accordingly, the models listed in appendix A meet these conditions:

i. The model must be written in a common programming language, and the executable(s) must run on a common computer platform.

ii. The model must be documented in a user's guide or model formulation report which identifies the mathematics of the model, data requirements and program operating characteristics at a level of detail comparable to that available for other recommended models in appendix A.

iii. The model must be accompanied by a complete test dataset including input parameters and output results. The test data must be packaged with the model in computer-readable form.

iv. The model must be useful to typical users, *e.g.*, state air agencies, for specific air quality control problems. Such users should be able to operate the computer program(s) from available documentation.

v. The model documentation must include a robust comparison with air quality data (and/or tracer measurements) or with other well-established analytical techniques.

vi. The developer must be willing to make the model and source code available to users at reasonable cost or make them available for public access through the Internet or National Technical Information Service. The model and its code cannot be proprietary.

d. The EPA's process of establishing a preferred model includes a determination of technical merit, in accordance with the above six items, including the practicality of the model for use in ongoing regulatory programs. Each model will also be subjected to a performance evaluation for an appropriate database and to a peer scientific review. Models for wide use (not just an isolated case) that are found to perform better will be proposed for inclusion as preferred models in future *Guideline* revisions.

e. No further evaluation of a preferred model is required for a particular application if the EPA requirements for regulatory use specified for the model in the *Guideline* are followed. Alternative models to those listed in appendix A should generally be compared with measured air quality data when they are used for regulatory applications consistent with recommendations in section 3.2.

3.1.2 REQUIREMENTS

a. Appendix A identifies refined models that are preferred for use in regulatory applications. If a model is required for a particular application, the user must select a model from appendix A or follow procedures

in section 3.2.2 for use of an alternative model or technique. Preferred models may be used without a formal demonstration of applicability as long as they are used as indicated in each model summary in appendix A. Further recommendations for the application of preferred models to specific source applications are found in subsequent sections of the *Guideline*.

b. If changes are made to a preferred model without affecting the modeled concentrations, the preferred status of the model is unchanged. Examples of modifications that do not affect concentrations are those made to enable use of a different computer platform or those that only affect the format or averaging time of the model results. The integration of a graphical user interface (GUI) to facilitate setting up the model inputs and/or analyzing the model results without otherwise altering the preferred model code is another example of a modification that does not affect concentrations. However, when any changes are made, the Regional Administrator must require a test case example to demonstrate that the modeled concentrations are not affected.

c. A preferred model must be operated with the options listed in appendix A for its intended regulatory application. If the regulatory options are not applied, the model is no longer "preferred." Any other modification to a preferred model that would result in a change in the concentration estimates likewise alters its status so that it is no longer a preferred model. Use of the modified model must then be justified as an alternative model on a case-by-case basis to the appropriate reviewing authority and approved by the Regional Administrator.

d. Where the EPA has not identified a preferred model for a particular pollutant or situation, the EPA may establish a multi-tiered approach for making a demonstration required under PSD or another CAA program. The initial tier or tiers may involve use of demonstration tools, screening models, screening techniques, or reduced-form models; while the last tier may involve the use of demonstration tools, refined models or techniques, or alternative models approved under section 3.2.

3.2 Alternative Models

3.2.1 Discussion

a. Selection of the best model or techniques for each individual air quality analysis is always encouraged, but the selection should be done in a consistent manner. A simple listing of models in this *Guideline* cannot alone achieve that consistency nor can it necessarily provide the best model for all possible situations. As discussed in section 3.1.1, the EPA has determined and applied a specific evaluation protocol that provides a statistical technique for evaluating

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model performance for predicting peak concentration values, as might be observed at individual monitoring locations.²⁹ This protocol is available to assist in developing a consistent approach when justifying the use of other-than-preferred models recommended in the *Guideline* (*i.e.*, alternative models). The procedures in this protocol provide a general framework for objective decision-making on the acceptability of an alternative model for a given regulatory application. These objective procedures may be used for conducting both the technical evaluation of the model and the field test or performance evaluation.

b. This subsection discusses the use of alternate models and defines three situations when alternative models may be used. This subsection also provides a procedure for implementing 40 CFR 51.166(l)(2) in PSD permitting. This provision requires written approval of the Administrator for any modification or substitution of an applicable model. An applicable model for purposes of 40 CFR 51.166(l) is a preferred model in appendix A to the *Guideline*. Approval to use an alternative model under section 3.2 of the *Guideline* qualifies as approval for the modification or substitution of a model under 40 CFR 51.166(l)(2). The Regional Administrators have delegated authority to issue such approvals under section 3.2 of the *Guideline*, provided that such approval is issued after consultation with the EPA's Model Clearinghouse and formally documented in a concurrence memorandum from the EPA's Model Clearinghouse which demonstrates that the requirements within section 3.2 for use of an alternative model have been met.

3.2.2 Requirements

a. Determination of acceptability of an alternative model is an EPA Regional Office responsibility in consultation with the EPA's Model Clearinghouse as discussed in paragraphs 3.0(b) and 3.2.1(b). Where the Regional Administrator finds that an alternative model is more appropriate than a preferred model, that model may be used subject to the approval of the EPA Regional Office based on the requirements of this subsection. This finding will normally result from a determination that: (1) A preferred air quality model is not appropriate for the particular application; or (2) a more appropriate model or technique is available and applicable.

b. An alternative model shall be evaluated from both a theoretical and a performance perspective before it is selected for use. There are three separate conditions under which such a model may be approved for use:

1. If a demonstration can be made that the model produces concentration estimates equivalent to the estimates obtained using a preferred model;

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2. If a statistical performance evaluation has been conducted using measured air quality data and the results of that evaluation indicate the alternative model performs better for the given application than a comparable model in appendix A; or

3. If there is no preferred model.

Any one of these three separate conditions may justify use of an alternative model. Some known alternative models that are applicable for selected situations are listed on the EPA's SCRAM Web site (section 2.3). However, inclusion there does not confer any unique status relative to other alternative models that are being or will be developed in the future.

c. Equivalency, condition (1) in paragraph (b) of this subsection, is established by demonstrating that the appropriate regulatory metric(s) are within ± 2 percent of the estimates obtained from the preferred model. The option to show equivalency is intended as a simple demonstration of acceptability for an alternative model that is nearly identical (or contains options that can make it identical) to a preferred model that it can be treated for practical purposes as the preferred model. However, notwithstanding this demonstration, models that are not equivalent may be used when one of the two other conditions described in paragraphs (d) and (e) of this subsection are satisfied.

d. For condition (2) in paragraph (b) of this subsection, established statistical performance evaluation procedures and techniques²⁸⁻²⁹ for determining the acceptability of a model for an individual case based on superior performance should be followed, as appropriate. Preparation and implementation of an evaluation protocol that is acceptable to both control agencies and regulated industry is an important element in such an evaluation.

e. Finally, for condition (3) in paragraph (b) of this subsection, an alternative model or technique may be approved for use provided that:

i. The model or technique has received a scientific peer review;

ii. The model or technique can be demonstrated to be applicable to the problem on a theoretical basis;

iii. The databases which are necessary to perform the analysis are available and adequate;

iv. Appropriate performance evaluations of the model or technique have shown that the model or technique is not inappropriately biased for regulatory application^a; and

^aFor PSD and other applications that use the model results in an absolute sense, the model should not be biased toward underestimates. Alternatively, for ozone and PM_{2.5} SIP attainment demonstrations and other applications that use the model results in a

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v. A protocol on methods and procedures to be followed has been established.

f. To formally document that the requirements of section 3.2 for use of an alternative model are satisfied for a particular application or range of applications, a memorandum will be prepared by the EPA's Model Clearinghouse through a consultative process with the EPA Regional Office.

3.3 EPA's Model Clearinghouse

a. The Regional Administrator has the authority to select models that are appropriate for use in a given situation. However, there is a need for assistance and guidance in the selection process so that fairness, consistency, and transparency in modeling decisions are fostered among the EPA Regional Offices and the state, local, and tribal agencies. To satisfy that need, the EPA established the Model Clearinghouse²³ to serve a central role of coordination and collaboration between EPA headquarters and the EPA Regional Offices. Additionally, the EPA holds periodic workshops with EPA Headquarters, EPA Regional Offices, and state, local, and tribal agency modeling representatives.

b. The appropriate EPA Regional Office should always be consulted for information and guidance concerning modeling methods and interpretations of modeling guidance, and to ensure that the air quality model user has available the latest most up-to-date policy and procedures. As appropriate, the EPA Regional Office may also request assistance from the EPA's Model Clearinghouse on other applications of models, analytical techniques, or databases or to clarify interpretation of the *Guideline* or related modeling guidance.

c. The EPA Regional Office will coordinate with the EPA's Model Clearinghouse after an initial evaluation and decision has been developed concerning the application of an alternative model. The acceptability and formal approval process for an alternative model is described in section 3.2.

4.0 MODELS FOR CARBON MONOXIDE, LEAD, SULFUR DIOXIDE, NITROGEN DIOXIDE AND PRIMARY PARTICULATE MATTER

4.1 Discussion

a. This section identifies modeling approaches generally used in the air quality impact analysis of sources that emit the criteria pollutants carbon monoxide (CO), lead, sulfur dioxide (SO₂), nitrogen dioxide (NO₂), and primary particulates (PM_{2.5} and PM₁₀).

b. The guidance in this section is specific to the application of the Gaussian plume models identified in appendix A. Gaussian

relative sense, the model should not be biased toward overestimates.

plume models assume that emissions and meteorology are in a steady-state, which is typically based on an hourly time step. This approach results in a plume that has an hourly-averaged distribution of emission mass according to a Gaussian curve through the plume. Though Gaussian steady-state models conserve the mass of the primary pollutant throughout the plume, they can still take into account a limited consideration of first-order removal processes (*e.g.*, wet and dry deposition) and limited chemical conversion (*e.g.*, OH oxidation).

c. Due to the steady-state assumption, Gaussian plume models are generally considered applicable to distances less than 50 km, beyond which, modeled predictions of plume impact are likely conservative. The locations of these impacts are expected to be unreliable due to changes in meteorology that are likely to occur during the travel time.

d. The applicability of Gaussian plume models may vary depending on the topography of the modeling domain, *i.e.*, simple or complex. Simple terrain is considered to be an area where terrain features are all lower in elevation than the top of the stack(s) of the source(s) in question. Complex terrain is defined as terrain exceeding the height of the stack(s) being modeled.

e. Gaussian models determine source impacts at discrete locations (receptors) for each meteorological and emission scenario, and generally attempt to estimate concentrations at specific sites that represent an ensemble average of numerous repetitions of the same "event." Uncertainties in model estimates are driven by this formulation, and as noted in section 2.1.1, evaluations of model accuracy should focus on the reducible uncertainty associated with physics and the formulation of the model. The "irreducible" uncertainty associated with Gaussian plume models may be responsible for variation in concentrations of as much as ± 50 percent.³⁰ "Reducible" uncertainties¹⁶ can be on a similar scale. For example, Pasquill³¹ estimates that, apart from data input errors, maximum ground-level concentrations at a given hour for a point source in flat terrain could be in error by 50 percent due to these uncertainties. Errors of 5 to 10 degrees in the measured wind direction can result in concentration errors of 20 to 70 percent for a particular time and location, depending on stability and station location. Such uncertainties do not indicate that an estimated concentration does not occur, only that the precise time and locations are in doubt. Composite errors in highest estimated concentrations of 10 to 40 percent are found to be typical.^{32,33} However, estimates of concentrations paired in time and space with observed concentrations are less certain.

f. Model evaluations and inter-comparisons should take these aspects of uncertainty into

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account. For a regulatory application of a model, the emphasis of model evaluations is generally placed on the highest modeled impacts. Thus, the Cox-Tikvart model evaluation approach, which compares the highest modeled impacts on several timescales, is recommended for comparisons of models and measurements and model inter-comparisons. The approach includes bootstrap techniques to determine the significance of various modeled predictions and increases the robustness of such comparisons when the number of available measurements are limited.^{34 35} Because of the uncertainty in paired modeled and observed concentrations, any attempts at calibration of models based on these comparisons is of questionable benefit and shall not be done.

4.2 Requirements

a. For NAAQS compliance demonstrations under PSD, use of the screening and preferred models for the pollutants listed in this subsection shall be limited to the near-field at a nominal distance of 50 km or less. Near-field application is consistent with capabilities of Gaussian plume models and, based on the EPA's assessment, is sufficient to address whether a source will cause or contribute to ambient concentrations in excess of a NAAQS. In most cases, maximum source impacts of inert pollutants will occur within the first 10 to 20 km from the source. Therefore, the EPA does not consider a long-range transport assessment beyond 50 km necessary for these pollutants if a near-field NAAQS compliance demonstration is required.³⁶

b. For assessment of PSD increments within the near-field distance of 50 km or less, use of the screening and preferred models for the pollutants listed in this subsection shall be limited to the same screening and preferred models approved for NAAQS compliance demonstrations.

c. To determine if a compliance demonstration for NAAQS and/or PSD increments may be necessary beyond 50 km (*i.e.*, long-range transport assessment), the following screening approach shall be used to determine if a significant ambient impact will occur with particular focus on Class I areas and/or the applicable receptors that may be threatened at such distances.

i. Based on application in the near-field of the appropriate screening and/or preferred model, determine the significance of the ambient impacts at or about 50 km from the new or modifying source. If a near-field assessment is not available or this initial analysis indicates there may be significant ambient impacts at that distance, then further assessment is necessary.

ii. For assessment of the significance of ambient impacts for NAAQS and/or PSD increments, there is not a preferred model or screening approach for distances beyond 50

km. Thus, the appropriate reviewing authority (paragraph 3.0(b)) and the EPA Regional Office shall be consulted in determining the appropriate and agreed upon screening technique to conduct the second level assessment. Typically, a Lagrangian model is most appropriate to use for these second level assessments, but applicants shall reach agreement on the specific model and modeling parameters on a case-by-case basis in consultation with the appropriate reviewing authority (paragraph 3.0(b)) and EPA Regional Office. When Lagrangian models are used in this manner, they shall not include plume-depleting processes, such that model estimates are considered conservative, as is generally appropriate for screening assessments.

d. In those situations where a cumulative impact analysis for NAAQS and/or PSD increments analysis beyond 50 km is necessary, the selection and use of an alternative model shall occur in agreement with the appropriate reviewing authority (paragraph 3.0(b)) and approval by the EPA Regional Office based on the requirements of paragraph 3.2.2(e).

4.2.1 Screening Models and Techniques

a. Where a preliminary or conservative estimate is desired, point source screening techniques are an acceptable approach to air quality analyses.

b. As discussed in paragraph 2.2(a), screening models or techniques are designed to provide a conservative estimate of concentrations. The screening models used in most applications are the screening versions of the preferred models for refined applications. The two screening models, AERSCREEN^{37 38} and CTSCREEN, are screening versions of AERMOD (American Meteorological Society (AMS)/EPA Regulatory Model) and CTDMPLUS (Complex Terrain Dispersion Model Plus Algorithms for Unstable Situations), respectively. AERSCREEN is the recommended screening model for most applications in all types of terrain and for applications involving building downwash. For those applications in complex terrain where the application involves a well-defined hill or ridge, CTSCREEN³⁹ can be used.

c. Although AERSCREEN and CTSCREEN are designed to address a single-source scenario, there are approaches that can be used on a case-by-case basis to address multi-source situations using screening meteorology or other conservative model assumptions. However, the appropriate reviewing authority (paragraph 3.0(b)) shall be consulted, and concurrence obtained, on the protocol for modeling multiple sources with AERSCREEN or CTSCREEN to ensure that the worst case is identified and assessed.

d. As discussed in section 4.2.3.4, there are also screening techniques built into AERMOD that use simplified or limited chemistry assumptions for determining the

partitioning of NO and NO₂ for NO₂ modeling. These screening techniques are part of the EPA's preferred modeling approach for NO₂ and do not need to be approved as an alternative model. However, as with other screening models and techniques, their usage shall occur in agreement with the appropriate reviewing authority (paragraph 3.0(b)).

e. As discussed in section 4.2(c)(ii), there are screening techniques needed for long-range transport assessments that will typically involve the use of a Lagrangian model. Based on the long-standing practice and documented capabilities of these models for long-range transport assessments, the use of a Lagrangian model as a screening technique for this purpose does not need to be approved as an alternative model. However, their usage shall occur in consultation with the appropriate reviewing authority (paragraph 3.0(b)) and EPA Regional Office.

f. All screening models and techniques shall be configured to appropriately address the site and problem at hand. Close attention must be paid to whether the area should be classified urban or rural in accordance with section 7.2.1.1. The climatology of the area must be studied to help define the worst-case meteorological conditions. Agreement shall be reached between the model user and the appropriate reviewing authority (paragraph 3.0(b)) on the choice of the screening model or technique for each analysis, on the input data and model settings, and the appropriate metric for satisfying regulatory requirements.

4.2.1.1 AERSCREEN

a. Released in 2011, AERSCREEN is the EPA's recommended screening model for simple and complex terrain for single sources including point sources, area sources, horizontal stacks, capped stacks, and flares. AERSCREEN runs AERMOD in a screening mode and consists of two main components: 1) the MAKEMET program which generates a site-specific matrix of meteorological conditions for input to the AERMOD model; and 2) the AERSCREEN command-prompt interface.

b. The MAKEMET program generates a matrix of meteorological conditions, in the form of AERMOD-ready surface and profile files, based on user-specified surface characteristics, ambient temperatures, minimum wind speed, and anemometer height. The meteorological matrix is generated based on looping through a range of wind speeds, cloud covers, ambient temperatures, solar elevation angles, and convective velocity scales (w^* , for convective conditions only) based on user-specified surface characteristics for surface roughness (Z_o), Bowen ratio (B_o), and albedo (r). For unstable cases, the convective mixing height (Z_{ic}) is calculated based on w^* , and the mechanical mixing height (Z_{im}) is calculated for unstable and

stable conditions based on the friction velocity, u^* .

c. For applications involving simple or complex terrain, AERSCREEN interfaces with AERMAP. AERSCREEN also interfaces with BPIPPRM to provide the necessary building parameters for applications involving building downwash using the Plume Rise Model Enhancements (PRIME) downwash algorithm. AERSCREEN generates inputs to AERMOD via MAKEMET, AERMAP, and BPIPPRM and invokes AERMOD in a screening mode. The screening mode of AERMOD forces the AERMOD model calculations to represent values for the plume centerline, regardless of the source-receptor-wind direction orientation. The maximum concentration output from AERSCREEN represents a worst-case 1-hour concentration. Averaging-time scaling factors of 1.0 for 3-hour, 0.9 for 8-hour, 0.60 for 24-hour, and 0.10 for annual concentration averages are applied internally by AERSCREEN to the highest 1-hour concentration calculated by the model for non-area type sources. For area type source concentrations for averaging times greater than one hour, the concentrations are equal to the 1-hour estimates.³⁷⁻⁴⁰

4.2.1.2 CTSCREEN

a. CTSCREEN³⁹⁻⁴¹ can be used to obtain conservative, yet realistic, worst-case estimates for receptors located on terrain above stack height. CTSCREEN accounts for the three-dimensional nature of plume and terrain interaction and requires detailed terrain data representative of the modeling domain. The terrain data must be digitized in the same manner as for CTDMPLUS and a terrain processor is available.⁴² CTSCREEN is designed to execute a fixed matrix of meteorological values for wind speed (u), standard deviation of horizontal and vertical wind speeds (σ_v , σ_w), vertical potential temperature gradient ($d\theta/dz$), friction velocity (u^*), Monin-Obukhov length (L), mixing height (Z_i) as a function of terrain height, and wind directions for both neutral/stable conditions and unstable convective conditions. The maximum concentration output from CTSCREEN represents a worst-case 1-hour concentration. Time-scaling factors of 0.7 for 3-hour, 0.15 for 24-hour and 0.03 for annual concentration averages are applied internally by CTSCREEN to the highest 1-hour concentration calculated by the model.

4.2.1.3 Screening in Complex Terrain

a. For applications utilizing AERSCREEN, AERSCREEN automatically generates a polar-grid receptor network with spacing determined by the maximum distance to model. If the application warrants a different receptor network than that generated by AERSCREEN, it may be necessary to run

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AERMOD in screening mode with a user-defined network. For CTSCREEN applications or AERMOD in screening mode outside of AERSCREEN, placement of receptors requires very careful attention when modeling in complex terrain. Often the highest concentrations are predicted to occur under very stable conditions, when the plume is near or impinges on the terrain. Under such conditions, the plume may be quite narrow in the vertical, so that even relatively small changes in a receptor's location may substantially affect the predicted concentration. Receptors within about a kilometer of the source may be even more sensitive to location. Thus, a dense array of receptors may be required in some cases.

b. For applications involving AERSCREEN, AERSCREEN interfaces with AERMAP to generate the receptor elevations. For applications involving CTSCREEN, digitized contour data must be preprocessed⁴² to provide hill shape parameters in suitable input format. The user then supplies receptor locations either through an interactive program that is part of the model or directly, by using a text editor; using both methods to select receptor locations will generally be necessary to assure that the maximum concentrations are estimated by either model. In cases where a terrain feature may "appear to the plume" as smaller, multiple hills, it may be necessary to model the terrain both as a single feature and as multiple hills to determine design concentrations.

c. Other screening techniques may be acceptable for complex terrain cases where established procedures⁴³ are used. The user is encouraged to confer with the appropriate reviewing authority (paragraph 3.0(b)) if any unforeseen problems are encountered, e.g., applicability, meteorological data, receptor siting, or terrain contour processing issues.

4.2.2 Refined Models

a. A brief description of each preferred model for refined applications is found in appendix A. Also listed in that appendix are availability, the model input requirements, the standard options that shall be selected when running the program, and output options.

4.2.2.1 AERMOD

a. For a wide range of regulatory applications in all types of terrain, and for aerodynamic building downwash, the required model is AERMOD.^{44 45} The AERMOD regulatory modeling system consists of the AERMOD dispersion model, the AERMET meteorological processor, and the AERMAP terrain processor. AERMOD is a steady-state Gaussian plume model applicable to directly emitted air pollutants that employs best state-of-practice parameterizations for char-

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acterizing the meteorological influences and dispersion. Differentiation of simple versus complex terrain is unnecessary with AERMOD. In complex terrain, AERMOD employs the well-known dividing-streamline concept in a simplified simulation of the effects of plume-terrain interactions.

b. The AERMOD modeling system has been extensively evaluated across a wide range of scenarios based on numerous field studies, including tall stacks in flat and complex terrain settings, sources subject to building downwash influences, and low-level non-buoyant sources.²⁷ These evaluations included several long-term field studies associated with operating plants as well as several intensive tracer studies. Based on these evaluations, AERMOD has shown consistently good performance, with "errors" in predicted versus observed peak concentrations, based on the Robust Highest Concentration (RHC) metric, consistently within the range of 10 to 40 percent (cited in paragraph 4.1(e)).

c. AERMOD incorporates the PRIME algorithm to account for enhanced plume growth and restricted plume rise for plumes affected by building wake effects.⁴⁶ The PRIME algorithm accounts for entrainment of plume mass into the cavity recirculation region, including re-entrainment of plume mass into the wake region beyond the cavity.

d. AERMOD incorporates the Buoyant Line and Point Source (BLP) Dispersion model to account for buoyant plume rise from line sources. The BLP option utilizes the standard meteorological inputs provided by the AERMET meteorological processor.

e. The state-of-the-science for modeling atmospheric deposition is evolving, new modeling techniques are continually being assessed, and their results are being compared with observations. Consequently, while deposition treatment is available in AERMOD, the approach taken for any purpose shall be coordinated with the appropriate reviewing authority (paragraph 3.0(b)).

4.2.2.2 CTDMPLUS

a. If the modeling application involves an elevated point source with a well-defined hill or ridge and a detailed dispersion analysis of the spatial pattern of plume impacts is of interest, CTDMPLUS is available. CTDMPLUS provides greater resolution of concentrations about the contour of the hill feature than does AERMOD through a different plume-terrain interaction algorithm.

4.2.2.3 OCD

a. If the modeling application involves determining the impact of offshore emissions from point, area, or line sources on the air quality of coastal regions, the recommended model is the OCD (Offshore and Coastal Dispersion) Model. OCD is a straight-line Gaussian model that incorporates overwater

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plume transport and dispersion as well as changes that occur as the plume crosses the shoreline. OCD is also applicable for situations that involve platform building downwash.

4.2.3 Pollutant Specific Modeling Requirements

4.2.3.1 Models for Carbon Monoxide

a. Models for assessing the impact of CO emissions are needed to meet NSR requirements to address compliance with the CO NAAQS and to determine localized impacts from transportation projects. Examples include evaluating effects of point sources, congested roadway intersections and highways, as well as the cumulative effect of numerous sources of CO in an urban area.

b. The general modeling recommendations and requirements for screening models in section 4.2.1 and refined models in section 4.2.2 shall be applied for CO modeling. Given the relatively low CO background concentrations, screening techniques are likely to be adequate in most cases. In applying these recommendations and requirements, the existing 1992 EPA guidance for screening CO impacts from highways may be consulted.⁴⁷

4.2.3.2 Models for Lead

a. In January 1999 (40 CFR part 58, appendix D), the EPA gave notice that concern about ambient lead impacts was being shifted away from roadways and toward a focus on stationary point sources. Thus, models for assessing the impact of lead emissions are needed to meet NSR requirements to address compliance with the lead NAAQS and for SIP attainment demonstrations. The EPA has also issued guidance on siting ambient monitors in the vicinity of stationary point sources.⁴⁸ For lead, the SIP should contain an air quality analysis to determine the maximum rolling 3-month average lead concentration resulting from major lead point sources, such as smelters, gasoline additive plants, etc. The EPA has developed a post-processor to calculate rolling 3-month average concentrations from model output.⁴⁹ General guidance for lead SIP development is also available.⁵⁰

b. For major lead point sources, such as smelters, which contribute fugitive emissions and for which deposition is important, professional judgment should be used, and there shall be coordination with the appropriate reviewing authority (paragraph 3.0(b)). For most applications, the general requirements for screening and refined models of section 4.2.1 and 4.2.2 are applicable to lead modeling.

4.2.3.3 Models for Sulfur Dioxide

a. Models for SO₂ are needed to meet NSR requirements to address compliance with the

SO₂ NAAQS and PSD increments, for SIP attainment demonstrations,⁵¹ and for characterizing current air quality via modeling.⁵² SO₂ is one of a group of highly reactive gases known as "oxides of sulfur" with largest emissions sources being fossil fuel combustion at power plants and other industrial facilities.

b. Given the relatively inert nature of SO₂ on the short-term time scales of interest (*i.e.*, 1-hour) and the sources of SO₂ (*i.e.*, stationary point sources), the general modeling requirements for screening models in section 4.2.1 and refined models in section 4.2.2 are applicable for SO₂ modeling applications. For urban areas, AERMOD automatically invokes a half-life of 4 hours⁵³ to SO₂. Therefore, care must be taken when determining whether a source is urban or rural (*see* section 7.2.1.1 for urban/rural determination methodology).

4.2.3.4 Models for Nitrogen Dioxide

a. Models for assessing the impact of sources on ambient NO₂ concentrations are needed to meet NSR requirements to address compliance with the NO₂ NAAQS and PSD increments. Impact of an individual source on ambient NO₂ depends, in part, on the chemical environment into which the source's plume is to be emitted. This is due to the fact that NO₂ sources co-emit NO along with NO₂ and any emitted NO may react with ambient ozone to convert to additional NO₂ downwind. Thus, comprehensive modeling of NO₂ would need to consider the ratio of emitted NO and NO₂, the ambient levels of ozone and subsequent reactions between ozone and NO, and the photolysis of NO₂ to NO.

b. Due to the complexity of NO₂ modeling, a multi-tiered screening approach is required to obtain hourly and annual average estimates of NO₂.⁵⁴ Since these methods are considered screening techniques, their usage shall occur in agreement with the appropriate reviewing authority (paragraph 3.0(b)). Additionally, since screening techniques are conservative by their nature, there are limitations to how these options can be used. Specifically, modeling of negative emissions rates should only be done after consultation with the EPA Regional Office to ensure that decreases in concentrations would not be overestimated. Each tiered approach (*see* Figure 4-1) accounts for increasingly complex considerations of NO₂ chemistry and is described in paragraphs c through e of this subsection. The tiers of NO₂ modeling include:

- i. A first-tier (most conservative) "full" conversion approach;
- ii. A second-tier approach that assumes ambient equilibrium between NO and NO₂; and
- iii. A third-tier consisting of several detailed screening techniques that account for

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ambient ozone and the relative amount of NO and NO₂ emitted from a source.

c. For Tier 1, use an appropriate refined model (section 4.2.2) to estimate nitrogen oxides (NO_x) concentrations and assume a total conversion of NO to NO₂.

d. For Tier 2, multiply the Tier 1 result(s) by the Ambient Ratio Method 2 (ARM2), which provides estimates of representative equilibrium ratios of NO₂/NO_x value based ambient levels of NO₂ and NO_x derived from national data from the EPA's Air Quality System (AQS).⁵⁵ The national default for ARM2 includes a minimum ambient NO₂/NO_x ratio of 0.5 and a maximum ambient ratio of 0.9. The reviewing agency may establish alternative minimum ambient NO₂/NO_x values based on the source's in-stack emissions ratios, with alternative minimum ambient ratios reflecting the source's in-stack NO₂/NO_x ratios. Preferably, alternative minimum ambient NO₂/NO_x ratios should be based on source-specific data which satisfies all quality assurance procedures that ensure data accuracy for both NO₂ and NO_x within the typical range of measured values. However, alternate information may be used to justify a source's anticipated NO₂/NO_x in-stack ratios, such as manufacturer test data, state or local agency guidance, peer-reviewed literature, and/or the EPA's NO₂/NO_x ratio database.

e. For Tier 3, a detailed screening technique shall be applied on a case-by-case basis. Because of the additional input data requirements and complexities associated with the Tier 3 options, their usage shall

occur in consultation with the EPA Regional Office in addition to the appropriate reviewing authority. The Ozone Limiting Method (OLM)⁵⁶ and the Plume Volume Molar Ratio Method (PVMRM)⁵⁷ are two detailed screening techniques that may be used for most sources. These two techniques use an appropriate section 4.2.2 model to estimate NO_x concentrations and then estimate the conversion of primary NO emissions to NO₂ based on the ambient levels of ozone and the plume characteristics. OLM only accounts for NO₂ formation based on the ambient levels of ozone while PVMRM also accommodates distance-dependent conversion ratios based on ambient ozone. Both PVMRM and OLM require that ambient ozone concentrations be provided on an hourly basis and explicit specification of the NO₂/NO_x in-stack ratios. PVMRM works best for relatively isolated and elevated point source modeling while OLM works best for large groups of sources, area sources, and near-surface releases, including roadway sources.

f. Alternative models or techniques may be considered on a case-by-case basis and their usage shall be approved by the EPA Regional Office (section 3.2). Such models or techniques should consider individual quantities of NO and NO₂ emissions, atmospheric transport and dispersion, and atmospheric transformation of NO to NO₂. Dispersion models that account for more explicit photochemistry may also be considered as an alternative model to estimate ambient impacts of NO_x sources.

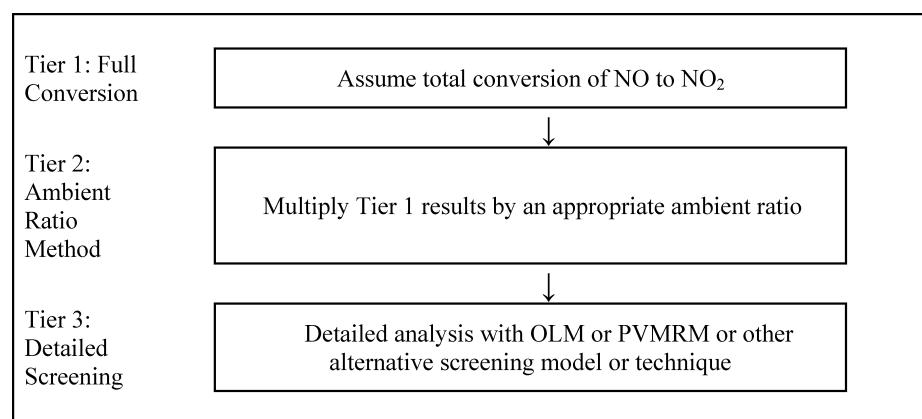


Figure 4-1: Multi-tiered Approach for Estimating NO₂ Concentrations

4.2.3.5 Models for PM_{2.5}

a. PM_{2.5} is a mixture consisting of several diverse components.⁵⁸ Ambient PM_{2.5} gen-

erally consists of two components: (1) The primary component, emitted directly from a source; and (2) the secondary component,

formed in the atmosphere from other pollutants emitted from the source. Models for PM_{2.5} are needed to meet NSR requirements to address compliance with the PM_{2.5} NAAQS and PSD increments and for SIP attainment demonstrations.

b. For NSR modeling assessments, the general modeling requirements for screening models in section 4.2.1 and refined models in section 4.2.2 are applicable for the primary component of PM_{2.5}, while the methods in section 5.4 are applicable for addressing the secondary component of PM_{2.5}. Guidance for PSD assessments is available for determining the best approach to handling sources of primary and secondary PM_{2.5}.⁵⁹

c. For SIP attainment demonstrations and regional haze reasonable progress goal analyses, effects of a control strategy on PM_{2.5} are estimated from the sum of the effects on the primary and secondary components composing PM_{2.5}. Model users should refer to section 5.4.1 and associated SIP modeling guidance⁶⁰ for further details concerning appropriate modeling approaches.

d. The general modeling requirements for the refined models discussed in section 4.2.2 shall be applied for PM_{2.5} hot-spot modeling for mobile sources. Specific guidance is available for analyzing direct PM_{2.5} impacts from highways, terminals, and other transportation projects.⁶¹

4.2.3.6 Models for PM₁₀

a. Models for PM₁₀ are needed to meet NSR requirements to address compliance with the PM₁₀ NAAQS and PSD increments and for SIP attainment demonstrations.

b. For most sources, the general modeling requirements for screening models in section 4.2.1 and refined models in section 4.2.2 shall be applied for PM₁₀ modeling. In cases where the particle size and its effect on ambient concentrations need to be considered, particle deposition may be used on a case-by-case basis and their usage shall be coordinated with the appropriate reviewing authority. A SIP development guide⁶² is also available to assist in PM₁₀ analyses and control strategy development.

c. Fugitive dust usually refers to dust put into the atmosphere by the wind blowing over plowed fields, dirt roads, or desert or sandy areas with little or no vegetation. Fugitive emissions include the emissions resulting from the industrial process that are not captured and vented through a stack, but may be released from various locations within the complex. In some unique cases, a model developed specifically for the situation may be needed. Due to the difficult nature of characterizing and modeling fugitive dust and fugitive emissions, the proposed procedure shall be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)) for each specific situation before the modeling exercise is begun.

Re-entrained dust is created by vehicles driving over dirt roads (*e.g.*, haul roads) and dust-covered roads typically found in arid areas. Such sources can be characterized as line, area or volume sources.⁶³ Emission rates may be based on site-specific data or values from the general literature.

d. Under certain conditions, recommended dispersion models may not be suitable to appropriately address the nature of ambient PM₁₀. In these circumstances, the alternative modeling approach shall be approved by the EPA Regional Office (section 3.2).

e. The general modeling requirements for the refined models discussed in section 4.2.2 shall be applied for PM₁₀ hot-spot modeling for mobile sources. Specific guidance is available for analyzing direct PM₁₀ impacts from highways, terminals, and other transportation projects.⁶¹

5.0 MODELS FOR OZONE AND SECONDARILY FORMED PARTICULATE MATTER

5.1 Discussion

a. Air pollutants formed through chemical reactions in the atmosphere are referred to as secondary pollutants. For example, ground-level ozone and a portion of PM_{2.5} are secondary pollutants formed through photochemical reactions. Ozone and secondarily formed particulate matter are closely related to each other in that they share common sources of emissions and are formed in the atmosphere from chemical reactions with similar precursors.

b. Ozone formation is driven by emissions of NO_x and volatile organic compounds (VOCs). Ozone formation is a complicated nonlinear process that requires favorable meteorological conditions in addition to VOC and NO_x emissions. Sometimes complex terrain features also contribute to the buildup of precursors and subsequent ozone formation or destruction.

c. PM_{2.5} can be either primary (*i.e.*, emitted directly from sources) or secondary in nature. The fraction of PM_{2.5} which is primary versus secondary varies by location and season. In the United States, PM_{2.5} is dominated by a variety of chemical species or components of atmospheric particles, such as ammonium sulfate, ammonium nitrate, organic carbon mass, elemental carbon, and other soil compounds and oxidized metals. PM_{2.5} sulfate, nitrate, and ammonium ions are predominantly the result of chemical reactions of the oxidized products of SO₂ and NO_x emissions with direct ammonia emissions.⁶⁴

d. Control measures reducing ozone and PM_{2.5} precursor emissions may not lead to proportional reductions in ozone and PM_{2.5}. Modeled strategies designed to reduce ozone or PM_{2.5} levels typically need to consider the chemical coupling between these pollutants. This coupling is important in understanding

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processes that control the levels of both pollutants. Thus, when feasible, it is important to use models that take into account the chemical coupling between ozone and PM_{2.5}. In addition, using such a multi-pollutant modeling system can reduce the resource burden associated with applying and evaluating separate models for each pollutant and promotes consistency among the strategies themselves.

e. PM_{2.5} is a mixture consisting of several diverse chemical species or components of atmospheric particles. Because chemical and physical properties and origins of each component differ, it may be appropriate to use either a single model capable of addressing several of the important components or to model primary and secondary components using different models. Effects of a control strategy on PM_{2.5} is estimated from the sum of the effects on the specific components comprising PM_{2.5}.

5.2 Recommendations

a. Chemical transformations can play an important role in defining the concentrations and properties of certain air pollutants. Models that take into account chemical reactions and physical processes of various pollutants (including precursors) are needed for determining the current state of air quality, as well as predicting and projecting the future evolution of these pollutants. It is important that a modeling system provide a realistic representation of chemical and physical processes leading to secondary pollutant formation and removal from the atmosphere.

b. Chemical transport models treat atmospheric chemical and physical processes such as deposition and motion. There are two types of chemical transport models, Eulerian (grid based) and Lagrangian. These types of models are differentiated from each other by their frame of reference. Eulerian models are based on a fixed frame of reference and Lagrangian models use a frame of reference that moves with parcels of air between the source and receptor point.⁹ Photochemical grid models are three-dimensional Eulerian grid-based models that treat chemical and physical processes in each grid cell and use diffusion and transport processes to move chemical species between grid cells.⁹ These types of models are appropriate for assessment of near-field and regional scale reactive pollutant impacts from specific sources^{7 10 11 12} or all sources.^{13 14 15} In some limited cases, the secondary processes can be treated with a box model, ideally in combination with a number of other modeling techniques and/or analyses to treat individual source sectors.

c. Regardless of the modeling system used to estimate secondary impacts of ozone and/or PM_{2.5}, model results should be compared to observation data to generate confidence

that the modeling system is representative of the local and regional air quality. For ozone related projects, model estimates of ozone should be compared with observations in both time and space. For PM_{2.5}, model estimates of speciated PM_{2.5} components (such as sulfate ion, nitrate ion, etc.) should be compared with observations in both time and space.⁶⁵

d. Model performance metrics comparing observations and predictions are often used to summarize model performance. These metrics include mean bias, mean error, fractional bias, fractional error, and correlation coefficient.⁶⁵ There are no specific levels of any model performance metric that indicate "acceptable" model performance. The EPA's preferred approach for providing context about model performance is to compare model performance metrics with similar contemporary applications.^{60 65} Because model application purpose and scope vary, model users should consult with the appropriate reviewing authority (paragraph 3.0(b)) to determine what model performance elements should be emphasized and presented to provide confidence in the regulatory model application.

e. There is no preferred modeling system or technique for estimating ozone or secondary PM_{2.5} for specific source impacts or to assess impacts from multiple sources. For assessing secondary pollutant impacts from single sources, the degree of complexity required to assess potential impacts varies depending on the nature of the source, its emissions, and the background environment. The EPA recommends a two-tiered approach where the first tier consists of using existing technically credible and appropriate relationships between emissions and impacts developed from previous modeling that is deemed sufficient for evaluating a source's impacts. The second tier consists of more sophisticated case-specific modeling analyses. The appropriate tier for a given application should be selected in consultation with the appropriate reviewing authority (paragraph 3.0(b)) and be consistent with EPA guidance.⁶⁶

5.3 Recommended Models and Approaches for Ozone

a. Models that estimate ozone concentrations are needed to guide the choice of strategies for the purposes of a nonattainment area demonstrating future year attainment of the ozone NAAQS. Additionally, models that estimate ozone concentrations are needed to assess impacts from specific sources or source complexes to satisfy requirements for NSR and other regulatory programs. Other purposes for ozone modeling include estimating the impacts of specific events on air

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quality, ozone deposition impacts, and planning for areas that may be attaining the ozone NAAQS.

5.3.1 Models for NAAQS Attainment Demonstrations and Multi-Source Air Quality Assessments

a. Simulation of ozone formation and transport is a complex exercise. Control agencies with jurisdiction over areas with ozone problems should use photochemical grid models to evaluate the relationship between precursor species and ozone. Use of photochemical grid models is the recommended means for identifying control strategies needed to address high ozone concentrations in such areas. Judgment on the suitability of a model for a given application should consider factors that include use of the model in an attainment test, development of emissions and meteorological inputs to the model, and choice of episodes to model. Guidance on the use of models and other analyses for demonstrating attainment of the air quality goals for ozone is available.⁵⁹⁶⁰ Users should consult with the appropriate reviewing authority (paragraph 3.0(b)) to ensure the most current modeling guidance is applied.

5.3.2 Models for Single-Source Air Quality Assessments

a. Depending on the magnitude of emissions, estimating the impact of an individual source's emissions of NO_x and VOC on ambient ozone is necessary for obtaining a permit. The simulation of ozone formation and transport requires realistic treatment of atmospheric chemistry and deposition. Models (*e.g.*, Lagrangian and photochemical grid models) that integrate chemical and physical processes important in the formation, decay, and transport of ozone and important precursor species should be applied. Photochemical grid models are primarily designed to characterize precursor emissions and impacts from a wide variety of sources over a large geographic area but can also be used to assess the impacts from specific sources.⁷¹¹¹²

b. The first tier of assessment for ozone impacts involves those situations where existing technical information is available (*e.g.*, results from existing photochemical grid modeling, published empirical estimates of source specific impacts, or reduced-form models) in combination with other supportive information and analysis for the purposes of estimating secondary impacts from a particular source. The existing technical information should provide a credible and representative estimate of the secondary impacts from the project source. The appropriate reviewing authority (paragraph 3.0(b)) and appropriate EPA guidance⁶⁶ should be consulted to determine what types of assessments

may be appropriate on a case-by-case basis.

c. The second tier of assessment for ozone impacts involves those situations where existing technical information is not available or a first tier demonstration indicates a more refined assessment is needed. For these situations, chemical transport models should be used to address single-source impacts. Special considerations are needed when using these models to evaluate the ozone impact from an individual source. Guidance on the use of models and other analyses for demonstrating the impacts of single sources for ozone is available.⁶⁶ This guidance document provides a more detailed discussion of the appropriate approaches to obtaining estimates of ozone impacts from a single source. Model users should use the latest version of the guidance in consultation with the appropriate reviewing authority (paragraph 3.0(b)) to determine the most suitable refined approach for single-source ozone modeling on a case-by-case basis.

5.4 Recommended Models and Approaches for Secondarily Formed PM_{2.5}

a. Models that estimate PM_{2.5} concentrations are needed to guide the choice of strategies for the purposes of a nonattainment area demonstrating future year attainment of the PM_{2.5} NAAQS. Additionally, models that estimate PM_{2.5} concentrations are needed to assess impacts from specific sources or source complexes to satisfy requirements for NSR and other regulatory programs. Other purposes for PM_{2.5} modeling include estimating the impacts of specific events on air quality, visibility, deposition impacts, and planning for areas that may be attaining the PM_{2.5} NAAQS.

5.4.1 Models for NAAQS Attainment Demonstrations and Multi-Source Air Quality Assessments

a. Models for PM_{2.5} are needed to assess the adequacy of a proposed strategy for meeting the annual and 24-hour PM_{2.5} NAAQS. Modeling primary and secondary PM_{2.5} can be a multi-faceted and complex problem, especially for secondary components of PM_{2.5} such as sulfates and nitrates. Control agencies with jurisdiction over areas with secondary PM_{2.5} problems should use models that integrate chemical and physical processes important in the formation, decay, and transport of these species (*e.g.*, photochemical grid models). Suitability of a modeling approach or mix of modeling approaches for a given application requires technical judgment as well as professional experience in choice of models, use of the model(s) in an attainment test, development of emissions and meteorological inputs to the model, and selection of days to model. Guidance on the use of models and other

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analyses for demonstrating attainment of the air quality goals for PM_{2.5} is available.⁵⁹⁶⁰ Users should consult with the appropriate reviewing authority (paragraph 3.0(b)) to ensure the most current modeling guidance is applied.

5.4.2 Models for Single-Source Air Quality Assessments

a. Depending on the magnitude of emissions, estimating the impact of an individual source's emissions on secondary particulate matter concentrations may be necessary for obtaining a permit. Primary PM_{2.5} components shall be simulated using the general modeling requirements in section 4.2.3.5. The simulation of secondary particulate matter formation and transport is a complex exercise requiring realistic treatment of atmospheric chemistry and deposition. Models should be applied that integrate chemical and physical processes important in the formation, decay, and transport of these species (e.g., Lagrangian and photochemical grid models). Photochemical grid models are primarily designed to characterize precursor emissions and impacts from a wide variety of sources over a large geographic area and can also be used to assess the impacts from specific sources.⁷¹⁰ For situations where a project source emits both primary PM_{2.5} and PM_{2.5} precursors, the contribution from both should be combined for use in determining the source's ambient impact. Approaches for combining primary and secondary impacts are provided in appropriate guidance for single source permit related demonstrations.⁶⁶

b. The first tier of assessment for secondary PM_{2.5} impacts involves those situations where existing technical information is available (e.g., results from existing photochemical grid modeling, published empirical estimates of source specific impacts, or reduced-form models) in combination with other supportive information and analysis for the purposes of estimating secondary impacts from a particular source. The existing technical information should provide a credible and representative estimate of the secondary impacts from the project source. The appropriate reviewing authority (paragraph 3.0(b)) and appropriate EPA guidance⁶⁶ should be consulted to determine what types of assessments may be appropriate on a case-by-case basis.

c. The second tier of assessment for secondary PM_{2.5} impacts involves those situations where existing technical information is not available or a first tier demonstration indicates a more refined assessment is needed. For these situations, chemical transport models should be used for assessments of single-source impacts. Special considerations are needed when using these models to evaluate the secondary particulate matter impact from an individual source. Guidance on the

use of models and other analyses for demonstrating the impacts of single sources for secondary PM_{2.5} is available.⁶⁶ This guidance document provides a more detailed discussion of the appropriate approaches to obtaining estimates of secondary particulate matter concentrations from a single source. Model users should use the latest version of this guidance in consultation with the appropriate reviewing authority (paragraph 3.0(b)) to determine the most suitable single-source modeling approach for secondary PM_{2.5} on a case-by-case basis.

6.0 MODELING FOR AIR QUALITY RELATED VALUES AND OTHER GOVERNMENTAL PROGRAMS

6.1 Discussion

a. Other federal government agencies and state, local, and tribal agencies with air quality and land management responsibilities have also developed specific modeling approaches for their own regulatory or other requirements. Although such regulatory requirements and guidance have come about because of EPA rules or standards, the implementation of such regulations and the use of the modeling techniques is under the jurisdiction of the agency issuing the guidance or directive. This section covers such situations with reference to those guidance documents, when they are available.

b. When using the model recommended or discussed in the *Guideline* in support of programmatic requirements not specifically covered by EPA regulations, the model user should consult the appropriate federal, state, local, or tribal agency to ensure the proper application and use of the models and/or techniques. These agencies have developed specific modeling approaches for their own regulatory or other requirements. Most of the programs have, or will have when fully developed, separate guidance documents that cover the program and a discussion of the tools that are needed. The following paragraphs reference those guidance documents, when they are available.

6.2 Air Quality Related Values

a. The 1990 CAA Amendments give FLMs an "affirmative responsibility" to protect the natural and cultural resources of Class I areas from the adverse impacts of air pollution and to provide the appropriate procedures and analysis techniques. The CAA identifies the FLM as the Secretary of the department, or their designee, with authority over these lands. Mandatory Federal Class I areas are defined in the CAA as international parks, national parks over 6,000 acres, and wilderness areas and memorial parks over 5,000 acres, established as of 1977. The FLMs are also concerned with the protection of resources in federally managed

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Class II areas because of other statutory mandates to protect these areas. Where state or tribal agencies have successfully petitioned the EPA and lands have been redesignated to Class I status, these agencies may have equivalent responsibilities to that of the FLMs for these non-federal Class I areas as described throughout the remainder of section 6.2.

b. The FLM agency responsibilities include the review of air quality permit applications from proposed new or modified major pollution sources that may affect these Class I areas to determine if emissions from a proposed or modified source will cause or contribute to adverse impacts on air quality related values (AQRVs) of a Class I area and making recommendations to the FLM. AQRVs are resources, identified by the FLM agencies, that have the potential to be affected by air pollution. These resources may include visibility, scenic, cultural, physical, or ecological resources for a particular area. The FLM agencies take into account the particular resources and AQRVs that would be affected; the frequency and magnitude of any potential impacts; and the direct, indirect, and cumulative effects of any potential impacts in making their recommendations.

c. While the AQRV notification and impact analysis requirements are outlined in the PSD regulations at 40 CFR 51.166(p) and 40 CFR 52.21(p), determination of appropriate analytical methods and metrics for AQRVs are determined by the FLM agencies and are published in guidance external to the general recommendations of this paragraph.

d. To develop greater consistency in the application of air quality models to assess potential AQRV impacts in both Class I areas and protected Class II areas, the FLM agencies have developed the Federal Land Managers' Air Quality Related Values Work Group Phase I Report (FLAG).⁶⁷ FLAG focuses upon specific technical and policy issues associated with visibility impairment, effects of pollutant deposition on soils and surface waters, and ozone effects on vegetation. Model users should consult the latest version of the FLAG report for current modeling guidance and with affected FLM agency representatives for any application specific guidance which is beyond the scope of the *Guideline*.

6.2.1 Visibility

a. Visibility in important natural areas (*e.g.*, Federal Class I areas) is protected under a number of provisions of the CAA, including sections 169A and 169B (addressing impacts primarily from existing sources) and section 165 (new source review). Visibility impairment is caused by light scattering and light absorption associated with particles and gases in the atmosphere. In most areas of the country, light scattering by PM_{2.5} is the most significant component of visibility

impairment. The key components of PM_{2.5} contributing to visibility impairment include sulfates, nitrates, organic carbon, elemental carbon, and crustal material.⁶⁷

b. Visibility regulations (40 CFR 51.300 through 51.309) require state, local, and tribal agencies to mitigate current and prevent future visibility impairment in any of the 156 mandatory Federal Class I areas where visibility is considered an important attribute. In 1999, the EPA issued revisions to the regulations to address visibility impairment in the form of regional haze, which is caused by numerous, diverse sources (*e.g.*, stationary, mobile, and area sources) located across a broad region (40 CFR 51.308 through 51.309). The state of relevant scientific knowledge has expanded significantly since that time. A number of studies and reports⁶⁸⁻⁶⁹ have concluded that long-range transport (*e.g.*, up to hundreds of kilometers) of fine particulate matter plays a significant role in visibility impairment across the country. Section 169A of the CAA requires states to develop SIPs containing long-term strategies for remediating existing and preventing future visibility impairment in the 156 mandatory Class I Federal areas, where visibility is considered an important attribute. In order to develop long-term strategies to address regional haze, many state, local, and tribal agencies will need to conduct regional-scale modeling of fine particulate concentrations and associated visibility impairment.

c. The FLAG visibility modeling recommendations are divided into two distinct sections to address different requirements for: (1) Near field modeling where plumes or layers are compared against a viewing background, and (2) distant/multi-source modeling for plumes and aggregations of plumes that affect the general appearance of a scene.⁶⁷ The recommendations separately address visibility assessments for sources proposing to locate relatively near and at farther distances from these areas.⁶⁷

6.2.1.1 Models for Estimating Near-Field Visibility Impairment

a. To calculate the potential impact of a plume of specified emissions for specific transport and dispersion conditions ("plume blight") for source-receptor distances less than 50 km, a screening model and guidance are available.⁶⁷⁻⁷⁰ If a more comprehensive analysis is necessary, a refined model should be selected. The model selection, procedures, and analyses should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)) and the affected FLM(s).

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6.2.1.2 Models for Estimating Visibility Impairment for Long-Range Transport

a. Chemical transformations can play an important role in defining the concentrations and properties of certain air pollutants. Models that take into account chemical reactions and physical processes of various pollutants (including precursors) are needed for determining the current state of air quality, as well as predicting and projecting the future evolution of these pollutants. It is important that a modeling system provide a realistic representation of chemical and physical processes leading to secondary pollutant formation and removal from the atmosphere.

b. Chemical transport models treat atmospheric chemical and physical processes such as deposition and motion. There are two types of chemical transport models, Eulerian (grid based) and Lagrangian. These types of models are differentiated from each other by their frame of reference. Eulerian models are based on a fixed frame of reference and Lagrangian models use a frame of reference that moves with parcels of air between the source and receptor point.⁹ Photochemical grid models are three-dimensional Eulerian grid-based models that treat chemical and physical processes in each grid cell and use diffusion and transport processes to move chemical species between grid cells.⁹ These types of models are appropriate for assessment of near-field and regional scale reactive pollutant impacts from specific sources^{7 10 11 12} or all sources.^{13 14 15}

c. Development of the requisite meteorological and emissions databases necessary for use of photochemical grid models to estimate AQRVs should conform to recommendations in section 8 and those outlined in the EPA's *Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, PM_{2.5}, and Regional Haze*.⁶⁰ Demonstration of the adequacy of prognostic meteorological fields can be established through appropriate diagnostic and statistical performance evaluations consistent with recommendations provided in the appropriate guidance.⁶⁰ Model users should consult the latest version of this guidance and with the appropriate reviewing authority (paragraph 3.0(b)) for any application-specific guidance that is beyond the scope of this subsection.

6.2.2 Models for Estimating Deposition Impacts

a. For many Class I areas, AQRVs have been identified that are sensitive to atmospheric deposition of air pollutants. Emissions of NO_x, sulfur oxides, NH₃, mercury, and secondary pollutants such as ozone and particulate matter affect components of ecosystems. In sensitive ecosystems, these compounds can acidify soils and surface waters,

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add nutrients that change biodiversity, and affect the ecosystem services provided by forests and natural areas.⁶⁷ To address the relationship between deposition and ecosystem effects, the FLM agencies have developed estimates of critical loads. A critical load is defined as, "A quantitative estimate of an exposure to one or more pollutants below which significant harmful effects on specified sensitive elements of the environment do not occur according to present knowledge."⁷¹

b. The FLM deposition modeling recommendations are divided into two distinct sections to address different requirements for: (1) Near field modeling, and (2) distant/multi-source modeling for cumulative effects. The recommendations separately address deposition assessments for sources proposing to locate relatively near and at farther distances from these areas.⁶⁷ Where the source and receptors are not in close proximity, chemical transport (e.g., photochemical grid) models generally should be applied for an assessment of deposition impacts due to one or a small group of sources. Over these distances, chemical and physical transformations can change atmospheric residence time due to different propensity for deposition to the surface of different forms of nitrate and sulfate. Users should consult the latest version of the FLAG report⁶⁷ and relevant FLM representatives for guidance on the use of models for deposition. Where source and receptors are in close proximity, users should contact the appropriate FLM for application-specific guidance.

6.3 Modeling Guidance for Other Governmental Programs

a. Dispersion and photochemical grid modeling may need to be conducted to ensure that individual and cumulative offshore oil and gas exploration, development, and production plans and activities do not significantly affect the air quality of any state as required under the Outer Continental Shelf Lands Act (OCSLA). Air quality modeling requires various input datasets, including emissions sources, meteorology, and pre-existing pollutant concentrations. For sources under the reviewing authority of the Department of Interior, Bureau of Ocean Energy Management (BOEM), guidance for the development of all necessary Outer Continental Shelf (OCS) air quality modeling inputs and appropriate model selection and application is available from the BOEM's Web site: <https://www.boem.gov/GOMR-Environmental-Compliance>.

b. The Federal Aviation Administration (FAA) is the appropriate reviewing authority for air quality assessments of primary pollutant impacts at airports and air bases. The Aviation Environmental Design Tool (AEDT) is developed and supported by the FAA, and

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is appropriate for air quality assessment of primary pollutant impacts at airports or air bases. AEDT has adopted AERMOD for treating dispersion. Application of AEDT is intended for estimating the change in emissions for aircraft operations, point source, and mobile source emissions on airport property and quantify the associated pollutant level-concentrations. AEDT is not intended for PSD, SIP, or other regulatory air quality analyses of point or mobile sources at or peripheral to airport property that are unrelated to airport operations. The latest version of AEDT may be obtained from the FAA at: <https://aedt.faa.gov>.

7.0 GENERAL MODELING CONSIDERATIONS

7.1 Discussion

a. This section contains recommendations concerning a number of different issues not explicitly covered in other sections of the *Guideline*. The topics covered here are not specific to any one program or modeling area, but are common to dispersion modeling analyses for criteria pollutants.

7.2 Recommendations

7.2.1 All Sources

7.2.1.1 Dispersion Coefficients

a. For any dispersion modeling exercise, the urban or rural determination of a source is critical in determining the boundary layer characteristics that affect the model's prediction of downwind concentrations. Historically, steady-state Gaussian plume models used in most applications have employed dispersion coefficients based on Pasquill-Gifford⁷² in rural areas and McElroy-Pooler⁷³ in urban areas. These coefficients are still incorporated in the BLP and OCD models. However, the AERMOD model incorporates a more up-to-date characterization of the atmospheric boundary layer using continuous functions of parameterized horizontal and vertical turbulence based on Monin-Obukhov similarity (scaling) relationships.⁴⁴ Another key feature of AERMOD's formulation is the option to use directly observed variables of the boundary layer to parameterize dispersion.^{44,45}

b. The selection of rural or urban dispersion coefficients in a specific application should follow one of the procedures suggested by Irwin⁷⁴ to determine whether the character of an area is primarily urban or rural (of the two methods, the land use procedure is considered more definitive.):

i. Land Use Procedure: (1) Classify the land use within the total area, A_o , circumscribed by a 3 km radius circle about the source using the meteorological land use typing scheme proposed by Auer;⁷⁵ (2) if land use types I1, I2, C1, R2, and R3 account for 50 percent or more of A_o , use urban dispersion coef-

ficients; otherwise, use appropriate rural dispersion coefficients.

ii. Population Density Procedure: (1) Compute the average population density, \bar{p} per square kilometer with A_o as defined above; (2) If \bar{p} is greater than 750 people per square kilometer, use urban dispersion coefficients; otherwise use appropriate rural dispersion coefficients.

c. Population density should be used with caution and generally not be applied to highly industrialized areas where the population density may be low and, thus, a rural classification would be indicated. However, the area is likely to be sufficiently built-up so that the urban land use criteria would be satisfied. Therefore, in this case, the classification should be "urban" and urban dispersion parameters should be used.

d. For applications of AERMOD in urban areas, under either the Land Use Procedure or the Population Density Procedure, the user needs to estimate the population of the urban area affecting the modeling domain because the urban influence in AERMOD is scaled based on a user-specified population. For non-population oriented urban areas, or areas influenced by both population and industrial activity, the user will need to estimate an equivalent population to adequately account for the combined effects of industrialized areas and populated areas within the modeling domain. Selection of the appropriate population for these applications should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)) and the latest version of the AERMOD Implementation Guide.⁷⁶

e. It should be noted that AERMOD allows for modeling rural and urban sources in a single model run. For analyses of whole urban complexes, the entire area should be modeled as an urban region if most of the sources are located in areas classified as urban. For tall stacks located within or adjacent to small or moderate sized urban areas, the stack height or effective plume height may extend above the urban boundary layer and, therefore, may be more appropriately modeled using rural coefficients. Model users should consult with the appropriate reviewing authority (paragraph 3.0(b)) and the latest version of the AERMOD Implementation Guide⁷⁶ when evaluating this situation.

f. Buoyancy-induced dispersion (BID), as identified by Pasquill,⁷⁷ is included in the preferred models and should be used where buoyant sources (e.g., those involving fuel combustion) are involved.

7.2.1.2 Complex Winds

a. *Inhomogeneous local winds.* In many parts of the United States, the ground is neither

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flat nor is the ground cover (or land use) uniform. These geographical variations can generate local winds and circulations, and modify the prevailing ambient winds and circulations. Typically, geographic effects are more apparent when the ambient winds are light or calm, as stronger synoptic or mesoscale winds can modify, or even eliminate the weak geographic circulations.⁷⁸ In general, these geographically induced wind circulation effects are named after the source location of the winds, *e.g.*, lake and sea breezes, and mountain and valley winds. In very rugged hilly or mountainous terrain, along coastlines, or near large land use variations, the characteristics of the winds are a balance of various forces, such that the assumptions of steady-state straight-line transport both in time and space are inappropriate. In such cases, a model should be chosen to fully treat the time and space variations of meteorology effects on transport and dispersion. The setup and application of such a model should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)) consistent with limitations of paragraph 3.2.2(e). The meteorological input data requirements for developing the time and space varying three-dimensional winds and dispersion meteorology for these situations are discussed in paragraph 8.4.1.2(c). Examples of inhomogeneous winds include, but are not limited to, situations described in the following paragraphs:

i. *Inversion breakup fumigation.* Inversion breakup fumigation occurs when a plume (or multiple plumes) is emitted into a stable layer of air and that layer is subsequently mixed to the ground through convective transfer of heat from the surface or because of advection to less stable surroundings. Fumigation may cause excessively high concentrations, but is usually rather short-lived at a given receptor. There are no recommended refined techniques to model this phenomenon. There are, however, screening procedures⁴⁰ that may be used to approximate the concentrations. Considerable care should be exercised in using the results obtained from the screening techniques.

ii. *Shoreline fumigation.* Fumigation can be an important phenomenon on and near the shoreline of bodies of water. This can affect both individual plumes and area-wide emissions. When fumigation conditions are expected to occur from a source or sources with tall stacks located on or just inland of a shoreline, this should be addressed in the air quality modeling analysis. The EPA has evaluated several coastal fumigation models, and the evaluation results of these models are available for their possible application on a case-by-case basis when air quality estimates under shoreline fumigation conditions are needed.⁷⁹ Selection of the appropriate model for applications where shoreline fumigation is of concern should be determined in

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consultation with the appropriate reviewing authority (paragraph 3.0(b)).

iii. *Stagnation.* Stagnation conditions are characterized by calm or very low wind speeds, and variable wind directions. These stagnant meteorological conditions may persist for several hours to several days. During stagnation conditions, the dispersion of air pollutants, especially those from low-level emissions sources, tends to be minimized, potentially leading to relatively high ground-level concentrations. If point sources are of interest, users should note the guidance provided in paragraph (a) of this subsection. Selection of the appropriate model for applications where stagnation is of concern should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)).

7.2.1.3 Gravitational Settling and Deposition

a. Gravitational settling and deposition may be directly included in a model if either is a significant factor. When particulate matter sources can be quantified and settling and dry deposition are problems, use professional judgment along with coordination with the appropriate reviewing authority (paragraph 3.0(b)). AERMOD contains algorithms for dry and wet deposition of gases and particles.⁸⁰ For other Gaussian plume models, an “infinite half-life” may be used for estimates of particle concentrations when only exponential decay terms are used for treating settling and deposition. Lagrangian models have varying degrees of complexity for dealing with settling and deposition and the selection of a parameterization for such should be included in the approval process for selecting a Lagrangian model. Eulerian grid models tend to have explicit parameterizations for gravitational settling and deposition as well as wet deposition parameters already included as part of the chemistry scheme.

7.2.2 Stationary Sources

7.2.2.1 Good Engineering Practice Stack Height

a. The use of stack height credit in excess of Good Engineering Practice (GEP) stack height or credit resulting from any other dispersion technique is prohibited in the development of emissions limits by 40 CFR 51.118 and 40 CFR 51.164. The definition of GEP stack height and dispersion technique are contained in 40 CFR 51.100. Methods and procedures for making the appropriate stack height calculations, determining stack height credits and an example of applying those techniques are found in several references,^{81 82 83 84} that provide a great deal of additional information for evaluating and describing building cavity and wake effects.

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b. If stacks for new or existing major sources are found to be less than the height defined by the EPA's refined formula for determining GEP height, then air quality impacts associated with cavity or wake effects due to the nearby building structures should be determined. The EPA refined formula height is defined as $H + 1.5L$.⁸³ Since the definition of GEP stack height defines excessive concentrations as a maximum ground-level concentration due in whole or in part to downwash of at least 40 percent in excess of the maximum concentration without downwash, the potential air quality impacts associated with cavity and wake effects should also be considered for stacks that equal or exceed the EPA formula height for GEP. The AERSCREEN model can be used to obtain screening estimates of potential downwash influences, based on the PRIME downwash algorithm incorporated in the AERMOD model. If more refined concentration estimates are required, AERMOD should be used (section 4.2.2).

7.2.2.2 Plume Rise

a. The plume rise methods of Briggs^{85 86} are incorporated in many of the preferred models and are recommended for use in many modeling applications. In AERMOD,^{44 45} for the stable boundary layer, plume rise is estimated using an iterative approach, similar to that in the CTDMPLUS model. In the convective boundary layer, plume rise is superposed on the displacements by random convective velocities.⁸⁷ In AERMOD, plume rise is computed using the methods of Briggs, except in cases involving building downwash, in which a numerical solution of the mass, energy, and momentum conservation laws is performed.⁸⁸ No explicit provisions in these models are made for multistack plume rise enhancement or the handling of such special plumes as flares.

b. Gradual plume rise is generally recommended where its use is appropriate: (1) In AERMOD; (2) in complex terrain screening procedures to determine close-in impacts; and (3) when calculating the effects of building wakes. The building wake algorithm in AERMOD incorporates and exercises the thermodynamically based gradual plume rise calculations as described in paragraph (a) of this subsection. If the building wake is calculated to affect the plume for any hour, gradual plume rise is also used in downwind dispersion calculations to the distance of final plume rise, after which final plume rise is used. Plumes captured by the near wake are re-emitted to the far wake as a ground-level volume source.

c. Stack tip downwash generally occurs with poorly constructed stacks and when the ratio of the stack exit velocity to wind speed is small. An algorithm developed by Briggs⁸⁶ is the recommended technique for this situa-

tion and is used in preferred models for point sources.

d. On a case-by-case basis, refinements to the preferred model may be considered for plume rise and downwash effects and shall occur in agreement with the appropriate reviewing authority (paragraph 3.0(b)) and approval by the EPA Regional Office based on the requirements of section 3.2.2.

7.2.3 Mobile Sources

a. Emissions of primary pollutants from mobile sources can be modeled with an appropriate model identified in section 4.2. Screening of mobile sources can be accomplished by using screening meteorology, e.g., worst-case meteorological conditions. Maximum hourly concentrations computed from screening modeling can be converted to longer averaging periods using the scaling ratios specified in the AERSCREEN User's Guide.³⁷

b. Mobile sources can be modeled in AERMOD as either line (*i.e.*, elongated area) sources or as a series of volume sources. However, since mobile source modeling usually includes an analysis of very near-source impacts (*e.g.*, hot-spot modeling, which can include receptors within 5–10 meters (m) of the roadway), the results can be highly sensitive to the characterization of the mobile emissions. Important characteristics for both line/area and volume sources include the plume release height, source width, and initial dispersion characteristics, and should also take into account the impact of traffic-induced turbulence that can cause roadway sources to have larger initial dimensions than might normally be used for representing line sources.

c. The EPA's quantitative PM hot-spot guidance⁶¹ and Haul Road Workgroup Final Report⁶³ provide guidance on the appropriate characterization of mobile sources as a function of the roadway and vehicle characteristics. The EPA's quantitative PM hot-spot guidance includes important considerations and should be consulted when modeling roadway links. Area, line or volume sources may be used for modeling mobile sources. However, experience in the field has shown that area sources may be easier to characterize correctly compared to volume sources. If volume sources are used, it is particularly important to ensure that roadway emissions are appropriately spaced when using volume source so that the emissions field is uniform across the roadway. Additionally, receptor placement is particularly important for volume sources that have "exclusion zones" where concentrations are not calculated for receptors located "within" the volume sources, *i.e.*, less than 2.15 times the initial lateral dispersion coefficient from the center of the volume.⁶¹ Placing receptors in these "exclusion zones" will result in underestimates of roadway impacts.

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8.0 MODEL INPUT DATA

a. Databases and related procedures for estimating input parameters are an integral part of the modeling process. The most appropriate input data available should always be selected for use in modeling analyses. Modeled concentrations can vary widely depending on the source data or meteorological data used. This section attempts to minimize the uncertainty associated with database selection and use by identifying requirements for input data used in modeling. More specific data requirements and the format required for the individual models are described in detail in the user's guide and/or associated documentation for each model.

8.1 Modeling Domain

8.1.1 Discussion

a. The modeling domain is the geographic area for which the required air quality analyses for the NAAQS and PSD increments are conducted.

8.1.2 Requirements

a. For a NAAQS or PSD increments assessment, the modeling domain or project's impact area shall include all locations where the emissions of a pollutant from the new or modifying source(s) may cause a significant ambient impact. This impact area is defined as an area with a radius extending from the new or modifying source to: (1) The most distant location where air quality modeling predicts a significant ambient impact will occur, or (2) the nominal 50 km distance considered applicable for Gaussian dispersion models, whichever is less. The required air quality analysis shall be carried out within this geographical area with characterization of source impacts, nearby source impacts, and background concentrations, as recommended later in this section.

b. For SIP attainment demonstrations for ozone and PM_{2.5}, or regional haze reasonable progress goal analyses, the modeling domain is determined by the nature of the problem being modeled and the spatial scale of the emissions that impact the nonattainment or Class I area(s). The modeling domain shall be designed so that all major upwind source areas that influence the downwind nonattainment area are included in addition to all monitor locations that are currently or recently violating the NAAQS or close to violating the NAAQS in the nonattainment area. Similarly, all Class I areas to be evaluated in a regional haze modeling application shall be included and sufficiently distant from the edge of the modeling domain. Guidance on the determination of the appropriate modeling domain for photochemical grid models in demonstrating attainment of these air quality goals is available.⁶⁰ Users should consult the latest version of this guidance

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for the most current modeling guidance and the appropriate reviewing authority (paragraph 3.0(b)) for any application specific guidance that is beyond the scope of this section.

8.2 Source Data

8.2.1 Discussion

a. Sources of pollutants can be classified as point, line, area, and volume sources. Point sources are defined in terms of size and may vary between regulatory programs. The line sources most frequently considered are roadways and streets along which there are well-defined movements of motor vehicles. They may also be lines of roof vents or stacks, such as in aluminum refineries. Area and volume sources are often collections of a multitude of minor sources with individually small emissions that are impractical to consider as separate point or line sources. Large area sources are typically treated as a grid network of square areas, with pollutant emissions distributed uniformly within each grid square. Generally, input data requirements for air quality models necessitate the use of metric units. As necessary, any English units common to engineering applications should be appropriately converted to metric.

b. For point sources, there are many source characteristics and operating conditions that may be needed to appropriately model the facility. For example, the plant layout (*e.g.*, location of stacks and buildings), stack parameters (*e.g.*, height and diameter), boiler size and type, potential operating conditions, and pollution control equipment parameters. Such details are required inputs to air quality models and are needed to determine maximum potential impacts.

c. Modeling mobile emissions from streets and highways requires data on the road layout, including the width of each traveled lane, the number of lanes, and the width of the median strip. Additionally, traffic patterns should be taken into account (*e.g.*, daily cycles of rush hour, differences in weekday and weekend traffic volumes, and changes in the distribution of heavy-duty trucks and light-duty passenger vehicles), as these patterns will affect the types and amounts of pollutant emissions allocated to each lane and the height of emissions.

d. Emission factors can be determined through source-specific testing and measurements (*e.g.*, stack test data) from existing sources or provided from a manufacturing association or vendor. Additionally, emissions factors for a variety of source types are compiled in an EPA publication commonly known as AP-42.⁶⁹ AP-42 also provides an indication of the quality and amount of data on which many of the factors are based. Other information concerning emissions is

available in EPA publications relating to specific source categories. The appropriate reviewing authority (paragraph 3.0(b)) should be consulted to determine appropriate source definitions and for guidance concerning the determination of emissions from and techniques for modeling the various source types.

8.2.2 Requirements

a. For SIP attainment demonstrations for the purpose of projecting future year NAAQS attainment for ozone, PM_{2.5}, and regional haze reasonable progress goal analyses, emissions which reflect actual emissions during the base modeling year time period should be input to models for base year modeling. Emissions projections to future years should account for key variables such as growth due to increased or decreased activity, expected emissions controls due to regulations, settlement agreements or consent decrees, fuel switches, and any other relevant information. Guidance on emissions estimation techniques (including future year projections) for SIP attainment demonstrations is available.⁶⁰⁻⁶⁹

b. For the purpose of SIP revisions for stationary point sources, the regulatory modeling of inert pollutants shall use the emissions input data shown in Table 8-1 for short-term and long-term NAAQS. To demonstrate compliance and/or establish the appropriate SIP emissions limits, Table 8-1 generally provides for the use of "allowable" emissions in the regulatory dispersion modeling of the stationary point source(s) of interest. In such modeling, these source(s) should be modeled sequentially with these loads for every hour of the year. As part of a cumulative impact analysis, Table 8-1 allows for the model user to account for actual operations in developing the emissions inputs for dispersion modeling of nearby sources, while other sources are best represented by air quality monitoring data. Consultation with the appropriate reviewing authority (paragraph 3.0(b)) is advisable on the establishment of the appropriate emissions inputs for regulatory modeling applications with respect to SIP revisions for stationary point sources.

c. For the purposes of demonstrating NAAQS compliance in a PSD assessment, the regulatory modeling of inert pollutants shall use the emissions input data shown in Table 8-2 for short and long-term NAAQS. The new or modifying stationary point source shall be modeled with "allowable" emissions in the regulatory dispersion modeling. As part of a cumulative impact analysis, Table 8-2 allows for the model user to account for actual operations in developing the emissions inputs for dispersion modeling of nearby sources, while other sources are best represented by air quality monitoring data. For purposes of situations involving emissions trading, refer

to current EPA policy and guidance to establish input data. Consultation with the appropriate reviewing authority (paragraph 3.0(b)) is advisable on the establishment of the appropriate emissions inputs for regulatory modeling applications with respect to PSD assessments for a proposed new or modifying source.

d. For stationary source applications, changes in operating conditions that affect the physical emission parameters (*e.g.*, release height, initial plume volume, and exit velocity) shall be considered to ensure that maximum potential impacts are appropriately determined in the assessment. For example, the load or operating condition for point sources that causes maximum ground-level concentrations shall be established. As a minimum, the source should be modeled using the design capacity (100 percent load). If a source operates at greater than design capacity for periods that could result in violations of the NAAQS or PSD increments, this load should be modeled. Where the source operates at substantially less than design capacity, and the changes in the stack parameters associated with the operating conditions could lead to higher ground level concentrations, loads such as 50 percent and 75 percent of capacity should also be modeled. Malfunctions which may result in excess emissions are not considered to be a normal operating condition. They generally should not be considered in determining allowable emissions. However, if the excess emissions are the result of poor maintenance, careless operation, or other preventable conditions, it may be necessary to consider them in determining source impact. A range of operating conditions should be considered in screening analyses. The load causing the highest concentration, in addition to the design load, should be included in refined modeling.

e. Emissions from mobile sources also have physical and temporal characteristics that should be appropriately accounted. For example, an appropriate emissions model shall be used to determine emissions profiles. Such emissions should include speciation specific for the vehicle types used on the roadway (*e.g.*, light duty and heavy duty trucks), and subsequent parameterizations of the physical emissions characteristics (*e.g.*, release height) should reflect those emissions sources. For long-term standards, annual average emissions may be appropriate, but for short-term standards, discrete temporal representation of emissions should be used (*e.g.*, variations in weekday and weekend traffic or the diurnal rush-hour profile typical of many cities). Detailed information and data requirements for modeling mobile sources of pollution are provided in the user's manuals for each of the models applicable to mobile sources.⁶¹⁻⁶³

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Table 8-1. - Point Source Model Emission Inputs for SIP Revisions of Inert Pollutants¹

Averaging time	Emissions limit (lb/MMBtu) ²	X	Operating level (MMBtu/hr) ²	X	Operating factor (e.g., hr/yr, hr/day)
Stationary Point Source(s) Subject to SIP Emissions Limit(s) Evaluation for Compliance with Ambient Standards (Including Areawide Demonstrations)					
Annual & quarterly	Maximum allowable emission limit or federally enforceable permit limit.		Actual or design capacity (whichever is greater), or federally enforceable permit condition.		Actual operating factor averaged over the most recent 2 years. ³
Short term (\leq 24 hours)	Maximum allowable emission limit or federally enforceable permit limit.		Actual or design capacity (whichever is greater), or federally enforceable permit condition. ⁴		Continuous operation, i.e., all hours of each time period under consideration (for all hours of the meteorological database). ⁵
Nearby Source(s)⁶					
Annual & quarterly	Maximum allowable emission limit or federally enforceable permit limit. ⁶		Annual level when actually operating, averaged over the most recent 2 years. ³		Actual operating factor averaged over the most recent 2 years. ^{3,8}
Short term (\leq 24 hours)	Maximum allowable emission limit or federally enforceable permit limit. ⁶		Temporally representative level when actually operating, reflective of the most recent 2 years. ^{3,7}		Continuous operation, i.e., all hours of each time period under consideration (for all hours of the meteorological database). ⁵
Other Source(s)^{6,9}					

The ambient impacts from Non-nearby or Other Sources (e.g., natural sources, minor sources and distant major sources, and unidentified sources) can be represented by air quality monitoring data unless adequate data do not exist.

1. For purposes of emissions trading, NSR, or PSD, other model input criteria may apply. See Section 8.2 for more information regarding attainment demonstrations of primary PM2.5.

2. Terminology applicable to fuel burning sources; analogous terminology (e.g., lb/throughput) may be used for other types of sources.

3. Unless it is determined that this period is not representative.

4. Operating levels such as 50 percent and 75 percent of capacity should also be modeled to determine the load causing the highest concentration.

5. If operation does not occur for all hours of the time period of consideration (e.g., 3 or 24-hours) and the source operation is constrained by a federally enforceable permit condition, an appropriate adjustment to the modeled emission rate may be made (e.g., if operation is only 8 a.m. to 4 p.m. each day, only these hours will be modeled with emissions from the source. Modeled emissions should not be averaged across non-operating time periods.).

6. See Section 8.3.3.

7. Temporally representative operating level could be based on Continuous Emissions Monitoring (CEM) data or other information and should be determined through consultation with the appropriate reviewing authority (Paragraph 3.0(b)).

8. For those permitted sources not in operation or that have not established an appropriate factor, continuous operation (i.e., 8760) should be used.

9. See Section 8.3.2.

Table 8-2. - Point Source Model Emission Inputs for NAAQS Compliance in PSD Demonstrations

Averaging time	Emissions limit (lb/MMBtu) ¹	X	Operating level (MMBtu/hr) ²	X	Operating factor (e.g., hr/yr, hr/day)
Proposed Major New or Modified Source					
Annual & quarterly	Maximum allowable emission limit or federally enforceable permit limit.		Design capacity or federally enforceable permit condition.		Continuous operation (i.e., 8760 hours). ²
Short term (\leq 24 hours)	Maximum allowable emission limit or federally enforceable permit limit.		Design capacity or federally enforceable permit condition. ³		Continuous operation, i.e., all hours of each time period under consideration (for all hours of the meteorological database). ²
Nearby Source(s)^{4,5}					
Annual & quarterly	Maximum allowable emission limit or federally enforceable permit limit. ⁵		Annual level when actually operating, averaged over the most recent 2 years. ⁶		Actual operating factor averaged over the most recent 2 years. ^{6,8}
Short term (\leq 24 hours)	Maximum allowable emission limit or federally enforceable permit limit. ⁵		Temporally representative level when actually operating, reflective of the most recent 2 years. ^{6,7}		Continuous operation, i.e., all hours of each time period under consideration (for all hours of the meteorological database). ²
Other Source(s)^{5,9}					

The ambient impacts from Non-nearby or Other Sources (e.g., natural sources, minor sources and distant major sources, and unidentified sources) can be represented by air quality monitoring data unless adequate data do not exist.

- Terminology applicable to fuel burning sources; analogous terminology (e.g., lb/throughput) may be used for other types of sources.
- If operation does not occur for all hours of the time period of consideration (e.g., 3 or 24-hours) and the source operation is constrained by a federally enforceable permit condition, an appropriate adjustment to the modeled emission rate may be made (e.g., if operation is only 8 a.m. to 4 p.m. each day, only those hours will be modeled with emissions from the source. Modeled emissions should not be averaged across non-operating time periods).
- Operating levels such as 50 percent and 75 percent of capacity should also be modeled to determine the load causing the highest concentration.
- Includes existing facility to which modification is proposed if the emissions from the existing facility will not be affected by the modification. Otherwise use the same parameters as for major modification.
- See Section 8.3.3.
- Unless it is determined that this period is not representative.
- Temporally representative operating level could be based on Continuous Emissions Monitoring (CEM) data or other information and should be determined through consultation with the appropriate reviewing authority (Paragraph 3.0(b)).
- For those permitted sources not in operation or that have not established an appropriate factor, continuous operation (i.e., 8760) should be used.
- See Section 8.3.2.

8.3 Background Concentrations

8.3.1 Discussion

a. Background concentrations are essential in constructing the design concentration, or total air quality concentration, as part of a cumulative impact analysis for NAAQS and PSD increments (section 9.2.3). Background air quality should not include the ambient impacts of the project source under consideration. Instead, it should include:

i. **Nearby sources:** These are individual sources located in the vicinity of the source(s) under consideration for emissions limits that are not adequately represented by ambient monitoring data. Typically, sources that cause a significant concentration gradient in the vicinity of the source(s) under consideration for emissions limits are not adequately represented by background ambient monitoring. The ambient contributions from these nearby sources are thereby

accounted for by explicitly modeling their emissions (section 8.2).

ii. **Other sources:** That portion of the background attributable to natural sources, other unidentified sources in the vicinity of the project, and regional transport contributions from more distant sources (domestic and international). The ambient contributions from these sources are typically accounted for through use of ambient monitoring data or, in some cases, regional-scale photochemical grid modeling results.

b. The monitoring network used for developing background concentrations is expected to conform to the same quality assurance and other requirements as those networks established for PSD purposes.⁹¹ Accordingly, the air quality monitoring data should be of sufficient completeness and follow appropriate data validation procedures. These data should be adequately representative of the area to inform calculation of the design concentration for comparison to the applicable NAAQS (section 9.2.2).

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c. For photochemical grid modeling conducted in SIP attainment demonstrations for ozone, PM_{2.5} and regional haze, the emissions from nearby and other sources are included as model inputs and fully accounted for in the modeling application and predicted concentrations. The concept of adding individual components to develop a design concentration, therefore, do not apply in these SIP applications. However, such modeling results may then be appropriate for consideration in characterizing background concentrations for other regulatory applications. Also, as noted in section 5, this modeling approach does provide for an appropriate atmospheric environment to assess single-source impacts for ozone and secondary PM_{2.5}.

d. For NAAQS assessments and SIP attainment demonstrations for inert pollutants, the development of the appropriate background concentration for a cumulative impact analysis involves proper accounting of each contribution to the design concentration and will depend upon whether the project area's situation consists of either an isolated single source(s) or a multitude of sources. For PSD increment assessments, all impacts after the appropriate baseline dates (*i.e.*, trigger date, major source baseline date, and minor source baseline date) from all increment-consuming and increment-expanding sources should be considered in the design concentration (section 9.2.2).

8.3.2 Recommendations for Isolated Single Sources

a. In areas with an isolated source(s), determining the appropriate background concentration should focus on characterization of contributions from all other sources through adequately representative ambient monitoring data.

b. The EPA recommends use of the most recent quality assured air quality monitoring data collected in the vicinity of the source to determine the background concentration for the averaging times of concern. In most cases, the EPA recommends using data from the monitor closest to and upwind of the project area. If several monitors are available, preference should be given to the monitor with characteristics that are most similar to the project area. If there are no monitors located in the vicinity of the new or modifying source, a "regional site" may be used to determine background concentrations. A regional site is one that is located away from the area of interest but is impacted by similar or adequately representative sources.

c. Many of the challenges related to cumulative impact analyses arise in the context of defining the appropriate metric to characterize background concentrations from ambient monitoring data and determining the appropriate method for combining this mon-

itor-based background contribution to the modeled impact of the project and other nearby sources. For many cases, the best starting point would be use of the current design value for the applicable NAAQS as a uniform monitored background contribution across the project area. However, there are cases in which the current design value may not be appropriate. Such cases include but are not limited to:

i. For situations involving a modifying source where the existing facility is determined to impact the ambient monitor, the background concentration at each monitor can be determined by excluding values when the source in question is impacting the monitor. In such cases, monitoring sites inside a 90° sector downwind of the source may be used to determine the area of impact.

ii. There may be other circumstances which would necessitate modifications to the ambient data record. Such cases could include removal of data from specific days or hours when a monitor is being impacted by activities that are not typical or not expected to occur again in the future (*e.g.*, construction, roadway repairs, forest fires, or unusual agricultural activities). There may also be cases where it may be appropriate to scale (multiplying the monitored concentrations with a scaling factor) or adjust (adding or subtracting a constant value the monitored concentrations) data from specific days or hours. Such adjustments would make the monitored background concentrations more temporally and/or spatially representative of the area around the new or modifying source for the purposes of the regulatory assessment.

iii. For short-term standards, the diurnal or seasonal patterns of the air quality monitoring data may differ significantly from the patterns associated with the modeled concentrations. When this occurs, it may be appropriate to pair the air quality monitoring data in a temporal manner that reflects these patterns (*e.g.*, pairing by season and/or hour of day).⁹²

iv. For situations where monitored air quality concentrations vary across the modeling domain, it may be appropriate to consider air quality monitoring data from multiple monitors within the project area.

d. Determination of the appropriate background concentrations should be consistent with appropriate EPA modeling guidance^{59,60} and justified in the modeling protocol that is vetted with the appropriate reviewing authority (paragraph 3.0(b)).

e. Considering the spatial and temporal variability throughout a typical modeling domain on an hourly basis and the complexities and limitations of hourly observations from the ambient monitoring network, the EPA does not recommend hourly or daily pairing of monitored background and modeled concentrations except in rare cases of

relatively isolated sources where the available monitor can be shown to be representative of the ambient concentration levels in the areas of maximum impact from the proposed new source. The implicit assumption underlying hourly pairing is that the background monitored levels for each hour are spatially uniform and that the monitored values are fully representative of background levels at each receptor for each hour. Such an assumption clearly ignores the many factors that contribute to the temporal and spatial variability of ambient concentrations across a typical modeling domain on an hourly basis. In most cases, the seasonal (or quarterly) pairing of monitored and modeled concentrations should sufficiently address situations to which the impacts from modeled emissions are not temporally correlated with background monitored levels.

f. In those cases where adequately representative monitoring data to characterize background concentrations are not available, it may be appropriate to use results from a regional-scale photochemical grid model, or other representative model application, as background concentrations consistent with the considerations discussed above and in consultation with the appropriate reviewing authority (paragraph 3.0(b)).

8.3.3 Recommendations for Multi-Source Areas

a. In multi-source areas, determining the appropriate background concentration involves: (1) Identification and characterization of contributions from nearby sources through explicit modeling, and (2) characterization of contributions from other sources through adequately representative ambient monitoring data. A key point here is the interconnectedness of each component in that the question of which nearby sources to include in the cumulative modeling is inextricably linked to the question of what the ambient monitoring data represents within the project area.

b. *Nearby sources:* All sources in the vicinity of the source(s) under consideration for emissions limits that are not adequately represented by ambient monitoring data should be explicitly modeled. Since an ambient monitor is limited to characterizing air quality at a fixed location, sources that cause a significant concentration gradient in the vicinity of the source(s) under consideration for emissions limits are not likely to be adequately characterized by the monitored data due to the high degree of variability of the source's impact.

i. The pattern of concentration gradients can vary significantly based on the averaging period being assessed. In general, concentration gradients will be smaller and more spatially uniform for annual averages than for short-term averages, especially for

hourly averages. The spatial distribution of annual impacts around a source will often have a single peak downwind of the source based on the prevailing wind direction, except in cases where terrain or other geographic effects are important. By contrast, the spatial distribution of peak short-term impacts will typically show several localized concentration peaks with more significant gradient.

ii. Concentration gradients associated with a particular source will generally be largest between that source's location and the distance to the maximum ground-level concentrations from that source. Beyond the maximum impact distance, concentration gradients will generally be much smaller and more spatially uniform. Thus, the magnitude of a concentration gradient will be greatest in the proximity of the source and will generally not be significant at distances greater than 10 times the height of the stack(s) at that source without consideration of terrain influences.

iii. The number of nearby sources to be explicitly modeled in the air quality analysis is expected to be few except in unusual situations. In most cases, the few nearby sources will be located within the first 10 to 20 km from the source(s) under consideration. Owing to both the uniqueness of each modeling situation and the large number of variables involved in identifying nearby sources, no attempt is made here to comprehensively define a "significant concentration gradient." Rather, identification of nearby sources calls for the exercise of professional judgment by the appropriate reviewing authority (paragraph 3.0(b)). This guidance is not intended to alter the exercise of that judgment or to comprehensively prescribe which sources should be included as nearby sources.

c. For cumulative impact analyses of short-term and annual ambient standards, the nearby sources as well as the project source(s) must be evaluated using an appropriate appendix A model or approved alternative model with the emission input data shown in Table 8-1 or 8-2.

i. When modeling a nearby source that does not have a permit and the emissions limits contained in the SIP for a particular source category is greater than the emissions possible given the source's maximum physical capacity to emit, the "maximum allowable emissions limit" for such a nearby source may be calculated as the emissions rate representative of the nearby source's maximum physical capacity to emit, considering its design specifications and allowable fuels and process materials. However, the burden is on the permit applicant to sufficiently document what the maximum physical capacity to emit is for such a nearby source.

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ii. It is appropriate to model nearby sources only during those times when they, by their nature, operate at the same time as the primary source(s) or could have impact on the averaging period of concern. Accordingly, it is not necessary to model impacts of a nearby source that does not, by its nature, operate at the same time as the primary source or could have impact on the averaging period of concern, regardless of an identified significant concentration gradient from the nearby source. The burden is on the permit applicant to adequately justify the exclusion of nearby sources to the satisfaction of the appropriate reviewing authority (paragraph 3.0(b)). The following examples illustrate two cases in which a nearby source may be shown not to operate at the same time as the primary source(s) being modeled: (1) Seasonal sources (only used during certain seasons of the year). Such sources would not be modeled as nearby sources during times in which they do not operate; and (2) Emergency backup generators, to the extent that they do not operate simultaneously with the sources that they back up. Such emergency equipment would not be modeled as nearby sources.

d. *Other sources.* That portion of the background attributable to all other sources (e.g., natural sources, minor and distant major sources) should be accounted for through use of ambient monitoring data and determined by the procedures found in section 8.3.2 in keeping with eliminating or reducing the source-oriented impacts from nearby sources to avoid potential double-counting of modeled and monitored contributions.

8.4 Meteorological Input Data

8.4.1 Discussion

a. This subsection covers meteorological input data for use in dispersion modeling for regulatory applications and is separate from recommendations made for photochemical grid modeling. Recommendations for meteorological data for photochemical grid modeling applications are outlined in the latest version of EPA's *Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, PM_{2.5}, and Regional Haze*.⁶⁰ In cases where Lagrangian models are applied for regulatory purposes, appropriate meteorological inputs should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)).

b. The meteorological data used as input to a dispersion model should be selected on the basis of spatial and climatological (temporal) representativeness as well as the ability of the individual parameters selected to characterize the transport and dispersion conditions in the area of concern. The representativeness of the measured data is dependent on numerous factors including, but not limited to: (1) The proximity of the me-

teorological monitoring site to the area under consideration; (2) the complexity of the terrain; (3) the exposure of the meteorological monitoring site; and (4) the period of time during which data are collected. The spatial representativeness of the data can be adversely affected by large distances between the source and receptors of interest and the complex topographic characteristics of the area. Temporal representativeness is a function of the year-to-year variations in weather conditions. Where appropriate, data representativeness should be viewed in terms of the appropriateness of the data for constructing realistic boundary layer profiles and, where applicable, three-dimensional meteorological fields, as described in paragraphs (c) and (d) of this subsection.

c. The meteorological data should be adequately representative and may be site-specific data, data from a nearby National Weather Service (NWS) or comparable station, or prognostic meteorological data. The implementation of NWS Automated Surface Observing Stations (ASOS) in the early 1990's should not preclude the use of NWS ASOS data if such a station is determined to be representative of the modeled area.⁹³

d. Model input data are normally obtained either from the NWS or as part of a site-specific measurement program. State climatology offices, local universities, FAA, military stations, industry, and pollution control agencies may also be sources of such data. In specific cases, prognostic meteorological data may be appropriate for use and obtained from similar sources. Some recommendations and requirements for the use of each type of data are included in this subsection.

8.4.2 Recommendations and Requirements

a. AERMET⁹⁴ shall be used to preprocess all meteorological data, be it observed or prognostic, for use with AERMOD in regulatory applications. The AERMINUTE⁹⁵ processor, in most cases, should be used to process 1-minute ASOS wind data for input to AERMET when processing NWS ASOS sites in AERMET. When processing prognostic meteorological data for AERMOD, the Mesoscale Model Interface Program (MMIF)¹⁰³ should be used to process data for input to AERMET. Other methods of processing prognostic meteorological data for input to AERMET should be approved by the appropriate reviewing authority. Additionally, the following meteorological preprocessors are recommended by the EPA: PCRAMMET,⁹⁶ MPRM,⁹⁷ and METPRO.⁹⁸ PCRAMMET is the recommended meteorological data preprocessor for use in applications of OCD employing hourly NWS data. MPRM is the recommended meteorological data preprocessor for applications of OCD employing site-specific meteorological data.

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METPRO is the recommended meteorological data preprocessor for use with CTDMPLUS.⁹⁹

b. Regulatory application of AERMOD necessitates careful consideration of the meteorological data for input to AERMET. Data representativeness, in the case of AERMOD, means utilizing data of an appropriate type for constructing realistic boundary layer profiles. Of particular importance is the requirement that all meteorological data used as input to AERMOD should be adequately representative of the transport and dispersion within the analysis domain. Where surface conditions vary significantly over the analysis domain, the emphasis in assessing representativeness should be given to adequate characterization of transport and dispersion between the source(s) of concern and areas where maximum design concentrations are anticipated to occur. The EPA recommends that the surface characteristics input to AERMET should be representative of the land cover in the vicinity of the meteorological data, *i.e.*, the location of the meteorological tower for measured data or the representative grid cell for prognostic data. Therefore, the model user should apply the latest version AERSURFACE,^{100 101} where applicable, for determining surface characteristics when processing measured meteorological data through AERMET. In areas where it is not possible to use AERSURFACE output, surface characteristics can be determined using techniques that apply the same analysis as AERSURFACE. In the case of prognostic meteorological data, the surface characteristics associated with the prognostic meteorological model output for the representative grid cell should be used.^{102 103} Furthermore, since the spatial scope of each variable could be different, representativeness should be judged for each variable separately. For example, for a variable such as wind direction, the data should ideally be collected near plume height to be adequately representative, especially for sources located in complex terrain. Whereas, for a variable such as temperature, data from a station several kilometers away from the source may be considered to be adequately representative. More information about meteorological data, representativeness, and surface characteristics can be found in the AERMOD Implementation Guide.⁷⁶

c. Regulatory application of CTDMPLUS requires the input of multi-level measurements of wind speed, direction, temperature, and turbulence from an appropriately sited meteorological tower. The measurements should be obtained up to the representative plume height(s) of interest. Plume heights of interest can be determined by use of screening procedures such as CTSCREEN.

d. Regulatory application of OCD requires meteorological data over land and over water. The over land or surface data, proc-

essed through PCRAMMET⁹⁶ or MPRM,⁹⁷ that provides hourly stability class, wind direction and speed, ambient temperature, and mixing height, are required. Data over water requires hourly mixing height, relative humidity, air temperature, and water surface temperature. Missing winds are substituted with the surface winds. Vertical wind direction shear, vertical temperature gradient, and turbulence intensities are optional.

e. The model user should acquire enough meteorological data to ensure that worst-case meteorological conditions are adequately represented in the model results. The use of 5 years of adequately representative NWS or comparable meteorological data, at least 1 year of site-specific, or at least 3 years of prognostic meteorological data, are required. If 1 year or more, up to 5 years, of site-specific data are available, these data are preferred for use in air quality analyses. Depending on completeness of the data record, consecutive years of NWS, site-specific, or prognostic data are preferred. Such data must be subjected to quality assurance procedures as described in section 8.4.4.2.

f. Objective analysis in meteorological modeling is to improve meteorological analyses (the “*first guess field*”) used as initial conditions for prognostic meteorological models by incorporating information from meteorological observations. Direct and indirect (using remote sensing techniques) observations of temperature, humidity, and wind from surface and radiosonde reports are commonly employed to improve these analysis fields. For long-range transport applications, it is recommended that objective analysis procedures, using direct and indirect meteorological observations, be employed in preparing input fields to produce prognostic meteorological datasets. The length of record of observations should conform to recommendations outlined in paragraph 8.4.2(e) for prognostic meteorological model datasets.

8.4.3 National Weather Service Data

8.4.3.1 Discussion

a. The NWS meteorological data are routinely available and familiar to most model users. Although the NWS does not provide direct measurements of all the needed dispersion model input variables, methods have been developed and successfully used to translate the basic NWS data to the needed model input. Site-specific measurements of model input parameters have been made for many modeling studies, and those methods and techniques are becoming more widely applied, especially in situations such as complex terrain applications, where available NWS data are not adequately representative.

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However, there are many modeling applications where NWS data are adequately representative and the applications still rely heavily on the NWS data.

b. Many models use the standard hourly weather observations available from the National Centers for Environmental Information (NCEI).^b These observations are then preprocessed before they can be used in the models. Prior to the advent of ASOS in the early 1990's, the standard "hourly" weather observation was a human-based observation reflecting a single 2-minute average generally taken about 10 minutes before the hour. However, beginning in January 2000 for first-order stations and in March 2005 for all stations, the NCEI has archived the 1-minute ASOS wind data (*i.e.*, the rolling 2-minute average winds) for the NWS ASOS sites. The AERMINUTE processor⁹⁵ was developed to reduce the number of calm and missing hours in AERMET processing by substituting standard hourly observations with full hourly average winds calculated from 1-minute ASOS wind data.

8.4.3.2 Recommendations

a. The preferred models listed in appendix A all accept, as input, the NWS meteorological data preprocessed into model compatible form. If NWS data are judged to be adequately representative for a specific modeling application, they may be used. The NCEI makes available surface^{104 105} and upper air¹⁰⁶ meteorological data online and in CD-ROM format. Upper air data are also available at the Earth System Research Laboratory Global Systems Divisions Web site (<http://esrl.noaa.gov/gsd>).

b. Although most NWS wind measurements are made at a standard height of 10 m, the actual anemometer height should be used as input to the preferred meteorological processor and model.

c. Standard hourly NWS wind directions are reported to the nearest 10 degrees. Due to the coarse resolution of these data, a specific set of randomly generated numbers has been developed by the EPA and should be used when processing standard hourly NWS data for use in the preferred EPA models to ensure a lack of bias in wind direction assignments within the models.

d. Beginning with year 2000, NCEI began archiving 2-minute winds, reported every minute to the nearest degree for NWS ASOS sites. The AERMINUTE processor was developed to read those winds and calculate hourly average winds for input to AERMET. When such data are available for the NWS ASOS site being processed, the AERMINUTE processor should be used, in most cases, to calculate hourly average wind speed and di-

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rection when processing NWS ASOS data for input to AERMOD.⁹³

e. Data from universities, FAA, military stations, industry and pollution control agencies may be used if such data are equivalent in accuracy and detail (*e.g.*, siting criteria, frequency of observations, data completeness, etc.) to the NWS data, they are judged to be adequately representative for the particular application, and have undergone quality assurance checks.

f. After valid data retrieval requirements have been met,¹⁰⁷ large number of hours in the record having missing data should be treated according to an established data substitution protocol provided that adequately representative alternative data are available. Data substitution guidance is provided in section 5.3 of reference.¹⁰⁷ If no representative alternative data are available for substitution, the absent data should be coded as missing using missing data codes appropriate to the applicable meteorological pre-processor. Appropriate model options for treating missing data, if available in the model, should be employed.

8.4.4 Site-Specific Data

8.4.4.1 Discussion

a. Spatial or geographical representativeness is best achieved by collection of all of the needed model input data in close proximity to the actual site of the source(s). Site-specific measured data are, therefore, preferred as model input, provided that appropriate instrumentation and quality assurance procedures are followed, and that the data collected are adequately representative (free from inappropriate local or microscale influences) and compatible with the input requirements of the model to be used. It should be noted that, while site-specific measurements are frequently made "on-property" (*i.e.*, on the source's premises), acquisition of adequately representative site-specific data does not preclude collection of data from a location off property. Conversely, collection of meteorological data on a source's property does not of itself guarantee adequate representativeness. For help in determining representativeness of site-specific measurements, technical guidance¹⁰⁷ is available. Site-specific data should always be reviewed for representativeness and adequacy by an experienced meteorologist, atmospheric scientist, or other qualified scientist in consultation with the appropriate reviewing authority (paragraph 3.0(b)).

8.4.4.2 Recommendations

a. The EPA guidance¹⁰⁷ provides recommendations on the collection and use of site-specific meteorological data. Recommendations on characteristics, siting, and exposure of meteorological instruments and on data recording, processing, completeness

^bFormerly the National Climatic Data Center (NCDC).

requirements, reporting, and archiving are also included. This publication should be used as a supplement to other limited guidance on these subjects.^{591 108 109} Detailed information on quality assurance is also available.¹¹⁰ As a minimum, site-specific measurements of ambient air temperature, transport wind speed and direction, and the variables necessary to estimate atmospheric dispersion should be available in meteorological datasets to be used in modeling. Care should be taken to ensure that meteorological instruments are located to provide an adequately representative characterization of pollutant transport between sources and receptors of interest. The appropriate reviewing authority (paragraph 3.0(b)) is available to help determine the appropriateness of the measurement locations.

i. *Solar radiation measurements.* Total solar radiation or net radiation should be measured with a reliable pyranometer or net radiometer sited and operated in accordance with established site-specific meteorological guidance.^{107 110}

ii. *Temperature measurements.* Temperature measurements should be made at standard shelter height (2m) in accordance with established site-specific meteorological guidance.¹⁰⁷

iii. *Temperature difference measurements.* Temperature difference (DT) measurements should be obtained using matched thermometers or a reliable thermocouple system to achieve adequate accuracy. Siting, probe placement, and operation of DT systems should be based on guidance found in Chapter 3 of reference 107 and such guidance should be followed when obtaining vertical temperature gradient data. AERMET may employ the Bulk Richardson scheme, which requires measurements of temperature difference, in lieu of cloud cover or insolation data. To ensure correct application and acceptance, AERMOD users should consult with the appropriate reviewing authority (paragraph 3.0(b)) before using the Bulk Richardson scheme for their analysis.

iv. *Wind measurements.* For simulation of plume rise and dispersion of a plume emitted from a stack, characterization of the wind profile up through the layer in which the plume disperses is desirable. This is especially important in complex terrain and/or complex wind situations where wind measurements at heights up to hundreds of meters above stack base may be required in some circumstances. For tall stacks when site-specific data are needed, these winds have been obtained traditionally using meteorological sensors mounted on tall towers. A feasible alternative to tall towers is the use of meteorological remote sensing instruments (*e.g.*, acoustic sounders or radar wind profilers) to provide winds aloft, coupled with 10-meter towers to provide the near-surface winds. Note that when site-specific wind

measurements are used, AERMOD, at a minimum, requires wind observations at a height above ground between seven times the local surface roughness height and 100 m. (For additional requirements for AERMOD and CTDMPLUS, see appendix A.) Specifications for wind measuring instruments and systems are contained in reference 107.

b. All processed site-specific data should be in the form of hourly averages for input to the dispersion model.

i. *Turbulence data.* There are several dispersion models that are capable of using direct measurements of turbulence (wind fluctuations) in the characterization of the vertical and lateral dispersion (*e.g.*, CTDMPLUS or AERMOD). When turbulence data are used to directly characterize the vertical and lateral dispersion, the averaging time for the turbulence measurements should be 1 hour. For technical guidance on processing of turbulence parameters for use in dispersion modeling, refer to the user's guide to the meteorological processor for each model (see section 8.4.2(a)).

ii. *Stability categories.* For dispersion models that employ P-G stability categories for the characterization of the vertical and lateral dispersion, the P-G stability categories, as originally defined, couple near-surface measurements of wind speed with subjectively determined insolation assessments based on hourly cloud cover and ceiling height observations. The wind speed measurements are made at or near 10 m. The insolation rate is typically assessed using observations of cloud cover and ceiling height based on criteria outlined by Turner.⁷² It is recommended that the P-G stability category be estimated using the Turner method with site-specific wind speed measured at or near 10 m and representative cloud cover and ceiling height. Implementation of the Turner method, as well as considerations in determining representativeness of cloud cover and ceiling height in cases for which site-specific cloud observations are unavailable, may be found in section 6 of reference 107. In the absence of requisite data to implement the Turner method, the solar radiation/delta-T (SRDT) method or wind fluctuation statistics (*i.e.*, the σ_E and σ_A methods) may be used.

iii. The SRDT method, described in section 6.4.4.2 of reference 107, is modified slightly from that published from earlier work¹¹¹ and has been evaluated with three site-specific databases.¹¹² The two methods of stability classification that use wind fluctuation statistics, the σ_E and σ_A methods, are also described in detail in section 6.4.4 of reference 107 (note applicable tables in section 6). For additional information on the wind fluctuation methods, several references are available.^{113 114 115 116}

c. *Missing data substitution.* After valid data retrieval requirements have been met,¹⁰⁷

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hours in the record having missing data should be treated according to an established data substitution protocol provided that adequately representative alternative data are available. Such protocols are usually part of the approved monitoring program plan. Data substitution guidance is provided in section 5.3 of reference 107. If no representative alternative data are available for substitution, the absent data should be coded as missing, using missing data codes appropriate to the applicable meteorological pre-processor. Appropriate model options for treating missing data, if available in the model, should be employed.

8.4.5 Prognostic Meteorological Data

8.4.5.1 Discussion

a. For some modeling applications, there may not be a representative NWS or comparable meteorological station available (*e.g.*, complex terrain), and it may be cost prohibitive or infeasible to collect adequately representative site-specific data. For these cases, it may be appropriate to use prognostic meteorological data, if deemed adequately representative, in a regulatory modeling application. However, if prognostic meteorological data are not representative of transport and dispersion conditions in the area of concern, the collection of site-specific data is necessary.

b. The EPA has developed a processor, the MMIF,¹⁰² to process MM5 (Mesoscale Model 5) or WRF (Weather Research and Forecasting) model data for input to various models including AERMOD. MMIF can process data for input to AERMET or AERMOD for a single grid cell or multiple grid cells. MMIF output has been found to compare favorably against observed data (site-specific or NWS).¹¹⁷ Specific guidance on processing MMIF for AERMOD can be found in reference 103. When using MMIF to process prognostic data for regulatory applications, the data should be processed to generate AERMET inputs and the data subsequently processed through AERMET for input to AERMOD. If an alternative method of processing data for input to AERMET is used, it must be approved by the appropriate reviewing authority (paragraph 3.0(b)).

8.4.5.2 Recommendations

a. *Prognostic model evaluation.* Appropriate effort by the applicant should be devoted to the process of evaluating the prognostic meteorological data. The modeling data should be compared to NWS observational data or other comparable data in an effort to show that the data are adequately replicating the observed meteorological conditions of the time periods modeled. An operational evaluation of the modeling data for all model years (*i.e.*, statistical, graphical) should be

completed.⁶⁰ The use of output from prognostic mesoscale meteorological models is contingent upon the concurrence with the appropriate reviewing authority (paragraph 3.0(b)) that the data are of acceptable quality, which can be demonstrated through statistical comparisons with meteorological observations aloft and at the surface at several appropriate locations.⁶⁰

b. *Representativeness.* When processing MMIF data for use with AERMOD, the grid cell used for the dispersion modeling should be adequately spatially representative of the analysis domain. In most cases, this may be the grid cell containing the emission source of interest. Since the dispersion modeling may involve multiple sources and the domain may cover several grid cells, depending on grid resolution of the prognostic model, professional judgment may be needed to select the appropriate grid cell to use. In such cases, the selected grid cells should be adequately representative of the entire domain.

c. *Grid resolution.* The grid resolution of the prognostic meteorological data should be considered and evaluated appropriately, particularly for projects involving complex terrain. The operational evaluation of the modeling data should consider whether a finer grid resolution is needed to ensure that the data are representative. The use of output from prognostic mesoscale meteorological models is contingent upon the concurrence with the appropriate reviewing authority (paragraph 3.0(b)) that the data are of acceptable quality.

8.4.6 Treatment of Near-Calms and Calms

8.4.6.1 Discussion

a. Treatment of calm or light and variable wind poses a special problem in modeling applications since steady-state Gaussian plume models assume that concentration is inversely proportional to wind speed, depending on model formulations. Procedures have been developed to prevent the occurrence of overly conservative concentration estimates during periods of calms. These procedures acknowledge that a steady-state Gaussian plume model does not apply during calm conditions, and that our knowledge of wind patterns and plume behavior during these conditions does not, at present, permit the development of a better technique. Therefore, the procedures disregard hours that are identified as calm. The hour is treated as missing and a convention for handling missing hours is recommended. With the advent of the AERMINUTE processor, when processing NWS ASOS data, the inclusion of hourly averaged winds from AERMINUTE will, in some instances, dramatically reduce the number of calm and missing hours, especially when the ASOS wind are derived from a sonic anemometer. To alleviate concerns

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about these issues, especially those introduced with AERMINUTE, the EPA implemented a wind speed threshold in AERMET for use with ASOS derived winds.^{93 94} Winds below the threshold will be treated as calms.

b. AERMOD, while fundamentally a steady-state Gaussian plume model, contains algorithms for dealing with low wind speed (near calm) conditions. As a result, AERMOD can produce model estimates for conditions when the wind speed may be less than 1 m/s, but still greater than the instrument threshold. Required input to AERMET for site-specific data, the meteorological processor for AERMOD, includes a threshold wind speed and a reference wind speed. The threshold wind speed is the greater of the threshold of the instrument used to collect the wind speed data or wind direction sensor.¹⁰⁷ The reference wind speed is selected by the model as the lowest level of non-missing wind speed and direction data where the speed is greater than the wind speed threshold, and the height of the measurement is between seven times the local surface roughness length and 100 m. If the only valid observation of the reference wind speed between these heights is less than the threshold, the hour is considered calm, and no concentration is calculated. None of the observed wind speeds in a measured wind profile that are less than the threshold speed are used in construction of the modeled wind speed profile in AERMOD.

8.4.6.2 Recommendations

a. Hourly concentrations calculated with steady-state Gaussian plume models using calms should not be considered valid; the wind and concentration estimates for these hours should be disregarded and considered to be missing. Model predicted concentrations for 3-, 8-, and 24-hour averages should be calculated by dividing the sum of the hourly concentrations for the period by the number of valid or non-missing hours. If the total number of valid hours is less than 18 for 24-hour averages, less than 6 for 8-hour averages, or less than 3 for 3-hour averages, the total concentration should be divided by 18 for the 24-hour average, 6 for the 8-hour average, and 3 for the 3-hour average. For annual averages, the sum of all valid hourly concentrations is divided by the number of non-calm hours during the year. AERMOD has been coded to implement these instructions. For hours that are calm or missing, the AERMOD hourly concentrations will be zero. For other models listed in appendix A, a post-processor computer program, CALMPRO¹¹⁸ has been prepared, is available on the EPA's SCRAM Web site (section 2.3), and should be used.

b. Stagnant conditions that include extended periods of calms often produce high concentrations over wide areas for relatively

long averaging periods. The standard steady-state Gaussian plume models are often not applicable to such situations. When stagnation conditions are of concern, other modeling techniques should be considered on a case-by-case basis (see also section 7.2.1.2).

c. When used in steady-state Gaussian plume models other than AERMOD, measured site-specific wind speeds of less than 1 m/s but higher than the response threshold of the instrument should be input as 1 m/s; the corresponding wind direction should also be input. Wind observations below the response threshold of the instrument should be set to zero, with the input file in ASCII format. For input to AERMOD, no such adjustment should be made to the site-specific wind data, as AERMOD has algorithms to account for light or variable winds as discussed in section 8.4.6.1(a). For NWS ASOS data, especially data using the 1-minute ASOS winds, a wind speed threshold option is allowed with a recommended speed of 0.5 m/s.⁹³ When using prognostic data processed by MMIF, a 0.5 m/s threshold is also invoked by MMIF for input to AERMET. Observations with wind speeds less than the threshold are considered calm, and no concentration is calculated. In all cases involving steady-state Gaussian plume models, calm hours should be treated as missing, and concentrations should be calculated as in paragraph (a) of this subsection.

9.0 REGULATORY APPLICATION OF MODELS

9.1 Discussion

a. Standardized procedures are valuable in the review of air quality modeling and data analyses conducted to support SIP submissions and revisions, NSR, or other EPA requirements to ensure consistency in their regulatory application. This section recommends procedures specific to NSR that facilitate some degree of standardization while at the same time allowing the flexibility needed to assure the technically best analysis for each regulatory application. For SIP attainment demonstrations, refer to the appropriate EPA guidance^{51 60} for the recommended procedures.

b. Air quality model estimates, especially with the support of measured air quality data, are the preferred basis for air quality demonstrations. A number of actions have been taken to ensure that the best air quality model is used correctly for each regulatory application and that it is not arbitrarily imposed.

- First, the *Guideline* clearly recommends that the most appropriate model be used in each case. Preferred models are identified, based on a number of factors, for many uses.

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• Second, the preferred models have been subjected to a systematic performance evaluation and a scientific peer review. Statistical performance measures, including measures of difference (or residuals) such as bias, variance of difference and gross variability of the difference, and measures of correlation such as time, space, and time and space combined, as described in section 2.1.1, were generally followed.

• Third, more specific information has been provided for considering the incorporation of new models into the *Guideline* (section 3.1), and the *Guideline* contains procedures for justifying the case-by-case use of alternative models and obtaining EPA approval (section 3.2).

c. Air quality modeling is the preferred basis for air quality demonstrations. Nevertheless, there are rare circumstances where the performance of the preferred air quality model may be shown to be less than reasonably acceptable or where no preferred air quality model, screening model or technique, or alternative model are suitable for the situation. In these unique instances, there is the possibility of assuring compliance and establishing emissions limits for an existing source solely on the basis of observed air quality data in lieu of an air quality modeling analysis. Comprehensive air quality monitoring in the vicinity of the existing source with proposed modifications will be necessary in these cases. The same attention should be given to the detailed analyses of the air quality data as would be applied to a model performance evaluation.

d. The current levels and forms of the NAAQS for the six criteria pollutants can be found on the EPA's NAAQS Web site at <https://www.epa.gov/criteria-air-pollutants>. As required by the CAA, the NAAQS are subjected to extensive review every 5 years and the standards, including the level and the form, may be revised as part of that review. The criteria pollutants have either long-term (annual or quarterly) and/or short-term (24-hour or less) forms that are not to be exceeded more than a certain frequency over a period of time (*e.g.*, no exceedance on a rolling 3-month average, no more than once per year, or no more than once per year averaged over 3 years), are averaged over a period of time (*e.g.*, an annual mean or an annual mean averaged over 3 years), or are some percentile that is averaged over a period of time (*e.g.*, annual 99th or 98th percentile averaged over 3 years). The 3-year period for ambient monitoring design values does not dictate the length of the data periods recommended for modeling (*i.e.*, 5 years of NWS meteorological data, at least 1 year of site-specific, or at least 3 years of prognostic meteorological data).

e. This section discusses general recommendations on the regulatory application of models for the purposes of NSR, including

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PSD permitting, and particularly for estimating design concentration(s), appropriately comparing these estimates to NAAQS and PSD increments, and developing emissions limits. This section also provides the criteria necessary for considering use of an analysis based on measured ambient data in lieu of modeling as the sole basis for demonstrating compliance with NAAQS and PSD increments.

9.2 Recommendations

9.2.1 Modeling Protocol

a. Every effort should be made by the appropriate reviewing authority (paragraph 3.0(b)) to meet with all parties involved in either a SIP submission or revision or a PSD permit application prior to the start of any work on such a project. During this meeting, a protocol should be established between the preparing and reviewing parties to define the procedures to be followed, the data to be collected, the model to be used, and the analysis of the source and concentration data to be performed. An example of the content for such an effort is contained in the Air Quality Analysis Checklist posted on the EPA's SCRAM Web site (section 2.3). This checklist suggests the appropriate level of detail to assess the air quality resulting from the proposed action. Special cases may require additional data collection or analysis and this should be determined and agreed upon at the pre-application meeting. The protocol should be written and agreed upon by the parties concerned, although it is not intended that this protocol be a binding, formal legal document. Changes in such a protocol or deviations from the protocol are often necessary as the data collection and analysis progresses. However, the protocol establishes a common understanding of how the demonstration required to meet regulatory requirements will be made.

9.2.2 Design Concentration and Receptor Sites

a. Under the PSD permitting program, an air quality analysis for criteria pollutants is required to demonstrate that emissions from the construction or operation of a proposed new source or modification will not cause or contribute to a violation of the NAAQS or PSD increments.

i. For a NAAQS assessment, the design concentration is the combination of the appropriate background concentration (section 8.3) with the estimated modeled impact of the proposed source. The NAAQS design concentration is then compared to the applicable NAAQS.

ii. For a PSD increment assessment, the design concentration includes impacts occurring after the appropriate baseline date from all increment-consuming and increment-expanding sources. The PSD increment design

concentration is then compared to the applicable PSD increment.

b. The specific form of the NAAQS for the pollutant(s) of concern will also influence how the background and modeled data should be combined for appropriate comparison with the respective NAAQS in such a modeling demonstration. Given the potential for revision of the form of the NAAQS and the complexities of combining background and modeled data, specific details on this process can be found in the applicable modeling guidance available on the EPA's SCRAM Web site (section 2.3). Modeled concentrations should not be rounded before comparing the resulting design concentration to the NAAQS or PSD increments. Ambient monitoring and dispersion modeling address different issues and needs relative to each aspect of the overall air quality assessment.

c. The PSD increments for criteria pollutants are listed in 40 CFR 52.21(c) and 40 CFR 51.166(c). For short-term increments, these maximum allowable increases in pollutant concentrations may be exceeded once per year at each site, while the annual increment may not be exceeded. The highest, second-highest increase in estimated concentrations for the short-term averages, as determined by a model, must be less than or equal to the permitted increment. The modeled annual averages must not exceed the increment.

d. Receptor sites for refined dispersion modeling should be located within the modeling domain (section 8.1). In designing a receptor network, the emphasis should be placed on receptor density and location, not total number of receptors. Typically, the density of receptor sites should be progressively more resolved near the new or modifying source, areas of interest, and areas with the highest concentrations with sufficient detail to determine where possible violations of a NAAQS or PSD increments are most likely to occur. The placement of receptor sites should be determined on a case-by-case basis, taking into consideration the source characteristics, topography, climatology, and monitor sites. Locations of particular importance include: (1) The area of maximum impact of the point source; (2) the area of maximum impact of nearby sources; and (3) the area where all sources combine to cause maximum impact. Depending on the complexities of the source and the environment to which the source is located, a dense array of receptors may be required in some cases. In order to avoid unreasonably large computer runs due to an excessively large array of receptors, it is often desirable to model the area twice. The first model run would use a moderate number of receptors more resolved near the new or modifying source and over areas of interest. The second model run would modify the receptor net-

work from the first model run with a denser array of receptors in areas showing potential for high concentrations and possible violations, as indicated by the results of the first model run. Accordingly, the EPA neither anticipates nor encourages that numerous iterations of modeling runs be made to continually refine the receptor network.

9.2.3 NAAQS and PSD Increments Compliance Demonstrations for New or Modifying Sources

a. As described in this subsection, the recommended procedure for conducting either a NAAQS or PSD increments assessment under PSD permitting is a multi-stage approach that includes the following two stages:

i. The EPA describes the first stage as a single-source impact analysis, since this stage involves considering only the impact of the new or modifying source. There are two possible levels of detail in conducting a single-source impact analysis with the model user beginning with use of a screening model and proceeding to use of a refined model as necessary.

ii. The EPA describes the second stage as a cumulative impact analysis, since it takes into account all sources affecting the air quality in an area. In addition to the project source impact, this stage includes consideration of background, which includes contributions from nearby sources and other sources (*e.g.*, natural, minor, and distant major sources).

b. Each stage should involve increasing complexity and details, as required, to fully demonstrate that a new or modifying source will not cause or contribute to a violation of any NAAQS or PSD increment. As such, starting with a single-source impact analysis is recommended because, where the analysis at this stage is sufficient to demonstrate that a source will not cause or contribute to any potential violation, this may alleviate the need for a more time-consuming and comprehensive cumulative modeling analysis.

c. The single-source impact analysis, or first stage of an air quality analysis, should begin by determining the potential of a proposed new or modifying source to cause or contribute to a NAAQS or PSD increment violation. In certain circumstances, a screening model or technique may be used instead of the preferred model because it will provide estimated worst-case ambient impacts from the proposed new or modifying source. If these worst case ambient concentration estimates indicate that the source will not cause or contribute to any potential violation of a NAAQS or PSD increment, then the screening analysis should generally be sufficient for the required demonstration under PSD. If the ambient concentration estimates indicate that the source's emissions have the potential to

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cause or contribute to a violation, then the use of a refined model to estimate the source's impact should be pursued. The refined modeling analysis should use a model or technique consistent with the *Guideline* (either a preferred model or technique or an alternative model or technique) and follow the requirements and recommendations for model inputs outlined in section 8. If the ambient concentration increase predicted with refined modeling indicates that the source will not cause or contribute to any potential violation of a NAAQS or PSD increment, then the refined analysis should generally be sufficient for the required demonstration under PSD. However, if the ambient concentration estimates from the refined modeling analysis indicate that the source's emissions have the potential to cause or contribute to a violation, then a cumulative impact analysis should be undertaken. The receptors that indicate the location of significant ambient impacts should be used to define the modeling domain for use in the cumulative impact analysis (section 8.2.2).

d. The cumulative impact analysis, or the second stage of an air quality analysis, should be conducted with the same refined model or technique to characterize the project source and then include the appropriate background concentrations (section 8.3). The resulting design concentrations should be used to determine whether the source will cause or contribute to a NAAQS or PSD increment violation. This determination should be based on: (1) The appropriate design concentration for each applicable NAAQS (and averaging period); and (2) whether the source's emissions cause or contribute to a violation at the time and location of any modeled violation (*i.e.*, when and where the predicted design concentration is greater than the NAAQS). For PSD increments, the cumulative impact analysis should also consider the amount of the air quality increment that has already been consumed by other sources, or, conversely, whether increment has expanded relative to the baseline concentration. Therefore, the applicant should model the existing or permitted nearby increment-consuming and increment-expanding sources, rather than using past modeling analyses of those sources as part of background concentration. This would permit the use of newly acquired data or improved modeling techniques if such data and/or techniques have become available since the last source was permitted.

9.2.3.1 Considerations in Developing Emissions Limits

a. Emissions limits and resulting control requirements should be established to provide for compliance with each applicable NAAQS (and averaging period) and PSD in-

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crement. It is possible that multiple emissions limits will be required for a source to demonstrate compliance with several criteria pollutants (and averaging periods) and PSD increments. Case-by-case determinations must be made as to the appropriate form of the limits, *i.e.*, whether the emissions limits restrict the emission factor (*e.g.*, limiting lb/MMBTU), the emission rate (*e.g.*, lb/hr), or both. The appropriate reviewing authority (paragraph 3.0(b)) and appropriate EPA guidance should be consulted to determine the appropriate emissions limits on a case-by-case basis.

9.2.4 Use of Measured Data in Lieu of Model Estimates

a. As described throughout the *Guideline*, modeling is the preferred method for demonstrating compliance with the NAAQS and PSD increments and for determining the most appropriate emissions limits for new and existing sources. When a preferred model or adequately justified and approved alternative model is available, model results, including the appropriate background, are sufficient for air quality demonstrations and establishing emissions limits, if necessary. In instances when the modeling technique available is only a screening technique, the addition of air quality monitoring data to the analysis may lend credence to the model results. However, air quality monitoring data alone will normally not be acceptable as the sole basis for demonstrating compliance with the NAAQS and PSD increments or for determining emissions limits.

b. There may be rare circumstances where the performance of the preferred air quality model will be shown to be less than reasonably acceptable when compared with air quality monitoring data measured in the vicinity of an existing source. Additionally, there may not be an applicable preferred air quality model, screening technique, or justifiable alternative model suitable for the situation. In these unique instances, there may be the possibility of establishing emissions limits and demonstrating compliance with the NAAQS and PSD increments solely on the basis of analysis of observed air quality data in lieu of an air quality modeling analysis. However, only in the case of a modification to an existing source should air quality monitoring data alone be a basis for determining adequate emissions limits or for demonstration that the modification will not cause or contribute to a violation of any NAAQS or PSD increment.

c. The following items should be considered prior to the acceptance of an analysis of measured air quality data as the sole basis for an air quality demonstration or determining an emissions limit:

i. Does a monitoring network exist for the pollutants and averaging times of concern in the vicinity of the existing source?

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- ii. Has the monitoring network been designed to locate points of maximum concentration?
- iii. Do the monitoring network and the data reduction and storage procedures meet EPA monitoring and quality assurance requirements?
- iv. Do the dataset and the analysis allow impact of the most important individual sources to be identified if more than one source or emission point is involved?
- v. Is at least one full year of valid ambient data available?
- vi. Can it be demonstrated through the comparison of monitored data with model results that available air quality models and techniques are not applicable?
- d. Comprehensive air quality monitoring in the area affected by the existing source with proposed modifications will be necessary in these cases. Additional meteorological monitoring may also be necessary. The appropriate number of air quality and meteorological monitors from a scientific and technical standpoint is a function of the situation being considered. The source configuration, terrain configuration, and meteorological variations all have an impact on number and optimal placement of monitors. Decisions on the monitoring network appropriate for this type of analysis can only be made on a case-by-case basis.
- e. Sources should obtain approval from the appropriate reviewing authority (paragraph 3.0(b)) and the EPA Regional Office for the monitoring network prior to the start of monitoring. A monitoring protocol agreed to by all parties involved is necessary to assure that ambient data are collected in a consistent and appropriate manner. The design of the network, the number, type, and location of the monitors, the sampling period, averaging time, as well as the need for meteorological monitoring or the use of mobile sampling or plume tracking techniques, should all be specified in the protocol and agreed upon prior to start-up of the network.
- f. Given the uniqueness and complexities of these rare circumstances, the procedures can only be established on a case-by-case basis for analyzing the source's emissions data and the measured air quality monitoring data, and for projecting with a reasoned basis the air quality impact of a proposed modification to an existing source in order to demonstrate that emissions from the construction or operation of the modification will not cause or contribute to a violation of the applicable NAAQS and PSD increment, and to determine adequate emissions limits. The same attention should be given to the detailed analyses of the air quality data as would be applied to a comprehensive model performance evaluation. In some cases, the monitoring data collected for use in the performance evaluation of preferred air quality models, screening technique, or existing al-

ternative models may help inform the development of a suitable new alternative model. Early coordination with the appropriate reviewing authority (paragraph 3.0(b)) and the EPA Regional Office is fundamental with respect to any potential use of measured data in lieu of model estimates.

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APPENDIX A TO APPENDIX W OF PART 51—
SUMMARIES OF PREFERRED AIR QUALITY
MODELS

TABLE OF CONTENTS

A.0 Introduction and Availability

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- A.1 AERMOD (AMS/EPA Regulatory Model)
- A.2 CTDMPLUS (Complex Terrain Dispersion Model Plus Algorithms for Unstable Situations)
- A.3 OCD (Offshore and Coastal Dispersion Model)

A.0 INTRODUCTION AND AVAILABILITY

(1) This appendix summarizes key features of refined air quality models preferred for specific regulatory applications. For each model, information is provided on availability, approximate cost (where applicable), regulatory use, data input, output format and options, simulation of atmospheric physics, and accuracy. These models may be used without a formal demonstration of applicability provided they satisfy the recommendations for regulatory use; not all options in the models are necessarily recommended for regulatory use.

(2) Many of these models have been subjected to a performance evaluation using comparisons with observed air quality data. Where possible, several of the models contained herein have been subjected to evaluation exercises, including: (1) Statistical performance tests recommended by the American Meteorological Society, and (2) peer scientific reviews. The models in this appendix have been selected on the basis of the results of the model evaluations, experience with previous use, familiarity of the model to various air quality programs, and the costs and resource requirements for use.

(3) Codes and documentation for all models listed in this appendix are available from the EPA's Support Center for Regulatory Air Models (SCRAM) Web site at <https://www.epa.gov/scram>. Codes and documentation may also be available from the National Technical Information Service (NTIS), <http://www.ntis.gov>, and, when available, are referenced with the appropriate NTIS accession number.

A.1 AERMOD (AMS/EPA REGULATORY MODEL)

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Availability

The model codes and associated documentation are available on EPA's SCRAM Web site (paragraph A.0(3)).

Abstract

AERMOD is a steady-state plume dispersion model for assessment of pollutant concentrations from a variety of sources. AERMOD simulates transport and dispersion from multiple point, area, or volume sources based on an up-to-date characterization of the atmospheric boundary layer. Sources may be located in rural or urban areas, and receptors may be located in simple or complex terrain. AERMOD accounts for building wake effects (*i.e.*, plume downwash) based on the PRIME building downwash algorithms. The model employs hourly sequential preprocessed meteorological data to estimate concentrations for averaging times from 1-hour to 1-year (also multiple years). AERMOD can be used to estimate the concentrations of nonreactive pollutants from highway traffic. AERMOD also handles unique modeling problems associated with aluminum reduction plants, and other industrial sources where plume rise and downwash effects from stationary buoyant line sources are important. AERMOD is designed to operate in concert with two pre-processor codes: AERMET processes meteorological data for input to AERMOD, and AERMAP processes

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terrain elevation data and generates receptor and hill height information for input to AERMOD.

a. Regulatory Use

(1) AERMOD is appropriate for the following applications:

- Point, volume, and area sources;
- Buoyant, elevated line sources (*e.g.*, aluminum reduction plants);
- Mobile sources;
- Surface, near-surface, and elevated releases;
- Rural or urban areas;
- Simple and complex terrain;
- Transport distances over which steady-state assumptions are appropriate, up to 50km;
- 1-hour to annual averaging times; and
- Continuous toxic air emissions.

(2) For regulatory applications of AERMOD, the regulatory default option should be set, *i.e.*, the parameter DFAULT should be employed in the MODELOPT record in the COntrol Pathway. The DFAULT option requires the use of meteorological data processed with the regulatory options in AERMET, the use of terrain elevation data processed through the AERMAP terrain processor, stack-tip downwash, sequential date checking, and does not permit the use of the model in the SCREEN mode. In the regulatory default mode, pollutant half-life or decay options are not employed, except in the case of an urban source of sulfur dioxide where a 4-hour half-life is applied. Terrain elevation data from the U.S. Geological Survey (USGS) 7.5-Minute Digital Elevation Model (DEM), or equivalent (approx. 30-meter resolution), (processed through AERMAP) should be used in all applications. Starting in 2011, data from the National Elevation Dataset (NED, <https://nationalmap.gov/elevation.html>) can also be used in AERMOD, which includes a range of resolutions, from 1-m to 2 arc seconds and such high resolution would always be preferred. In some cases, exceptions from the terrain data requirement may be made in consultation with the appropriate reviewing authority (paragraph 3.0(b)).

b. Input Requirements

(1) Source data: Required inputs include source type, location, emission rate, stack height, stack inside diameter, stack gas exit velocity, stack gas exit temperature, area and volume source dimensions, and source base elevation. For point sources subject to the influence of building downwash, direction-specific building dimensions (processed through the BPIPPRM building processor) should be input. Variable emission rates are optional. Buoyant line sources require coordinates of the end points of the line, release height, emission rate, average line

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source width, average building width, average spacing between buildings, and average line source buoyancy parameter. For mobile sources, traffic volume; emission factor, source height, and mixing zone width are needed to determine appropriate model inputs.

(2) Meteorological data: The AERMET meteorological preprocessor requires input of surface characteristics, including surface roughness (z_0), Bowen ratio, and albedo, as well as, hourly observations of wind speed between $7z_0$ and 100 m (reference wind speed measurement from which a vertical profile can be developed), wind direction, cloud cover, and temperature between z_0 and 100 m (reference temperature measurement from which a vertical profile can be developed). Meteorological data can be in the form of observed data or prognostic modeled data as discussed in paragraph 8.4.1(d). Surface characteristics may be varied by wind sector and by season or month. When using observed meteorological data, a morning sounding (in National Weather Service format) from a representative upper air station is required. Latitude, longitude, and time zone of the surface, site-specific (if applicable) and upper air meteorological stations are required. The wind speed starting threshold is also required in AERMET for applications involving site-specific data. When using prognostic data, modeled profiles of temperature and winds are input to AERMET. These can be hourly or a time that represents a morning sounding. Additionally, measured profiles of wind, temperature, vertical and lateral turbulence may be required in certain applications (*e.g.*, in complex terrain) to adequately represent the meteorology affecting plume transport and dispersion. Optionally, measurements of solar and/or net radiation may be input to AERMET. Two files are produced by the AERMET meteorological preprocessor for input to the AERMOD dispersion model. When using observed data, the surface file contains observed and calculated surface variables, one record per hour. For applications with multi-level site-specific meteorological data, the profile contains the observations made at each level of the meteorological tower (or remote sensor). When using prognostic data, the surface file contains surface variables calculated by the prognostic model and AERMET. The profile file contains the observations made at each level of a meteorological tower (or remote sensor), the one-level observations taken from other representative data (*e.g.*, National Weather Service surface observations), one record per level per hour, or in the case of prognostic data, the prognostic modeled values of temperature and winds at user-specified levels.

(i) Data used as input to AERMET should possess an adequate degree of representativeness to ensure that the wind, temperature and turbulence profiles derived by AERMOD

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are both laterally and vertically representative of the source impact area. The adequacy of input data should be judged independently for each variable. The values for surface roughness, Bowen ratio, and albedo should reflect the surface characteristics in the vicinity of the meteorological tower or representative grid cell when using prognostic data, and should be adequately representative of the modeling domain. Finally, the primary atmospheric input variables, including wind speed and direction, ambient temperature, cloud cover, and a morning upper air sounding, should also be adequately representative of the source area when using observed data.

(ii) For applications involving the use of site-specific meteorological data that includes turbulence parameters (*i.e.*, sigma-theta and/or sigma-w), the application of the ADJ_U* option in AERMET would require approval as an alternative model application under section 3.2.

(iii) For recommendations regarding the length of meteorological record needed to perform a regulatory analysis with AERMOD, see section 8.4.2.

(3) Receptor data: Receptor coordinates, elevations, height above ground, and hill height scales are produced by the AERMAP terrain preprocessor for input to AERMOD. Discrete receptors and/or multiple receptor grids, Cartesian and/or polar, may be employed in AERMOD. AERMAP requires input of DEM or NED terrain data produced by the USGS, or other equivalent data. AERMAP can be used optionally to estimate source elevations.

c. Output

Printed output options include input information, high concentration summary tables by receptor for user-specified averaging periods, maximum concentration summary tables, and concurrent values summarized by receptor for each day processed. Optional output files can be generated for: A listing of occurrences of exceedances of user-specified threshold value; a listing of concurrent (raw) results at each receptor for each hour modeled, suitable for post-processing; a listing of design values that can be imported into graphics software for plotting contours; a listing of results suitable for NAAQS analyses including NAAQS exceedances and culpability analyses; an unformatted listing of raw results above a threshold value with a special structure for use with the TOXX model component of TOXST; a listing of concentrations by rank (*e.g.*, for use in quantile-quantile plots); and a listing of concentrations, including arc-maximum normalized concentrations, suitable for model evaluation studies.

d. Type of Model

AERMOD is a steady-state plume model, using Gaussian distributions in the vertical and horizontal for stable conditions, and in the horizontal for convective conditions. The vertical concentration distribution for convective conditions results from an assumed bi-Gaussian probability density function of the vertical velocity.

e. Pollutant Types

AERMOD is applicable to primary pollutants and continuous releases of toxic and hazardous waste pollutants. Chemical transformation is treated by simple exponential decay.

f. Source-Receptor Relationships

AERMOD applies user-specified locations for sources and receptors. Actual separation between each source-receptor pair is used. Source and receptor elevations are user input or are determined by AERMAP using USGS DEM or NED terrain data. Receptors may be located at user-specified heights above ground level.

g. Plume Behavior

(1) In the convective boundary layer (CBL), the transport and dispersion of a plume is characterized as the superposition of three modeled plumes: (1) The direct plume (from the stack); (2) the indirect plume; and (3) the penetrated plume, where the indirect plume accounts for the lofting of a buoyant plume near the top of the boundary layer, and the penetrated plume accounts for the portion of a plume that, due to its buoyancy, penetrates above the mixed layer, but can disperse downward and re-enter the mixed layer. In the CBL, plume rise is superposed on the displacements by random convective velocities (Weil *et al.*, 1997).

(2) In the stable boundary layer, plume rise is estimated using an iterative approach to account for height-dependent lapse rates, similar to that in the CTDMPLUS model (see A.2 in this appendix).

(3) Stack-tip downwash and buoyancy induced dispersion effects are modeled. Building wake effects are simulated for stacks subject to building downwash using the methods contained in the PRIME downwash algorithms (Schulman, *et al.*, 2000). For plume rise affected by the presence of a building, the PRIME downwash algorithm uses a numerical solution of the mass, energy and momentum conservation laws (Zhang and Ghoniem, 1993). Streamline deflection and the position of the stack relative to the building affect plume trajectory and dispersion. Enhanced dispersion is based on the approach of Weil (1996). Plume mass captured by the cavity is well-mixed within the cavity. The captured plume mass is re-emitted to the far wake as a volume source.

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(4) For elevated terrain, AERMOD incorporates the concept of the critical dividing streamline height, in which flow below this height remains horizontal, and flow above this height tends to rise up and over terrain (Snyder *et al.*, 1985). Plume concentration estimates are the weighted sum of these two limiting plume states. However, consistent with the steady-state assumption of uniform horizontal wind direction over the modeling domain, straight-line plume trajectories are assumed, with adjustment in the plume/receptor geometry used to account for the terrain effects.

h. Horizontal Winds

Vertical profiles of wind are calculated for each hour based on measurements and surface-layer similarity (scaling) relationships. At a given height above ground, for a given hour, winds are assumed constant over the modeling domain. The effect of the vertical variation in horizontal wind speed on dispersion is accounted for through simple averaging over the plume depth.

i. Vertical Wind Speed

In convective conditions, the effects of random vertical updraft and downdraft velocities are simulated with a bi-Gaussian probability density function. In both convective and stable conditions, the mean vertical wind speed is assumed equal to zero.

j. Horizontal Dispersion

Gaussian horizontal dispersion coefficients are estimated as continuous functions of the parameterized (or measured) ambient lateral turbulence and also account for buoyancy-induced and building wake-induced turbulence. Vertical profiles of lateral turbulence are developed from measurements and similarity (scaling) relationships. Effective turbulence values are determined from the portion of the vertical profile of lateral turbulence between the plume height and the receptor height. The effective lateral turbulence is then used to estimate horizontal dispersion.

k. Vertical Dispersion

In the stable boundary layer, Gaussian vertical dispersion coefficients are estimated as continuous functions of parameterized vertical turbulence. In the convective boundary layer, vertical dispersion is characterized by a bi-Gaussian probability density function and is also estimated as a continuous function of parameterized vertical turbulence. Vertical turbulence profiles are developed from measurements and similarity (scaling) relationships. These turbulence profiles account for both convective and mechanical turbulence. Effective turbulence values are determined from the portion of the vertical profile of vertical turbulence between the plume height and the receptor

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height. The effective vertical turbulence is then used to estimate vertical dispersion.

l. Chemical Transformation

Chemical transformations are generally not treated by AERMOD. However, AERMOD does contain an option to treat chemical transformation using simple exponential decay, although this option is typically not used in regulatory applications except for sources of sulfur dioxide in urban areas. Either a decay coefficient or a half-life is input by the user. Note also that the Plume Volume Molar Ratio Method and the Ozone Limiting Method (section 4.2.3.4) for NO₂ analyses are available.

m. Physical Removal

AERMOD can be used to treat dry and wet deposition for both gases and particles.

n. Evaluation Studies

American Petroleum Institute, 1998. Evaluation of State of the Science of Air Quality Dispersion Model, Scientific Evaluation, prepared by Woodward-Clyde Consultants, Lexington, Massachusetts, for American Petroleum Institute, Washington, DC 20005-4070.

Brode, R.W., 2002. Implementation and Evaluation of PRIME in AERMOD. Preprints of the 12th Joint Conference on Applications of Air Pollution Meteorology, May 20-24, 2002; American Meteorological Society, Boston, MA.

Brode, R.W., 2004. Implementation and Evaluation of Bulk Richardson Number Scheme in AERMOD. 13th Joint Conference on Applications of Air Pollution Meteorology, August 23-26, 2004; American Meteorological Society, Boston, MA.

U.S. Environmental Protection Agency, 2003. AERMOD: Latest Features and Evaluation Results. Publication No. EPA-454/R-03-003. Office of Air Quality Planning and Standards, Research Triangle Park, NC.

Heist, D., et al, 2013. Estimating near-road pollutant dispersion: A model inter-comparison. *Transportation Research Part D: Transport and Environment*, 25: pp 93-105.

A.2 CTDMLPLUS (COMPLEX TERRAIN DISPERSION MODEL PLUS ALGORITHMS FOR UNSTABLE SITUATIONS)

References

Perry, S.G., D.J. Burns, L.H. Adams, R.J. Paine, M.G. Dennis, M.T. Mills, D.G. Strimaitis, R.J. Yamartino and E.M. Insley, 1989. User's Guide to the Complex Terrain Dispersion Model Plus Algorithms for Unstable Situations

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- (CTDMPLUS). Volume 1: Model Descriptions and User Instructions. EPA Publication No. EPA-600/8-89-041. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 89-181424).
- Perry, S.G., 1992. CTDMPLUS: A Dispersion Model for Sources near Complex Topography. Part I: Technical Formulations. *Journal of Applied Meteorology*, 31(7): 633-645.

Availability

The model codes and associated documentation are available on the EPA's SCRAM Web site (paragraph A.0(3)).

Abstract

CTDMPLUS is a refined point source Gaussian air quality model for use in all stability conditions for complex terrain applications. The model contains, in its entirety, the technology of CTDM for stable and neutral conditions. However, CTDMPLUS can also simulate daytime, unstable conditions, and has a number of additional capabilities for improved user friendliness. Its use of meteorological data and terrain information is different from other EPA models; considerable detail for both types of input data is required and is supplied by preprocessors specifically designed for CTDMPLUS. CTDMPLUS requires the parameterization of individual hill shapes using the terrain preprocessor and the association of each model receptor with a particular hill.

a. Regulatory Use

CTDMPLUS is appropriate for the following applications:

- Elevated point sources;
- Terrain elevations above stack top;
- Rural or urban areas;
- Transport distances less than 50 kilometers; and
- 1-hour to annual averaging times when used with a post-processor program such as CHAVG.

b. Input Requirements

(1) Source data: For each source, user supplies source location, height, stack diameter, stack exit velocity, stack exit temperature, and emission rate; if variable emissions are appropriate, the user supplies hourly values for emission rate, stack exit velocity, and stack exit temperature.

(2) Meteorological data: For applications of CTDMPLUS, multiple level (typically three or more) measurements of wind speed and direction, temperature and turbulence (wind fluctuation statistics) are required to create the basic meteorological data file ("PROFILE"). Such measurements should be obtained up to the representative plume height(s) of interest (*i.e.*, the plume height(s)

under those conditions important to the determination of the design concentration). The representative plume height(s) of interest should be determined using an appropriate complex terrain screening procedure (*e.g.*, CTSCREEN) and should be documented in the monitoring/modeling protocol. The necessary meteorological measurements should be obtained from an appropriately sited meteorological tower augmented by SODAR and/or RASS if the representative plume height(s) of interest is above the levels represented by the tower measurements. Meteorological preprocessors then create a SURFACE data file (hourly values of mixed layer heights, surface friction velocity, Monin-Obukhov length and surface roughness length) and a RAWINsonde data file (upper air measurements of pressure, temperature, wind direction, and wind speed).

(3) Receptor data: Receptor names (up to 400) and coordinates, and hill number (each receptor must have a hill number assigned).

(4) Terrain data: User inputs digitized contour information to the terrain preprocessor which creates the TERRAIN data file (for up to 25 hills).

c. Output

(1) When CTDMPLUS is run, it produces a concentration file, in either binary or text format (user's choice), and a list file containing a verification of model inputs, *i.e.*,

- Input meteorological data from "SURFACE" and "PROFILE,"
- Stack data for each source,
- Terrain information,
- Receptor information, and
- Source-receptor location (line printer map).

(2) In addition, if the case-study option is selected, the listing includes:

- Meteorological variables at plume height,
- Geometrical relationships between the source and the hill, and
- Plume characteristics at each receptor, *i.e.*,

—Distance in along-flow and cross flow direction
—Effective plume-receptor height difference
—Effective σ_y & σ_z values, both flat terrain and hill induced (the difference shows the effect of the hill)
—Concentration components due to WRAP, LIFT and FLAT.

(3) If the user selects the TOPN option, a summary table of the top four concentrations at each receptor is given. If the ISOR option is selected, a source contribution table for every hour will be printed.

(4) A separate output file of predicted (1-hour only) concentrations ("CONC") is written if the user chooses this option. Three forms of output are possible:

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(i) A binary file of concentrations, one value for each receptor in the hourly sequence as run;

(ii) A text file of concentrations, one value for each receptor in the hourly sequence as run; or

(iii) A text file as described above, but with a listing of receptor information (names, positions, hill number) at the beginning of the file.

(5) Hourly information provided to these files besides the concentrations themselves includes the year, month, day, and hour information as well as the receptor number with the highest concentration.

d. Type of Model

CTDMPLUS is a refined steady-state, point source plume model for use in all stability conditions for complex terrain applications.

e. Pollutant Types

CTDMPLUS may be used to model non-reactive, primary pollutants.

f. Source-Receptor Relationship

Up to 40 point sources, 400 receptors and 25 hills may be used. Receptors and sources are allowed at any location. Hill slopes are assumed not to exceed 15°, so that the linearized equation of motion for Boussinesq flow are applicable. Receptors upwind of the impingement point, or those associated with any of the hills in the modeling domain, require separate treatment.

g. Plume Behavior

(1) As in CTDM, the basic plume rise algorithms are based on Briggs' (1975) recommendations.

(2) A central feature of CTDMPLUS for neutral/stable conditions is its use of a critical dividing-streamline height (H_c) to separate the flow in the vicinity of a hill into two separate layers. The plume component in the upper layer has sufficient kinetic energy to pass over the top of the hill while streamlines in the lower portion are constrained to flow in a horizontal plane around the hill. Two separate components of CTDMPLUS compute ground-level concentrations resulting from plume material in each of these flows.

(3) The model calculates on an hourly (or appropriate steady averaging period) basis how the plume trajectory (and, in stable/neutral conditions, the shape) is deformed by each hill. Hourly profiles of wind and temperature measurements are used by CTDMPLUS to compute plume rise, plume penetration (a formulation is included to handle penetration into elevated stable layers, based on Briggs (1984)), convective scaling parameters, the value of H_c , and the Froude number above H_c .

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h. Horizontal Winds

CTDMPLUS does not simulate calm meteorological conditions. Both scalar and vector wind speed observations can be read by the model. If vector wind speed is unavailable, it is calculated from the scalar wind speed. The assignment of wind speed (either vector or scalar) at plume height is done by either:

- Interpolating between observations above and below the plume height, or
- Extrapolating (within the surface layer) from the nearest measurement height to the plume height.

i. Vertical Wind Speed

Vertical flow is treated for the plume component above the critical dividing streamline height (H_c); see "Plume Behavior."

j. Horizontal Dispersion

Horizontal dispersion for stable/neutral conditions is related to the turbulence velocity scale for lateral fluctuations, σ_v , for which a minimum value of 0.2 m/s is used. Convective scaling formulations are used to estimate horizontal dispersion for unstable conditions.

k. Vertical Dispersion

Direct estimates of vertical dispersion for stable/neutral conditions are based on observed vertical turbulence intensity, e.g., σ_w (standard deviation of the vertical velocity fluctuation). In simulating unstable (convective) conditions, CTDMPLUS relies on a skewed, bi-Gaussian probability density function (pdf) description of the vertical velocities to estimate the vertical distribution of pollutant concentration.

l. Chemical Transformation

Chemical transformation is not treated by CTDMPLUS.

m. Physical Removal

Physical removal is not treated by CTDMPLUS (complete reflection at the ground/hill surface is assumed).

n. Evaluation Studies

Burns, D.J., L.H. Adams and S.G. Perry, 1990. Testing and Evaluation of the CTDMPLUS Dispersion Model: Daytime Convective Conditions. U.S. Environmental Protection Agency, Research Triangle Park, NC.

Paumier, J.O., S.G. Perry and D.J. Burns, 1990. An Analysis of CTDMPLUS Model Predictions with the Lovett Power Plant Data Base. U.S. Environmental Protection Agency, Research Triangle Park, NC.

Paumier, J.O., S.G. Perry and D.J. Burns, 1992. CTDMPLUS: A Dispersion Model for Sources near Complex Topography. Part

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II: Performance Characteristics. *Journal of Applied Meteorology*, 31(7): 646-660.

A.3 OCD (OFFSHORE AND COASTAL DISPERSION MODEL)

Reference

DiCristofaro, D.C. and S.R. Hanna, 1989. OCD: The Offshore and Coastal Dispersion Model, Version 4. Volume I: User's Guide, and Volume II: Appendices. Sigma Research Corporation, Westford, MA. (NTIS Nos. PB 93-144384 and PB 93-144392).

Availability

The model codes and associated documentation are available on EPA's SCRAM Web site (paragraph A.0(3)).

Abstract

(1) OCD is a straight-line Gaussian model developed to determine the impact of offshore emissions from point, area or line sources on the air quality of coastal regions. OCD incorporates overwater plume transport and dispersion as well as changes that occur as the plume crosses the shoreline. Hourly meteorological data are needed from both offshore and onshore locations. These include water surface temperature, overwater air temperature, mixing height, and relative humidity.

(2) Some of the key features include platform building downwash, partial plume penetration into elevated inversions, direct use of turbulence intensities for plume dispersion, interaction with the overland internal boundary layer, and continuous shoreline fumigation.

a. Regulatory Use

OCD has been recommended for use by the Bureau of Ocean Energy Management for emissions located on the Outer Continental Shelf (50 FR 12248; 28 March 1985). OCD is applicable for overwater sources where onshore receptors are below the lowest source height. Where onshore receptors are above the lowest source height, offshore plume transport and dispersion may be modeled on a case-by-case basis in consultation with the appropriate reviewing authority (paragraph 3.0(b)).

b. Input Requirements

(1) Source data: Point, area or line source location, pollutant emission rate, building height, stack height, stack gas temperature, stack inside diameter, stack gas exit velocity, stack angle from vertical, elevation of stack base above water surface and gridded specification of the land/water surfaces. As an option, emission rate, stack gas exit velocity and temperature can be varied hourly.

(2) Meteorological data: PCRAMMET is the recommended meteorological data preprocessor for use in applications of OCD

employing hourly NWS data. MPRM is the recommended meteorological data preprocessor for applications of OCD employing site-specific meteorological data.

(i) Over land: Surface weather data including hourly stability class, wind direction, wind speed, ambient temperature, and mixing height are required.

(ii) Over water: Hourly values for mixing height, relative humidity, air temperature, and water surface temperature are required; if wind speed/direction are missing, values over land will be used (if available); vertical wind direction shear, vertical temperature gradient, and turbulence intensities are optional.

(3) Receptor data: Location, height above local ground-level, ground-level elevation above the water surface.

c. Output

(1) All input options, specification of sources, receptors and land/water map including locations of sources and receptors.

(2) Summary tables of five highest concentrations at each receptor for each averaging period, and average concentration for entire run period at each receptor.

(3) Optional case study printout with hourly plume and receptor characteristics. Optional table of annual impact assessment from non-permanent activities.

(4) Concentration output files can be used by ANALYSIS postprocessor to produce the highest concentrations for each receptor, the cumulative frequency distributions for each receptor, the tabulation of all concentrations exceeding a given threshold, and the manipulation of hourly concentration files.

d. Type of Model

OCD is a Gaussian plume model constructed on the framework of the MPTER model.

e. Pollutant Types

OCD may be used to model primary pollutants. Settling and deposition are not treated.

f. Source-Receptor Relationship

(1) Up to 250 point sources, 5 area sources, or 1 line source and 180 receptors may be used.

(2) Receptors and sources are allowed at any location.

(3) The coastal configuration is determined by a grid of up to 3600 rectangles. Each element of the grid is designated as either land or water to identify the coastline.

g. Plume Behavior

(1) The basic plume rise algorithms are based on Briggs' recommendations.

(2) Momentum rise includes consideration of the stack angle from the vertical.

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(3) The effect of drilling platforms, ships, or any overwater obstructions near the source are used to decrease plume rise using a revised platform downwash algorithm based on laboratory experiments.

(4) Partial plume penetration of elevated inversions is included using the suggestions of Briggs (1975) and Weil and Brower (1984).

(5) Continuous shoreline fumigation is parameterized using the Turner method where complete vertical mixing through the thermal internal boundary layer (TIBL) occurs as soon as the plume intercepts the TIBL.

h. Horizontal Winds

(1) Constant, uniform wind is assumed for each hour.

(2) Overwater wind speed can be estimated from overland wind speed using relationship of Hsu (1981).

(3) Wind speed profiles are estimated using similarity theory (Businger, 1973). Surface layer fluxes for these formulas are calculated from bulk aerodynamic methods.

i. Vertical Wind Speed

Vertical wind speed is assumed equal to zero.

j. Horizontal Dispersion

(1) Lateral turbulence intensity is recommended as a direct estimate of horizontal dispersion. If lateral turbulence intensity is not available, it is estimated from boundary layer theory. For wind speeds less than 8 m/s, lateral turbulence intensity is assumed inversely proportional to wind speed.

(2) Horizontal dispersion may be enhanced because of obstructions near the source. A virtual source technique is used to simulate the initial plume dilution due to downwash.

(3) Formulas recommended by Pasquill (1976) are used to calculate buoyant plume enhancement and wind direction shear enhancement.

(4) At the water/land interface, the change to overland dispersion rates is modeled using a virtual source. The overland dispersion rates can be calculated from either lateral turbulence intensity or Pasquill-Gifford curves. The change is implemented where the plume intercepts the rising internal boundary layer.

k. Vertical Dispersion

(1) Observed vertical turbulence intensity is not recommended as a direct estimate of vertical dispersion. Turbulence intensity should be estimated from boundary layer theory as default in the model. For very stable conditions, vertical dispersion is also a function of lapse rate.

(2) Vertical dispersion may be enhanced because of obstructions near the source. A vir-

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tual source technique is used to simulate the initial plume dilution due to downwash.

(3) Formulas recommended by Pasquill (1976) are used to calculate buoyant plume enhancement.

(4) At the water/land interface, the change to overland dispersion rates is modeled using a virtual source. The overland dispersion rates can be calculated from either vertical turbulence intensity or the Pasquill-Gifford coefficients. The change is implemented where the plume intercepts the rising internal boundary layer.

l. Chemical Transformation

Chemical transformations are treated using exponential decay. Different rates can be specified by month and by day or night.

m. Physical Removal

Physical removal is also treated using exponential decay.

n. Evaluation Studies

DiCristofaro, D.C. and S.R. Hanna, 1989. OCD: The Offshore and Coastal Dispersion Model. Volume I: User's Guide. Sigma Research Corporation, Westford, MA.

Hanna, S.R., L.L. Schulman, R.J. Paine and J.E. Pleim, 1984. The Offshore and Coastal Dispersion (OCD) Model User's Guide, Revised. OCS Study, MMS 84-0069. Environmental Research & Technology, Inc., Concord, MA. (NTIS No. PB 86-159803).

Hanna, S.R., L.L. Schulman, R.J. Paine, J.E. Pleim and M. Baer, 1985. Development and Evaluation of the Offshore and Coastal Dispersion (OCD) Model. *Journal of the Air Pollution Control Association*, 35: 1039-1047.

Hanna, S.R. and D.C. DiCristofaro, 1988. Development and Evaluation of the OCD/API Model. Final Report. API Pub. 4461, American Petroleum Institute, Washington, DC.

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APPENDIX X TO PART 51—EXAMPLES OF ECONOMIC INCENTIVE PROGRAMS

I. INTRODUCTION AND PURPOSE

This appendix contains examples of EIP's which are covered by the EIP rules. Program descriptions identify key provisions which distinguish the different model program types. The examples provide additional information and guidance on various types of regulatory programs collectively referred to as EIP's. The examples include programs involving stationary, area, and mobile sources. The definition section at 40 CFR 51.491 defines an EIP as a program which may include State established emission fees or a system of marketable permits, or a system of State fees on sale or manufacture of products the

VIEW DOCUMENT

The Arizona Revised Statutes have been updated to include the revised sections from the 54th Legislature, 1st Regular Session. Please note that the next update of this compilation will not take place until after the conclusion of the 54th Legislature, 2nd Regular Session, which convenes in January 2020.

DISCLAIMER

This online version of the Arizona Revised Statutes is primarily maintained for legislative drafting purposes and reflects the version of law that is effective on January 1st of the year following the most recent legislative session. The official version of the Arizona Revised Statutes is published by Thomson Reuters.

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.

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VIEW DOCUMENT

The Arizona Revised Statutes have been updated to include the revised sections from the 54th Legislature, 1st Regular Session. Please note that the next update of this compilation will not take place until after the conclusion of the 54th Legislature, 2nd Regular Session, which convenes in January 2020.

DISCLAIMER

This online version of the Arizona Revised Statutes is primarily maintained for legislative drafting purposes and reflects the version of law that is effective on January 1st of the year following the most recent legislative session. The official version of the Arizona Revised Statutes is published by Thomson Reuters.

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.

VIEW DOCUMENT

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49-425. Rules; hearing

- A. The director shall adopt such rules as he determines are necessary and feasible to reduce the release into the atmosphere of air contaminants originating within the territorial limits of the state or any portion thereof and shall adopt, modify, and amend reasonable standards for the quality of, and emissions into, the ambient air of the state for the prevention, control and abatement of air pollution. Additional standards shall be established for particulate matter emissions, sulfur dioxide emissions, and other air contaminant emissions determined to be necessary and feasible for the prevention, control and abatement of air pollution. In fixing such ambient air quality standards, emission standards or standards of performance, the director shall give consideration but shall not be limited to the relevant factors prescribed by the clean air act.
- B. No rule may be enacted or amended except after the director first holds a public hearing after twenty days' notice of such hearing. The proposed rule, or any proposed amendment of a rule, shall be made available to the public at the time of notice of such hearing.
- C. The department shall enforce the rules adopted by the director.
- D. All rules enacted pursuant to this section shall be made available to the public at a reasonable charge upon request.

D-5

DEPARTMENT OF HEALTH SERVICES (Expedited Rulemaking) (R19-1205)

Title 9, Chapter 7, Article 7, Medical Uses of Radioactive Material

Amend: R9-7-705, R9-7-707, R9-7-710, R9-7-711, R9-7-719, R9-7-720, R9-7-721, R9-7-722,
R9-7-723, R9-7-724, R9-7-727, R9-7-728, R9-7-731, R9-7-744



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: December 3, 2019

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

FROM: Council Staff

DATE: November 8, 2019

SUBJECT: DEPARTMENT OF HEALTH SERVICES (R19-1205)

Title 9, Chapter 7, Article 7, Medical Uses of Radioactive Material

Amend: R9-7-705, R9-7-707, R9-7-710, R9-7-711, R9-7-719, R9-7-720,
R9-7-721, R9-7-722, R9-7-723, R9-7-724, R9-7-727, R9-7-728,
R9-7-731, R9-7-744

Summary:

This expedited rulemaking from the Department of Health Services (Department) seeks to amend rules in Title 9, Chapter 7, Article 7 relating to Medical Uses of Radioactive Material. Under A.R.S. § 30-654(B)(5), the Department is required to make rules deemed necessary to administer A.R.S. Title 30, Chapter 4, Control of Ionizing Radiation. The Department adopted these rules in 9 A.A.C. Chapter 7.

The Department indicates that Arizona is an “Agreement State” pursuant to a document negotiated between the U.S. Atomic Energy Commission (now U.S. Nuclear Regulatory Commission) and the Governor of Arizona in March 1967 under A.R.S. § 30-656. In order to remain in compliance with this Agreement, Arizona must adopt regulations related to the control of radioactive material in a manner that is consistent with federal regulations.

The U.S. Nuclear Regulatory Commission periodically issues changes known as “Regulation Toolbox: Review Summary Sheets for Regulation Amendments (RATS IDs) that

must be incorporated by Agreement States. Many of these RATS IDs have not yet been incorporated into Arizona's regulations relating to the medical uses of radioactive material. Therefore, the Department is conducting an expedited rulemaking to make changes to conform to the RATS IDs under 10 CFR Chapter I. The Department states that it is also making changes to clarify language, correct cross-references, and make the rules easier to understand.

The Department received an exemption from the rulemaking moratorium to conduct this expedited rulemaking on July 8, 2019.

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

Yes. This expedited rulemaking satisfies the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)(3), (4), and (6) because it: (1) "corrects typographical errors, makes address or name changes or clarifies language of a rule without changing its effect;" (2) "adopts or incorporates by reference without material change federal statutes or regulations pursuant to section 41-1028, statutes of this state or rules of other agencies of this state;" and (3) "amends or repeals rules that are outdated, redundant or otherwise no longer necessary for the operation of state government."

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

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

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

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

4. 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.

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

No. The Department did not make any changes to the rules between the Notice of Proposed Expedited Rulemaking and the Notice of Final Rulemaking.

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

No. The rules are not more stringent than corresponding federal law. However, a number of federal regulations in the Code of Federal Regulations (CFR) apply to these rules. The

Department cites to the applicable CFR provisions in the Notice of Final Expedited Rulemaking.

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

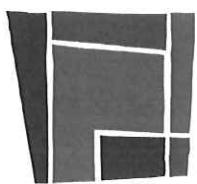
Yes. Under the applicable statute, A.R.S. § 30-672, as amended by Laws 2017, Ch. 313, the Department is authorized to issue licenses and registrations for sources of ionizing radiation and for those persons using these sources. This licensing and registration must be compatible with the requirements in the Agreement. The statute refers to both general and specific permits. The general permit applies to certain levels of radioactive material. Specific permits are issued by rule for quantities and uses that are specific to the user and their training or scope of practice.

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

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

9. **Conclusion**

The Department is conducting this expedited rulemaking to update its rules to conform with U.S. Nuclear Regulatory Commission-issued RATS IDs under 10 CFR Chapter I. Because Arizona is an Agreement State, its regulations related to the control of radioactive material must remain in compliance with federal regulations per the terms of the Agreement. The Department is also making other clarifying changes, correcting cross-references, and making the rules easier to understand. This will result in a reduced regulatory burden and rules that are more clear, concise, understandable, and effective. If approved, these rules would be immediately effective. Council staff recommends approval of this rulemaking.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

October 21, 2019

VIA EMAIL: grrc@azdoa.gov

Nicole Sorensen, Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 7, Article 7 Expedited Rulemaking

Dear Ms. Sorensen:

1. The close of record date: October 18, 2019
2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. The rulemaking adopts regulations of the U.S. Nuclear Regulatory Commission, related to the control of radioactive material used for medical purposes, in a manner that is consistent with federal regulations and the Agreement negotiated between the U.S. Atomic Energy Commission (now U.S. Nuclear Regulatory Commission) and the Governor of Arizona in March 1967 under A.R.S. § 30-656. In addition, the rulemaking makes other changes to reduce the administrative burden of the rules by clarifying existing language in the rules, correcting cross-references, and making the rules easier to understand. Thus, the rulemaking complies with criteria for expedited rulemaking under A.R.S. § 41-1027(A)(3), (4), and (6).
3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C. 7, Article 7, does not relate to a five-year-review report.
4. A list of all items enclosed:
 - a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule
 - b. Materials incorporated by reference, which are not being updated in the rulemaking
 - c. Statutory authority

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "RL". It is enclosed in a large, thin-lined oval.

Robert Lane
Director's Designee

RL:rms

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING
TITLE 9. HEALTH SERVICES
CHAPTER 7. RADIATION CONTROL
ARTICLE 7. MEDICAL USES OF RADIOACTIVE MATERIAL

PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| R9-7-705 | Amend |
| R9-7-707 | Amend |
| R9-7-710 | Amend |
| R9-7-711 | Amend |
| R9-7-719 | Amend |
| R9-7-720 | Amend |
| R9-7-721 | Amend |
| R9-7-722 | Amend |
| R9-7-723 | Amend |
| R9-7-724 | Amend |
| R9-7-727 | Amend |
| R9-7-728 | Amend |
| R9-7-731 | Amend |
| R9-7-744 | Amend |
- 2. Citations to the agency's statutory authority for the rulemaking to include the authorizing statute (general) and the implementing statute (specific):**
- Authorizing Statutes: A.R.S. §§ 30-654(B)(5) and 36-136(G)
Implementing Statutes: A.R.S. §§ 30-654, 30-656, 30-657, 30-671 through 30-672.01, 30-681 through 30-689, and 30-721
- 3. The effective date of the rules:**
The rules are effective the day the Notice of Final Expedited Rulemaking is filed with the Office of the Secretary of State.
- 4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed expedited rulemaking:**
Notice of Rulemaking Docket Opening: 25 A.A.R. 2442, September 20, 2019
Notice of Proposed Expedited Rulemaking: 25 A.A.R. 2995, October 11, 2019

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

Name: Colby Bower, Assistant Director

Address: Department of Health Services
Public Health Licensing Services
150 N. 18th Ave., Suite 510
Phoenix, AZ 85007

Telephone: (602) 542-6383

Fax: (602) 364-4808

E-mail: Colby.Bower@azdhs.gov
or

Name: Robert Lane, Chief
Address: Arizona Department of Health Services
Office of Administrative Counsel and Rules
150 N. 18th Avenue, Suite 200
Phoenix, AZ 85007

Telephone: (602) 542-1020

Fax: (602) 364-1150

E-mail: Robert.Lane@azdhs.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, under A.R.S. § 41-1027, to include an explanation about the rulemaking:

Arizona Revised Statutes (A.R.S.) § 30-654(B)(5) requires the Arizona Department of Health Services (Department) to make rules deemed necessary to administer A.R.S. Title 30, Chapter 4, Control of Ionizing Radiation. The Department has adopted these rules in A.A.C. Title 9, Chapter 7. Arizona is an Agreement State by the Document negotiated between the U.S. Atomic Energy Commission (now U.S. Nuclear Regulatory Commission) and the Governor of Arizona in March 1967 under A.R.S. § 30-656. In order to remain in compliance with the Agreement, Arizona must adopt regulations related to the control of radioactive material in a manner that is consistent with federal regulations. The U.S. Nuclear Regulatory Commission periodically issues changes, denoted as Regulation Toolbox: Review Summary Sheets for Regulation Amendments (RATS IDs), that are required to be incorporated by Agreement States. Several RATS IDs have not yet been incorporated into Arizona's rules related to the medical uses of radioactive material. The Department has revised the rules in A.A.C. Title 9, Chapter 7, Article 7, by expedited rulemaking to make changes to conform to the RATS IDs under 10 CFR Chapter I. The Department has also made other changes to reduce the administrative burden of the rules by clarifying existing

language in the rules, correcting cross-references, and making the rules easier to understand. The Department believes that these changes are consistent with the purpose for A.R.S. § 41-1027 in that this rulemaking does not increase the cost of regulatory compliance, does not increase a fee, or reduce a procedural right of regulated persons, and either adopts or incorporates by reference, without material change, federal statutes and regulations, or clarifies language of a rule without changing its effect.

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

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

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

Not applicable

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

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

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

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

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

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

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

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

According to A.R.S. Title 30, Chapter 4, Article 2, as amended by Laws 2017, Ch. 313, the Department is authorized to issue licenses and registrations for sources of ionizing radiation and those persons using these sources. This licensing and registration must be compatible with requirements in the Agreement. The rules refer to permits both general

and specific. The general permit 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.

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

The rules are not more stringent than federal law. Applicable federal law includes: 10 CFR 30.34(g), 10 CFR 32.72, 10 CFR 35.2, 10 CFR 35.12, 10 CFR 35.13, 10 CFR 35.14, 10 CFR 35.15, 10 CFR 35.24, 10 CFR 35.40, 10 CFR 35.41, 10 CFR 35.50, 10 CFR 35.51, 10 CFR 35.55, 10 CFR 35.57, 10 CFR 35.190, 10 CFR 35.204, 10 CFR 35.290, 10 CFR 35.300, 10 CFR 35.390, 10 CFR 35.392, 10 CFR 35.394, 10 CFR 35.396, 10 CFR 35.400, 10 CFR 35.433, 10 CFR 35.490, 10 CFR 35.491, 10 CFR 35.500, 10 CFR 35.590, 10 CFR 35.600, 10 CFR 35.610, 10 CFR 35.655, 10 CFR 35.690, 10 CFR 35.2024, 10 CFR 35.2310, 10 CFR 35.2655, 10 CFR 35.3045, 10 CFR 35.3204, 10 CFR 37.7(a), 10 CFR 37.77, 10 CFR 37.81(g), 10 CFR 40.23, 10 CFR 40.64, 10 CFR 40.66, 10 CFR 40.67, 10 CFR 70.5, 10 CFR 70.20(b), 10 CFR 70.32, and 10 CFR 71.97.

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

No such analysis was submitted.

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

In the rules being revised as part of this rulemaking, there are three incorporations by reference in R9-7-723 that are not being changed. These are listed below:

10 CFR 35.392, January 1, 2013
10 CFR 35.394, January 1, 2013
10 CFR 35.396, January 1, 2013

There is also one incorporation by reference in R9-7-727, listed below, that is being removed as no longer unnecessary:

10 CFR 35.491, January 1, 2013

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

packages:

The rule was not previously made as an emergency rule.

- 15. The full text of the rule follows:**

TITLE 9. HEALTH SERVICES
CHAPTER 7. RADIATION CONTROL
ARTICLE 7. MEDICAL USES OF RADIOACTIVE MATERIAL

Section	
R9-7-705.	Authority and Responsibilities for the Radiation Protection Program
R9-7-707.	Written Directives
R9-7-710.	Radiation Safety Officer <u>and Associate Radiation Safety Officer</u> Training
R9-7-711.	Authorized Medical Physicist Training
R9-7-719.	Training for Uptake, Dilution, and Excretion Studies
R9-7-720.	Permissible Molybdenum-99, Strontium-82, and Strontium-85 Concentrations
R9-7-721.	Training for Imaging and Localization Studies Not Requiring a Written Directive
R9-7-722.	Safety Instruction and Precautions for Use of Unsealed Radioactive Material Requiring a Written Directive
R9-7-723.	Training for Use of Unsealed Radioactive Material Requiring a Written Directive, Including Treatment of Hyperthyroidism, and Treatment of Thyroid Carcinoma
R9-7-724.	Surveys after Brachytherapy Source Implant and Removal; Accountability
R9-7-727.	Training for Use of Manual Brachytherapy Sources and Training for the Use of Strontium-90 Sources for Treatment of Ophthalmic Disease
R9-7-728.	Training for Use of Sealed Sources for Diagnosis
R9-7-731.	Safety Procedures and Instructions for Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units
R9-7-744.	Training for Use of Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units

ARTICLE 7. MEDICAL USES OF RADIOACTIVE MATERIAL

R9-7-705. Authority and Responsibilities for the Radiation Protection Program

- A. A licensee's management shall appoint in writing a ~~radiation safety officer~~ Radiation Safety Officer, who agrees, in writing, to be responsible for implementing the radiation protection program. The licensee, through the ~~RSO~~ Radiation Safety Officer, shall ensure that radiation safety activities are being performed in accordance with licensee-approved procedures and regulatory requirements. A licensee's management may appoint, in writing, one or more Associate Radiation Safety Officers to support the Radiation Safety Officer. The Radiation Safety Officer, with written agreement of the licensee's management, must assign the specific duties and tasks to each Associate Radiation Safety Officer. These duties and tasks are restricted to the types of use for which the Associate Radiation Safety Officer is listed on a license. The Radiation Safety Officer may delegate duties and tasks to the Associate Radiation Safety Officer but shall not delegate the authority or responsibilities for implementing the radiation protection program. Each time the ~~RSO~~ Radiation Safety Officer is changed, the licensee shall provide to the Department within 30 days an amendment request and a copy of the correspondence between the licensee's management and the candidate, accepting the position of ~~RSO~~ Radiation Safety Officer.
- B. Licensees that are authorized for two or more different types of uses of radioactive material listed in Groups 300, 400, 600, and 1,000, or two or more types of units under group 600 or 1,000, shall establish a Radiation Safety Committee (RSC) to oversee all uses of radioactive material permitted by the license. At a minimum, the RSC shall include an authorized user of each type of use permitted by the license, the ~~RSO~~ Radiation Safety Officer, a representative of the nursing service, and a representative of management who is neither an authorized user nor a ~~RSO~~ Radiation Safety Officer.
- C. If a licensee or applicant is not a health care institution and is unable to meet the RSC membership requirements in subsection (B), the licensee or applicant may request an exemption in accordance with A.R.S. § 30-654(B)(13). The request for exemption shall be made to the Department in writing and list the reasons why the health care institution is unable to meet the requirements.
- D. A licensee shall ensure that the RSC meets, at a minimum, on an annual basis and maintain the RSC meeting minutes for Department review for three years after the date of the RSC meeting.
- E. A licensee shall notify the Department no later than 30 days after:
 - 1. An authorized user, an authorized nuclear pharmacist, a Radiation Safety Officer, an

- Associate Radiation Safety Officer, an authorized medical physicist, or ophthalmic physicist permanently discontinues performance of duties under the license or has a name change;
2. The licensee permits an individual qualified to be a Radiation Safety Officer under R9-7-710 to function as a temporary Radiation Safety Officer and to perform the functions of a Radiation Safety Officer;
 3. The licensee's mailing address changes;
 4. The licensee's name changes, but the name change does not constitute a transfer of control of the license as described in R9-7-313(B);
 5. The licensee has added to or changed the areas of use identified in the application or on the license where byproduct material is used in accordance with R9-7-301, if the change does not include addition or relocation of either an area where PET radionuclides are produced or a PET radioactive drug delivery line from the PET radionuclide/PET radioactive drug production area; or
 6. The licensee obtains a sealed source for use in manual brachytherapy from a different manufacturer or with a different model number than authorized by its license for which it did not require a license amendment as provided in R9-7-701. The notification must include the manufacturer and model number of the sealed source, the isotope, and the quantity per sealed source.

R9-7-707. Written Directives

- A. A licensee shall ensure that a written directive is dated and signed by an authorized user before the administration of I-131 sodium iodide greater than 1.11 MBq (30 microcuries (μ Ci)), any therapeutic dosage of unsealed radioactive material or any therapeutic dose of radiation from radioactive material. If, because of the emergent nature of the patient's condition, a delay in order to provide a written directive would jeopardize the patient's health, an oral directive is acceptable. The information contained in the oral directive shall be documented as soon as possible in writing in the patient's record. A written directive shall be prepared within 48 hours of the oral directive.
- B. A written directive shall contain the patient or human research subject's name and the following information:

 1. For any administration of quantities greater than 1.11 MBq (30 μ Ci) of sodium iodide I-131: the dosage;
 2. For an administration of a therapeutic dosage of unsealed radioactive material other than sodium iodide I-131: the radiopharmaceutical, dosage, and route of administration;
 3. For gamma stereotactic radiosurgery: the total dose, treatment site, and values for the

- target coordinate settings per treatment for each anatomically distinct treatment site;
4. For teletherapy: the total dose, dose per fraction, number of fractions, and treatment site;
 5. For high dose-rate remote afterloading brachytherapy: the radionuclide, treatment site, dose per fraction, number of fractions, and total dose; **or**
 - 6. For permanent implant brachytherapy:**
 - a. Before implantation: the treatment site, radionuclide, and total strength; and**
 - b. After implantation but before the patient leaves the post-treatment recovery area: the treatment site, number of sources implanted, total source strength implanted, and date; or**
- 6.7.** For all other brachytherapy, including low, medium, and pulsed dose rate remote afterloaders:
- a. Before implantation: the treatment site, the radionuclide, and dose; and
 - b. After implantation but before completion of the procedure: the radionuclide, treatment site, number of sources, and total source strength and exposure time (or the total dose), and date.

C. The licensee shall retain a copy of the written directive for three years after creation of the record.

R9-7-710. Radiation Safety Officer and Associate Radiation Safety Officer Training

- A.** A licensee shall require an individual fulfilling the responsibilities of the ~~radiation safety officer~~ Radiation Safety Officer, described in R9-7-705, to be an individual who:
1. Is certified by a specialty board whose certification process includes all of the requirements in subsection ~~(A)(2)~~ (A)(2)(a) and (B) and whose certification has been recognized by the Department, the NRC, or an Agreement State. To have its certification process recognized, a specialty board shall require all candidates for certification to:
 - a. Meet the following minimum requirements:
 - i. Hold a bachelor's or graduate degree from an accredited college or university in physical science or engineering or biological science with a minimum of 20 college credits in physical science;
 - ii. Have five or more years of professional experience in health physics (graduate training may be substituted for no more than two years of the required experience) including at least three years in applied health physics; and
 - iii. Pass an examination administered by diplomates of the specialty board, which evaluates knowledge and competence in radiation physics and instrumentation, radiation protection, mathematics pertaining to the use

- and measurement of radioactivity, radiation biology, and radiation dosimetry; or
- b. Meet the following minimum requirements:
- i. Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;
 - ii. Have two years of full-time practical training and/or supervised experience in medical physics;
 - (1) Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the Commission or an the Department, the NRC, or another Agreement State; or
 - (2) In clinical nuclear medicine facilities providing diagnostic and/or therapeutic services under the direction of physicians who meet the requirements for authorized users qualified under subsection (B), R9-7-721, or R9-7-723; and
 - iii. Pass an examination, administered by diplomates of the specialty board, that assesses knowledge and competence in clinical diagnostic radiological or nuclear medicine physics and in radiation safety; ~~or~~
2. Has:
- a. ~~completed~~ Completed a structured educational program consisting of both:
 - a.i. 200 hours of didactic and laboratory training in the following areas:
 - i.(1) Radiation physics and instrumentation;
 - ii.(2) Radiation protection;
 - iii.(3) Mathematics pertaining to the use and measurement of radioactivity;
 - iv.(4) Radiation biology; and
 - v.(5) Radiation dosimetry; and
 - b.ii. One year of full-time radiation safety experience under the supervision of the individual identified as the ~~radiation safety officer~~ Radiation Safety Officer on a Department, a NRC, or an Agreement State license or permit issued by a NRC master material licensee that authorizes similar type(s) of use(s) of radioactive material involving the following:
 - i.(1) Shipping, receiving, and performing related radiation surveys;

- ii.(2) Using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and instruments used to measure radionuclides;
 - iii.(3) Securing and controlling radioactive material;
 - iv.(4) Using administrative controls to avoid mistakes in the administration of radioactive material;
 - v.(5) Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures;
 - vi.(6) Using emergency procedures to control radioactive material; and
 - vii.(7) Disposing of radioactive material; ~~or~~ and
 - e.b. Has obtained Obtained written certification, signed by a preceptor ~~radiation safety officer~~ Radiation Safety Officer or Associate Radiation Safety Officer, that the individual has satisfactorily completed the requirements in subsection (A)(2)(a) ~~and (A)(2)(b)~~ and has achieved a level of radiation safety knowledge sufficient to function independently as a ~~radiation safety officer~~ Radiation Safety Officer or as an Associate Radiation Safety Officer for a medical use licensee; ~~or~~
3. Is:
- a. A medical physicist who has been certified by a specialty board whose certification process has been recognized by the Department, the NRC, or another Agreement State under R9-7-711(A) or equivalent, has experience with radiation safety aspects of similar types of use of radioactive material for which the licensee seeks the approval of the individual as Radiation Safety Officer or an Associate Radiation Safety Officer, and meets the requirements in subsection (B); or
 - b. ~~an~~ An authorized user, authorized medical physicist, or authorized nuclear pharmacist identified on the licensee's license and has experience with the radiation safety aspects of similar types of use of radioactive material for which the individual has ~~radiation safety officer~~ Radiation Safety Officer responsibilities.; or
4. Has experience with the radiation safety aspects of the types of use of radioactive material for which the individual is seeking simultaneous approval both as the Radiation Safety Officer and the authorized user on the same new medical license and meets the requirements in subsection (B).
- B.** A licensee shall require an individual fulfilling the responsibilities of the Radiation Safety Officer

to have training in the radiation safety, regulatory issues, and emergency procedures for the types of use for which the licensee seeks approval. This training requirement may be satisfied by completing training that is supervised by a Radiation Safety Officer, an Associate Radiation Safety Officer, authorized medical physicist, authorized nuclear pharmacist, or authorized user, as appropriate, who is authorized for the type(s) of use for which the licensee is seeking approval.

B.C. Exceptions.

1. An individual identified as a ~~radiation safety officer~~ Radiation Safety Officer or as an Associate Radiation Safety Officer on a Department, a NRC, or ~~an another~~ Agreement State license or a permit issued by the NRC or an Agreement State broad scope licensee or master material license permit or by a master material license permittee of broad scope ~~before the effective date of these rules May 5, 2007~~ need not comply with the training requirements in subsections (A)(1) through (A)(3) (4).
2. A physician, dentist, or podiatrist identified as an authorized user for the medical use of radioactive material on a license issued by the Department, the NRC, or an Agreement State, a permit issued by a NRC master material licensee, a permit issued by the Department, the NRC, or an Agreement State broad scope licensee, or a permit issued by a NRC master material license broad scope permittee ~~before the effective date of these rules May 5, 2007~~ need not comply with the training requirements in this Article.

C.D. The training and experience required in this Section shall be obtained within the seven years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.

D.E. Individuals who, under subsection ~~(B) (C)~~, need not comply with training requirements described in this Section may serve as preceptors for, and supervisors of, applicants seeking authorization on Department licenses for the same uses for which these individuals are authorized.

F. Records Retention.

1. The licensee shall retain both a copy of the authority, duties, and responsibilities of the Radiation Safety Officer, as required by this Section, and a signed copy of each Radiation Safety Officer's agreement to be responsible for implementing the radiation safety program for the duration of the license. The records must include the signature of the Radiation Safety Officer and licensee management.
2. For each Associate Radiation Safety Officer appointed under this Section, the licensee shall retain, for five years after the Associate Radiation Safety Officer is removed from the license, a copy of the written document appointing the Associate Radiation Safety Officer, signed by the licensee's management.

R9-7-711. Authorized Medical Physicist Training

- A. A licensee shall require an authorized medical physicist to be an individual who:
1. Is certified by a specialty board whose certification process includes all of the training and experience requirements in subsection (A)(3)(b) and (A)(3)(e) subsections (A)(2)(a) and (B) and whose certification has been recognized by the Department, the NRC, or an Agreement State; or To have its certification process recognized, a specialty board shall require all candidates for certification to:
 2. Training requirements.
 - a. Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;
 - b. Have two years of full-time practical training and/or supervised experience in medical physics:
 - i. Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the NRC or an Agreement State; or
 - ii. In clinical radiation facilities providing high-energy, external beam therapy (photons and electrons with energies greater than or equal to 1 million electron volts) and brachytherapy services under the direction of physicians who meet the requirements for authorized users in R9-7-710, R9-7-719, R9-7-721, R9-7-723, R9-7-727, R9-7-728, or R9-7-744; and
 - c. Pass an examination, administered by diplomates of the specialty board, that assesses knowledge and competence in clinical radiation therapy, radiation safety, calibration, quality assurance, and treatment planning for external beam therapy, brachytherapy, and stereotactic radiosurgery; or
 - 3.2. Training requirements alternative. Meets the following alternative training requirements:
 - a. Holds a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university; and has completed one year of full-time training in medical physics and an additional year of full-time work experience under the supervision of an individual who meets the requirements for an authorized medical physicist for the type(s) of use for which the individual is seeking authorization. This training and work experience must be conducted in clinical radiation facilities that provide high-energy, external beam therapy (photons and electrons with energies

greater than or equal to 1 million electron volts) and brachytherapy services and must include:

- i. Performing sealed source leak tests and inventories;
 - ii. Performing decay corrections;
 - iii. Performing full calibration and periodic spot checks of external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and
 - iv. Conducting radiation surveys around external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and
- b. Has obtained written attestation that the individual has satisfactorily completed the requirements in both subsections ~~(A)(2)~~ and ~~(A)(3)(e)~~, or in both subsections ~~(A)(3)(a)~~ and ~~(A)(3)(e)~~ (A)(2)(a) and (B); and has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written attestation must be signed by a preceptor authorized medical physicist who meets the requirements in ~~section~~ this Section, or equivalent Agreement State or NRC requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status; and
- e.B.** ~~Has A licensee shall require an authorized medical physicist to be an individual who has~~ training for the type(s) of use for which authorization is sought that includes hands-on device operation, safety procedures, clinical use, and the operation of a treatment planning system. This training requirement may be satisfied by satisfactorily completing either a training program provided by the vendor or by training supervised by an authorized medical physicist authorized for the type(s) of use for which the individual is seeking authorization.
- B.C.** Exceptions. An individual identified as a teletherapy or medical physicist on a Department, a NRC, or ~~an~~ another Agreement State license or a permit issued by the NRC or ~~an~~ another Agreement State broad scope licensee or master material license permit or by a master material license permittee of broad scope before ~~the effective date of these rules May 5, 2007~~ need not comply with the training requirements in subsection (A).
- C.D.** The training and experience required in this Section shall be obtained within the seven years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.

D.E. Individuals who, under subsection (B) (C), need not comply with training requirements described in this Section may serve as preceptors for, and supervisors of, applicants seeking authorization on Department licenses for the same uses for which these individuals are authorized.

R9-7-719. Training for Uptake, Dilution, and Excretion Studies

A. Except as provided in R9-7-710, the licensee shall require an authorized user of unsealed radioactive material for the uses authorized under Group 100 in Exhibit A of this Article to be a physician who:

1. Is certified by a medical specialty board whose certification process has been recognized by the NRC or an Agreement State, as specified in the NRC's Medical Uses Licensee Toolkit available through <https://www.nrc.gov>, and who meets the requirements in subsection (A)(3). To have its certification process recognized, a specialty board shall require all candidates for certification to:
 - a. Complete 60 hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies as described in subsection (A)(3); and
 - b. Pass an examination, administered by diplomates of the specialty board, that assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; ~~or~~
2. Is an authorized user under R9-7-721, R9-7-723, the NRC, or equivalent Agreement State requirements; or
3. Has:
 - a. ~~completed~~ Completed 60 hours of training and experience, including a minimum of eight hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies. The training and experience must include:
 - a.i. Classroom and laboratory training in the following areas:
 - i.(1) Radiation physics and instrumentation;
 - ii.(2) Radiation protection;
 - iii.(3) Mathematics pertaining to the use and measurement of radioactivity;
 - iv.(4) Chemistry of radioactive material for medical use; and
 - v.(5) Radiation biology; and

b.ii. Work experience, under the supervision of an authorized user who meets the requirements in this Article, NRC, or equivalent Agreement State requirements, involving:

- i.(1) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
- ii.(2) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;
- iii.(3) Calculating, measuring, and safely preparing patient or human research subject dosages;
- iv.(4) Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;
- v.(5) Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and
- vi.(6) Administering dosages of radioactive drugs to patients or human research subjects; and

e.b. Has obtained Obtained written attestation, signed by a preceptor authorized user ~~who meets the requirements of R9-7-719, R9-7-721, or R9-7-723, the NRC, or equivalent Agreement State requirements~~; that the individual has satisfactorily completed the requirements in subsection (A)(1) or ~~(A)(3)~~ subsection (A)(3)(a) and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under Exhibit A of this Article.

The attestation must be obtained from either:

- i. A preceptor authorized user who meets the requirements in this Section, R9-7-721, or R9-7-723, the NRC, or equivalent Agreement State requirements; or
- ii. A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in this Section, R9-7-721, or R9-7-723, the NRC, or equivalent Agreement State requirements, and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of

Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in subsection (A)(3)(a).

- B. The training and experience in subsections (A)(1)(a) or (3)(a) shall have been obtained within the seven years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.
- C. Individuals who, under R9-7-710(B), need not comply with training requirements described in this Section may serve as preceptors for, and supervisors of, applicants seeking authorization on Department licenses for the same uses for which these individuals are authorized.

R9-7-720. Permissible Molybdenum-99, Strontium-82, and Strontium-85 Concentrations

- A. A licensee may not administer to humans a radiopharmaceutical that contains more than 0.15 kilobecquerel of molybdenum-99 per megabecquerel of technetium-99m (0.15 microcurie of molybdenum-99 per millicurie of technetium-99m) or, more than 0.02 kilobecquerel of strontium-82 per megabecquerel of rubidium-82 chloride injection (0.02 microcurie of strontium-82 per millicurie of rubidium-82 chloride); or more than 0.2 kilobecquerel of strontium-85 per megabecquerel of rubidium-82 chloride injection (0.2 microcurie of strontium-85 per millicurie of rubidium-82).
- B. A licensee that uses molybdenum-99/technetium-99m generators for preparing a technetium-99m radiopharmaceutical shall measure the molybdenum-99 concentration of the first eluate after receipt of a generator to demonstrate compliance with subsection (A).
- C. A licensee that uses a strontium-82/rubidium-82 generator for preparing a rubidium-82 radiopharmaceutical shall, before the first patient use of the day, measure the concentration of radionuclides strontium-82 and strontium-85 to demonstrate compliance with subsection (A).
- D. A licensee shall maintain a record of each molybdenum-99 concentration measurement or strontium-82 and strontium-85 concentrations measurements for three years following completion of the measurement.
- E. A licensee shall notify by telephone the NRC Operations Center and the distributor of the generator within seven calendar days after discovery that an eluate exceeded the permissible concentration listed in subsection (A) at the time of generator elution. The telephone report to the NRC must include the manufacturer, model number, and serial number (or lot number) of the generator; the results of the measurement; the date of the measurement; whether dosages were administered to patients or human research subjects; when the distributor was notified; and the action taken.

R9-7-721. Training for Imaging and Localization Studies Not Requiring a Written Directive

Except as provided in R9-7-710, the licensee shall require an authorized user of unsealed radioactive material for the uses authorized under Group 200 in Exhibit A of this Article to be a physician who:

1. Is certified by a medical specialty board whose certification process has been recognized by the NRC or an Agreement State, as specified in the NRC's Medical Uses Licensee Toolkit available through https://www.nrc.gov, and who meets the requirements in subsection (3). To have its certification process recognized, a specialty board shall require all candidates for certification to:
 - a. Complete 700 hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for imaging and localization studies as described in subsection (3); and
 - b. Pass an examination, administered by diplomates of the specialty board, that assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or
2. Is an authorized user under R9-7-723, the NRC, or equivalent Agreement State requirements; or
3. Has:
 - a. ~~completed~~ Completed 700 hours of training and experience, including a minimum of 80 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for imaging and localization studies. The training and experience must include:
 - a.i. Classroom and laboratory training in the following areas:
 - i.(1) Radiation physics and instrumentation;
 - ii.(2) Radiation protection;
 - iii.(3) Mathematics pertaining to the use and measurement of radioactivity;
 - iv.(4) Chemistry of radioactive material for medical use; and
 - v.(5) Radiation biology; and
 - b.ii. Work experience, under the supervision of an authorized user who meets the requirements in this Section, R9-7-710, R9-7-721, or R9-7-723 and in subsection (3)(b)(vii); the requirements of the NRC; or equivalent Agreement State requirements, involving: An authorized nuclear pharmacist who meets the requirements in R9-7-712 may provide the

supervised work experience for subsection (3)(a)(ii)(7). Work experience must involve:

- i.(1) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
- ii.(2) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;
- iii.(3) Calculating, measuring, and safely preparing patient or human research subject dosages;
- iv.(4) Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;
- v.(5) Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; ~~and~~
- vi.(6) Administering dosages of radioactive drugs to patients or human research subjects; and
- vii.(7) Eluting generator systems appropriate for preparation of radioactive drugs for imaging and localization studies, measuring and testing the eluate for radionuclide purity, and processing the eluate with reagent kits to prepare labeled radioactive drugs; and

e.b. ~~Has obtained Obtained written attestation, signed by a preceptor authorized user who meets the requirements as an authorized user for Exhibit A group 200 nuclides, NRC, or equivalent Agreement State requirements, that the individual has satisfactorily completed the requirements in subsection (1) or (3)(a) and has achieved a level of competency sufficient to function independently is able to independently fulfill the radiation safety-related duties as an authorized user for the medical uses authorized under Exhibit A of this Article Group 200 in Exhibit A of this Article. The attestation must be obtained from either:~~

- i. ~~A preceptor authorized user who meets the requirements in this Section, R9-7-710, or R9-7-723; NRC requirements; or equivalent Agreement State requirements; or~~
- ii. ~~A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in this Section, R9-7-710, or R9-7-723; NRC requirements; or equivalent~~

Agreement State requirements, and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in subsection (3)(a).

R9-7-722. Safety Instruction and Precautions for Use of Unsealed Radioactive Material Requiring a Written Directive

- A. A licensee shall provide radiation safety instruction, initially and at least annually, for all personnel caring for the patient or human research subject receiving radiopharmaceutical therapy and hospitalized for compliance with R9-7-717. To satisfy this requirement, the instruction shall describe the licensee's procedures for:
 1. Patient or human research subject control;
 2. Visitor control;
 3. Contamination control; and
 4. Waste control; and.
- B. For each patient or human research subject who cannot be released under R9-7-717, a licensee shall:
 1. Quarter the patient or the human research subject in a private room with a private sanitary facility;
 2. Visibly post the patient's or the human research subject's room with a "Radioactive Materials" sign;
 3. Note on the door or in the patient's or human research subject's chart where and how long visitors may stay in the patient's or the human research subject's room; and
 4. Monitor material and items removed from the patient's or the human research subject's room to determine that their radioactivity cannot be distinguished from the natural background radiation level with a radiation detection survey instrument set on its most sensitive scale and with no interposed shielding, or handle the material and items as radioactive waste.
- C. A licensee shall notify the ~~radiation safety officer~~ Radiation Safety Officer, or his or her designee, and the authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.
- D. A licensee may use any unsealed byproduct material identified in R9-7-723(A)(2)(b)(vi) prepared

for medical use and for which a written directive is required that is:

1. Obtained from:
 - a. A manufacturer or preparer licensed under R9-7-311 or equivalent Agreement State requirements, or
 - b. A PET radioactive drug producer licensed under R9-7-311 or equivalent Agreement State requirements;
2. Excluding production of PET radionuclides, prepared by:
 - a. An authorized nuclear pharmacist;
 - b. A physician who is an authorized user and who meets the requirements specified in R-7-723; or
 - c. An individual under the supervision, as specified in R9-7-712, of the authorized nuclear pharmacist in subsection (D)(2)(a) or the physician who is an authorized user in subsection (D)(2)(b);
3. Obtained from and prepared by an NRC or Agreement State licensee for use in research in accordance with an Investigational New Drug (IND) protocol accepted by FDA; or
4. Prepared by the licensee for use in research in accordance with an Investigational New Drug (IND) protocol accepted by FDA.

D.E. A licensee shall retain records of instruction and safety procedures performed under this rule for three years from the date of the activity.

R9-7-723. Training for Use of Unsealed Radioactive Material Requiring a Written Directive, Including Treatment of Hyperthyroidism, and Treatment of Thyroid Carcinoma

- A. Except as provided in R9-7-710, the licensee shall require an authorized user of unsealed radioactive material for the uses authorized under Group 300 in Exhibit A of this Article to be a physician who:
1. Is certified by a medical specialty board whose certification process has been recognized by the NRC or an Agreement State, as specified in the NRC's Medical Uses Licensee Toolkit available through https://www.nrc.gov, and who meets the requirements in subsection (A)(2). To have its certification process recognized, a specialty board shall require all candidates for certification to:
 - a. Successfully complete residency training in a radiation therapy or nuclear medicine training program or a program in a related medical specialty. These residency training programs must include 700 hours of training and experience as described in (A)(2) subsection (A)(2)(a). Eligible training programs must be approved by the Residency Review Committee of the Accreditation Council for

Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Post-Graduate Training of the American Osteopathic Association; and

- b. Pass an examination, administered by diplomates of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, and quality assurance, and clinical use of unsealed radioactive material for which a written directive is required; or
2. Has:
 - a. ~~completed~~ Completed 700 hours of training and experience, including a minimum of 200 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material requiring a written directive. The training and experience must include:
 - a.i. Classroom and laboratory training in the following areas:
 - i.(1) Radiation physics and instrumentation;
 - ii.(2) Radiation protection;
 - iii.(3) Mathematics pertaining to the use and measurement of radioactivity;
 - iv.(4) Chemistry of radioactive material for medical use; and
 - v.(5) Radiation biology; and
 - b.ii. Work experience, under the supervision of an authorized user who meets the requirements in this Article, NRC, or equivalent Agreement State requirements, involving:
 - i.(1) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
 - ii.(2) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;
 - iii.(3) Calculating, measuring, and safely preparing patient or human research subject dosages;
 - iv.(4) Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;
 - v.(5) Using procedures to contain spilled radioactive material safely and using proper decontamination procedures;

vi.(6) Administering dosages of radioactive drugs to patients or human research subjects involving a minimum of three cases in each of the following categories for which the individual is requesting authorized user status:

- (1)(a) Oral administration of less than or equal to 1.22 gigabecquerels (33 millicuries) of sodium iodide I-131, for which a written directive is required (Experience with at least three cases in the Category specified in subsection (A)(2)(b)(vi)(2) (A)(2)(a)(ii)(6)(b) also satisfies this requirement);
- (2)(b) Oral administration of greater than 1.22 gigabecquerels (33 millicuries) of sodium iodide I-131;
- (3)(c) Parenteral administration of any beta emitter, or a photon-emitting radionuclide with a photon energy less than 150 keV, for which a written directive is required; and/or
- (4)(d) Parenteral administration of any other radionuclide, for which a written directive is required; and

e.b. Has obtained Obtained written attestation, signed by a preceptor authorized user who meets the requirements as an authorized user for Exhibit A group 300 nuclides, NRC, or equivalent Agreement State requirements, that the individual has satisfactorily completed the requirements in subsection (A)(1) or (A)(2) (A)(2)(a) and has achieved a level of competency sufficient to function independently is able to independently fulfill the radiation safety-related duties as an authorized user for the medical uses authorized under Group 300 in Exhibit A of this Article for which the individual is requesting authorized user status. The written attestation must be signed by a preceptor authorized user who meets the requirements in this Section, NRC, or equivalent Agreement State requirements. The preceptor authorized user, who meets the requirements in subsection (B), must have experience in administering dosages in the same dosage category or categories as the individual requesting authorized user status. obtained from either:

- i. A preceptor authorized user who meets the requirements in this Section or equivalent Agreement State or NRC requirements and has experience

- in administering dosages in the same dosage category or categories as the individual requesting authorized user status; or
- ii. A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in this Section or equivalent Agreement State or NRC requirements, has experience in administering dosages in the same dosage category or categories as the individual requesting authorized user status, and concurs with the attestation provided by the residency program director.
The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in subsection (A)(2)(a).
- B. Except as provided in R9-7-710, a licensee shall require an authorized user of iodine-131 for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 gigabecquerels (33 millicuries) to be a physician who has completed the training requirements in 10 CFR 35.392, January 1, 2013, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.
- C. Except as provided in R9-7-710, a licensee shall require an authorized user of iodine-131 for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 gigabecquerels (33 millicuries) to be a physician who has completed the training requirements in 10 CFR 35.394, January 1, 2013, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.
- D. Except as provided in R9-7-710, a licensee shall require an authorized user for the parenteral administration of unsealed radioactive material requiring a written directive to be a physician who has completed the training requirements in 10 CFR 35.396, January 1, 2013, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.
- E. The training and experience shall have been obtained within the seven years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.

R9-7-724. Surveys after Brachytherapy Source Implant and Removal; Accountability

- A.** A licensee shall make a survey to locate and account for all sources that have not been implanted immediately after implanting sources in a patient or a human research subject.
- B.** A licensee shall make a survey of the patient or the human research subject with a radiation detection survey instrument immediately after removing the last temporary implant source to confirm that all sources have been removed.
- C.** A licensee shall maintain accountability at all times for all sources in storage or use.
- D.** A licensee shall return brachytherapy sources to a secure storage area as soon as possible after removing sources from a patient or a human research subject.
- E.** A licensee shall record the procedures performed in subsections (A) through (D) and retain the records for three years following completion of the record.
- F.** A licensee must use only brachytherapy sources:
 - 1. Approved in the Sealed Source and Device Registry for manual brachytherapy medical use. The manual brachytherapy sources may be used for manual brachytherapy uses that are not explicitly listed in the Sealed Source and Device Registry, but must be used in accordance with the radiation safety conditions and limitations described in the Sealed Source and Device Registry; or
 - 2. In research to deliver therapeutic doses for medical use in accordance with an active Investigational Device Exemption (IDE) application accepted by the U.S. Food and Drug Administration, provided the requirements of R9-7-450(A) are met.

R9-7-727. Training for Use of Manual Brachytherapy Sources and Training for the Use of Strontium-90 Sources for Treatment of Ophthalmic Disease

- A.** Except as provided in R9-7-710, the licensee shall require an authorized user of a manual brachytherapy source for the uses authorized under this Article to be a physician who:
 - 1. Is certified by a medical specialty board whose certification process has been recognized by the NRC or an Agreement State and who meets the requirements in subsection (A)(2).
The names of board certifications that have been recognized by the NRC or an Agreement State are specified in the NRC's Medical Uses Licensee Toolkit available through <https://www.nrc.gov>. To have its certification process recognized, a specialty board shall require all candidates for certification to:
 - a. Successfully complete a minimum of three years of residency training in a radiation oncology program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Post-Graduate Training of the American Osteopathic Association; and

- b. Pass an examination, administered by diplomates of the specialty board, that tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of manual brachytherapy; or
- 2. Has completed a structured educational program in basic radionuclide handling techniques applicable to the use of manual brachytherapy sources that includes:
 - a. 200 hours of classroom and laboratory training in the following areas:
 - i. Radiation physics and instrumentation;
 - ii. Radiation protection;
 - iii. Mathematics pertaining to the use and measurement of radioactivity;
 - iv. Radiation biology; **and**
 - b. 500 hours of work experience, under the supervision of an authorized user who meets the requirements in this Section, or equivalent NRC or Agreement State requirements at a medical institution, involving:
 - i. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
 - ii. Checking survey meters for proper operation;
 - iii. Preparing, implanting, and removing brachytherapy sources;
 - iv. Maintaining running inventories of material on hand;
 - v. Using administrative controls to prevent a medical event involving the use of radioactive material;
 - vi. Using emergency procedures to control radioactive material; **and**
 - c. ~~Has completed Completing~~ three years of supervised clinical experience in radiation oncology, under an authorized user who meets the requirements in this Section, or equivalent Agreement State requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by subsection (A)(2)(b); and
 - d. ~~Has obtained Obtaining~~ written attestation, signed by a preceptor authorized user who meets the requirements in this Section, NRC, or equivalent Agreement State requirements, that the individual has satisfactorily completed the requirements in subsection (A)(1) or (A)(2) subsections (A)(2)(a) through (c) and ~~has achieved a~~

~~level of competency sufficient to function independently~~ is able to independently fulfill the radiation safety-related duties as an authorized user of manual brachytherapy sources for the medical uses authorized under Exhibit A of this Article. The attestation must be obtained from either:

- i. A preceptor authorized user who meets the requirements in this Section or equivalent Agreement State or NRC requirements; or
- ii. A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in this Section or equivalent Agreement State or NRC requirements, and concurs with the attestation provided by the residency program director.
The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in subsection (A)(2)(a) and (b).

B. ~~Except as provided in R9-7-710, a licensee shall require an authorized user of strontium-90 for ophthalmic radiotherapy to be a physician who has completed the training requirements in 10 CFR 35.491, January 1, 2013, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.~~

B. A licensee who uses strontium-90 for ophthalmic treatments must ensure that certain activities as specified in subsection (C) are performed by either:

1. An authorized medical physicist; or
2. An individual who:
 - a. Is identified as an ophthalmic physicist on a:
 - i. Specific medical use license issued by the Department, the NRC, or another Agreement State,
 - ii. Permit issued by an NRC or other Agreement State broad scope medical use licensee,
 - iii. Medical use permit issued by an NRC master material licensee, or
 - iv. Permit issued by an NRC master material licensee broad scope medical use permittee;
 - b. Holds a master's or doctor's degree in physics, medical physics, other physical

- sciences, engineering, or applied mathematics from an accredited college or university;
- c. Has successfully completed one year of full-time training in medical physics and an additional year of full-time work experience under the supervision of a medical physicist; and
- d. Has documented training in:
- i. The creation, modification, and completion of written directives;
- ii. Procedures for administrations requiring a written directive; and
- iii. Performing the calibration measurements of brachytherapy sources as detailed in R9-7-726.
- C.** The individuals who are identified in subsection (B)(1) or (2) shall:
1. Calculate the activity of each strontium-90 source that is used to determine the treatment times for ophthalmic treatments. The decay must be based on the activity determined under R9-7-726; and
2. Assist the licensee in developing, implementing, and maintaining written procedures to provide high confidence that the administration is in accordance with the written directive. These procedures must include the frequencies that the individual meeting the requirements in paragraph (a) of this section will observe treatments, review the treatment methodology, calculate treatment time for the prescribed dose, and review records to verify that the administrations were in accordance with the written directives.
- D.** Licensees shall retain a record of the activity of each strontium-90 source in accordance with R9-7-313.
- E.** The training and experience shall have been obtained within the seven years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.

R9-7-728. Training for Use of Sealed Sources for Diagnosis

- A.** Except as provided in R9-7-710, the licensee shall require the authorized user of a diagnostic sealed source for use in a device authorized under Group 500 in Exhibit A of this Article to be a physician, dentist, or podiatrist who:
1. is Is certified by a medical specialty board whose certification process has been recognized by the NRC or an Agreement State and who meets the requirements in subsections (A)(1) and (2) (A)(3) and (B) and whose certification has been recognized by the Department, the NRC, or another Agreement State as specified in the NRC's Medical Uses Licensee Toolkit available through <https://www.nrc.gov>; or

2. Is an authorized user for uses listed in Group 200 of Exhibit A of this Article or equivalent NRC or Agreement State requirements; or
 - +3. Has completed eight hours of classroom and laboratory training in basic radionuclide handling techniques specifically applicable to the use of the device. The training must include:
 - a. Radiation physics and instrumentation;
 - b. Radiation protection;
 - c. Mathematics pertaining to the use and measurement of radioactivity;
 - d. Radiation biology; and
- 2.B. Has A licensee shall require the authorized user of a diagnostic sealed source for use in a device authorized under Group 500 in Exhibit A of this Article to have completed training in the use of the device for the uses requested.
- B.C. The training and experience shall have been obtained within the seven years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.

R9-7-731. Safety Procedures and Instructions for Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units

- A. A licensee shall:
1. Secure the unit, the console, the console keys, and the treatment room when not in use or unattended;
 2. Permit only individuals approved by the authorized user, ~~radiation safety officer~~ Radiation Safety Officer, or authorized medical physicist to be present in the treatment room during treatment with a source;
 3. Prevent dual operation of more than one radiation producing device in a treatment room if applicable; and
 4. Develop, implement, and maintain written procedures for responding to an abnormal situation when the operator is unable to place a source in the shielded position, or remove the patient or human research subject from the radiation field with controls from outside the treatment room. These procedures shall include:
 - a. Instructions for responding to equipment failures and the names of the individuals responsible for implementing corrective actions;
 - b. The process for restricting access to and posting of the treatment area to minimize the risk of inadvertent exposure; and
 - c. The names and telephone numbers of the authorized users, the authorized

medical physicist, and the ~~radiation safety officer~~ Radiation Safety Officer to be contacted if the unit or console operates abnormally.

- B.** A licensee shall post instructions at the unit console to inform the operator of:

 - 1. The location of the procedures required by subsection (A)(4); and
 - 2. The names and telephone numbers of the authorized users, the authorized medical physicist, and the ~~radiation safety officer~~ Radiation Safety Officer to be contacted if the unit or console operates abnormally.
- C.** A licensee shall provide instruction, initially and at least annually, to all individuals who operate the unit, as appropriate to the individual's assigned duties, in:

 - 1. The procedures identified in subsection (A)(4); and
 - 2. The operating procedures for the unit.
- D.** A licensee shall ensure that operators, authorized medical physicists, and authorized users participate in drills of the emergency procedures, initially and at least annually.
- E.** A licensee shall retain a record of individuals receiving instruction required by subsection (C) for three years from the date of the instruction.
- F.** A licensee shall maintain a copy of the procedures required by subsections (A)(4) and (C)(2) for Department review. The copy shall be maintained for three years beyond the termination date of the activities for which the procedures were written.
- G.** Prior to the first use for patient treatment of a new unit or an existing unit with a manufacturer upgrade that affects the operation and safety of the unit, a licensee shall ensure that vendor operational and safety training is provided to all individuals who will operate the unit. The vendor operational and safety training must be provided by the device manufacturer or by an individual certified by the device manufacturer to provide the operational and safety training.
- H.** A licensee shall have each teletherapy unit and gamma stereotactic radiosurgery unit fully inspected and serviced during each source replacement to assure proper functioning of the source exposure mechanism and other safety components. The interval between each full-inspection servicing shall not exceed five years for each teletherapy unit and shall not exceed seven years for each gamma stereotactic radiosurgery unit.
- I.** A licensee shall:

 - 1. Ensure that inspection and servicing are performed only by persons specifically licensed to do so by the Department, the NRC or another Agreement State, and
 - 2. Keep a record of the inspection and servicing for three years after termination.
- J.** A licensee shall maintain a record of safety instruction required by R9-7-722, R9-7-725 and this Section and the operational and safety instructions for three years after the date of the instruction.

The record must include a list of the topics covered, the date of the instruction, the name(s) of the attendee(s), and the name(s) of the individual(s) who provided the instruction.

R9-7-744. Training for Use of Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units

- A. Except as provided in R9-7-710, a licensee shall require an authorized user of a sealed source for a use authorized under Group 600 in Exhibit A of this Article to be a physician who:
1. Is certified by a medical specialty board whose certification process has been recognized by the Department, the NRC or another Agreement State and who meets the requirements in subsection (A)(2)(e). The names of board certifications that have been recognized by the Department, the NRC or another Agreement State are specified in the NRC's Medical Uses Licensee Toolkit available through https://www.nrc.gov. To have its certification process recognized, a specialty board shall require all candidates to:
 - a. Successfully complete a minimum of three years of residency training in a radiation therapy program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Post-Graduate Training of the American Osteopathic Association; and
 - b. Pass an examination, administered by diplomates of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of stereotactic radiosurgery, remote afterloaders and external beam therapy; or
 2. Has completed a structured educational program in basic radionuclide techniques applicable to the use of a sealed source in a therapeutic medical unit that includes:
 - a. 200 hours of classroom and laboratory training in the following areas:
 - i. Radiation physics and instrumentation;
 - ii. Radiation protection;
 - iii. Mathematics pertaining to the use and measurement of radioactivity;
 - iv. Chemistry of radioactive material for medical use; and
 - v. Radiation biology; and
 - b. 500 hours of work experience, under the supervision of an authorized user who meets the requirements in this Section, or equivalent Agreement State or NRC requirements at a medical institution, involving:
 - i. Reviewing full calibration measurements and periodic spot-checks;
 - ii. Preparing treatment plans and calculating treatment doses and times;

- iii. Using administrative controls to prevent a medical event involving the use of radioactive material;
 - iv. Implementing emergency procedures to be followed in the event of the abnormal operation of the medical unit or console;
 - v. Checking and using survey meters; and
 - vi. Selecting the proper dose and how it is to be administered; ~~and~~
- c. ~~Has completed~~ Completing three years of supervised clinical experience in radiation therapy, under an authorized user who meets the requirements in this Section, or equivalent Agreement State or NRC requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by subsection (A)(2)(b); and
- d. ~~Has obtained~~ Obtaining written attestation that the individual has satisfactorily completed the requirements in subsection (A)(1) or (A)(2) subsections (A)(2)(a) through (c) and (B), and ~~has achieved a level of competency sufficient to function independently~~ is able to independently fulfill the radiation safety-related duties as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The written attestation must be signed by ~~a preceptor authorized user who meets the requirements in this Section, or equivalent Agreement State or NRC requirements for an authorized user for each type of therapeutic medical unit for which the individual is requesting authorized user status; and obtained from either:~~
 - i. A preceptor authorized user who meets the requirements in this Section, NRC requirements, or equivalent Agreement State requirements for the type(s) of therapeutic medical unit for which the individual is requesting authorized user status; or
 - ii. A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in this Section, NRC requirements, or equivalent Agreement State requirements, for the type(s) of therapeutic medical unit for which the

individual is requesting authorized user status, and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in subsection (A)(2)(a) through (c).

- e.B.** Has received A licensee shall require an authorized user of a sealed source for a use authorized under Group 600 in Exhibit A of this Article to receive training in device operation, safety procedures, and clinical use for the type(s) of use for which authorization is sought. This training requirement may be satisfied by satisfactory completion of a training program provided by the vendor for new users or by receiving training supervised by an authorized user or authorized medical physicist, as appropriate, who is authorized for the type(s) of use for which the individual is seeking authorization.
- B.C.** The training and experience shall have been obtained within the seven years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.

Materials Incorporated by Reference

Not being updated in the rulemaking

[10 CFR 35.392](#), January 1, 2013

[10 CFR 35.394](#), January 1, 2013

[10 CFR 35.396](#), January 1, 2013

Being removed in the rulemaking

[10 CFR 35.491](#), January 1, 2013

CHAPTER 7. RADIATION CONTROL

- K. The name and address of the individual who will interpret each radiographic image;
- L. A description of the planned procedures for advising a screened individual and the screened individual's physician of the screening procedure results, and the need for further medical care, and
- M. A description of the procedures for retention or disposition of the radiographic images and other records pertaining to the x-ray examination.

Historical Note

New Appendix A, recodified from 12 A.A.C. 1, Article 6, Appendix A at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

ARTICLE 7. MEDICAL USES OF RADIOACTIVE MATERIAL**R9-7-701. License Required**

- A. A person may manufacture, produce, acquire, receive, possess, prepare, use, or transfer radioactive material for medical use only in accordance with a specific license issued by the Department, the NRC, or another Agreement State, or as allowed in subsection (B)(1) or (B)(2).
- B. A specific license is not needed for an individual who:
 1. Receives, possesses, uses, or transfers radioactive material in accordance with the rules in this Chapter under the supervision of an authorized user as provided in R9-7-706, unless prohibited by license condition; or
 2. Prepares unsealed radioactive material for medical use in accordance with the rules in this Chapter under the supervision of an authorized nuclear pharmacist or authorized user.

Historical Note

New Section R9-7-701 recodified from R12-1-701 at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-702. Definitions

“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.

“Authorized nuclear pharmacist” means a pharmacist who meets the requirements in R9-7-712.

“Authorized user” means a physician, dentist, or podiatrist who meets the requirements in R9-7-719, R9-7-721, R9-7-723, R9-7-727, R9-7-728, or R9-7-744.

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

“CT” means computerized tomography.

“High dose rate afterloading brachytherapy” means the treating of human disease using the radiation from a radioactive sealed source containing more than 1 curie of radioactive material. The radioactive material is introduced into a patient’s body using a device that allows the therapist to indirectly handle the radiation source during the treatment. For purposes of the requirements in this Article “pulse dose rate afterloading brachytherapy” is included in this definition.

“Human research subject” means an individual who is or becomes a participant in research overseen by an IRB, either as a recipient of the test article or as a control. A

subject may be either a healthy human, in research overseen by the RDRC, or a patient.

“Institutional review board” (IRB) is defined in R9-7-704(B).

“Manual brachytherapy” means a type of brachytherapy in which the brachytherapy sources (e.g., seeds, ribbons) are manually placed topically on or inserted either into the body cavities that are in close proximity to a treatment site or directly into the tissue volume.

“Medical event” means an event that meets the criteria in R9-7-745.

“Medical institution” means an organization in which several medical disciplines are practiced.

“Medical use” means the intentional internal or external administration of radioactive material, or the radiation from it, to an individual under the supervision of an authorized user.

“Nuclear cardiology” means the diagnosis of cardiac disease using radiopharmaceuticals.

“PET” means positron emission tomography.

“Physically present” means that a supervising medical professional is in proximity to the patient during a radiation therapy procedure so that immediate emergency orders can be communicated to ancillary staff, should the occasion arise.

“Prescribed dosage” means the specified activity or range of activity of unsealed radioactive material as documented:

In a written directive; or

In accordance with the directions of the authorized user for procedures performed in accordance with the uses described in Exhibit A.

“Prescribed dose” means:

For gamma stereotactic radiosurgery, the total dose as documented in the written directive;

For teletherapy, the total dose and dose per fraction as documented in the written directive;

For manual brachytherapy, either the total source strength and exposure time or the total dose, as documented in the written directive; or

For remote brachytherapy afterloaders, the total dose and dose per fraction as documented in the written directive.

“Radiation Safety Officer” (RSO) for purposes of this Article, and in addition to the definition in Article 1 means an individual who:

Meets the requirements in R9-7-710, or

Is identified as a radiation safety officer on:

A specific medical use license issued by the NRC or Agreement State; or

A medical use permit issued by a NRC master material license.

“Radioactive drug” is defined in 21 CFR 310.3(c) and includes a “radioactive biological product” as defined in 21 CFR 600.3, April 1, 2006, both of which are incorporated by reference, published by the Office of Federal Register, National Archives and Records Administration, Washington, DC 20408, and on file with the Department. These incorporated materials contain no future editions or amendments.

CHAPTER 7. RADIATION CONTROL

“Radioactive Drug Research Committee” (RDRC) means the committee established by the licensee to review all basic research involving the administration of a radioactive drug to human research subjects, taken from 21 CFR 361.1, April 1, 2006, which is incorporated by reference, published by the Office of Federal Register, National Archives and Records Administration, Washington, DC 20408, and on file with the Department. This incorporation by reference contains no future editions or amendments. Research is considered basic research if it is done for the purpose of advancing scientific knowledge, which includes basic information regarding the metabolism (including kinetics, distributions, dosimetry, and localization) of a radioactive drug or regarding human physiology, pathophysiology, or biochemistry. Basic research is not intended for immediate therapeutic or diagnostic purposes and is not intended to determine the safety and effectiveness of a radioactive drug in humans.

“Radiopharmaceutical” means any drug that exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any nonradioactive reagent kit or nuclide generator that is intended to be used in the preparation of any such substance. For purposes of this Article radiopharmaceutical is equivalent to radioactive drug.

“Remote afterloading brachytherapy device” means a device used in radiation therapy that allows the authorized user to insert, from a remote location, a radiation source into an applicator that has been previously inserted in an individual requiring treatment.

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

“Stereotactic radiosurgery” means the use of external radiation in conjunction with a stereotactic guidance device to very precisely deliver a dose.

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

“Therapeutic dosage” means a dosage of unsealed radioactive material that is intended to deliver a radiation dose to a patient or human research subject for palliative or curative treatment.

“Therapeutic dose” means a radiation dose delivered from a source containing radioactive material to a patient or human research subject for palliative or curative treatment.

“Treatment site” means the anatomical description of the tissue intended to receive a radiation dose, as described in a written directive.

“Unit dosage” means a dosage prepared for medical use for administration as a single dosage to a patient or human research subject without any further manipulation of the dosage after it is initially prepared.

“Written directive” means an authorized user’s written order for the administration of radioactive material or radiation from radioactive material to a specific patient or human research subject, as specified in R9-7-707.

Historical Note

New Section R9-7-702 recodified from R12-1-702 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-703. License for Medical Use of Radioactive Material

- A. In addition to the requirements set forth in R9-7-309, the Department shall issue a specific license for medical use of radioactive material if:
1. The applicant has appointed a radiation safety committee, meeting the requirements in R9-7-705, that will oversee the use of licensed material throughout the licensee’s facility and associated radiation safety program;
 2. The applicant possesses facilities for the clinical care of patients or human research subjects; and
 3. The individual designated on the application as an authorized user has met the training and experience requirements in R9-7-719, R9-7-721, R9-7-723, R9-7-727, R9-7-728, or R9-7-744.
- B. Specific licenses to individual authorized users for medical use of radioactive material:
1. The Department shall approve an application by a prospective individual authorized user or prospective group of authorized users for a specific license governing the medical use of radioactive material if:
 - a. The applicant satisfies the general requirements in R9-7-309;
 - b. The application is for use in the applicant’s practice at an office outside of a medical institution;
 - c. The applicant meets the training and experience requirements in subsection (A)(3); and
 - d. The applicant has a radiation safety committee, if the criteria in R9-7-705 are applicable and a RDRC, if the use is basic research involving humans.
 2. The Department shall not approve an application by a prospective authorized user or group of prospective authorized users for a specific license to receive, possess, or use radioactive material on the premises of a medical institution unless:
 - a. The use of radioactive material is limited to:
 - i. The administration of radiopharmaceuticals for diagnostic or therapeutic purposes;
 - ii. The performance of diagnostic studies on patients or human research subjects to whom a radiopharmaceutical has been administered;
 - iii. The performance of in vitro diagnostic studies; or
 - iv. The calibration and quality control checks of radioactive assay instrumentation, radiation safety instrumentation, or diagnostic instrumentation;
 - b. The authorized user brings the radioactive material and removes the radioactive material upon departure; and
 - c. The medical institution does not hold a radioactive materials license under subsection (A).
- C. Specific licenses for certain groups of medical uses of radioactive material:
1. The Department shall approve an application for a specific license under subsections (A) or (B), for any medical use or uses of radioactive material specified in Groups 100 through 1,000, in Exhibit A of this Article, for all of the materials within each group requested in the application if:
 - a. The applicant satisfies the requirements of subsections (A) and (B);
 - b. Each person involved in the preparation and use of the radioactive material is an authorized user, an

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- authorized nuclear pharmacist, or certified as a nuclear medicine technologist by the Medical Radiologic Technology Board of Examiners (MRTBE);
- c. The applicant's radiation detection and measuring instrumentation is adequate for conducting the procedures involved in the authorized uses selected from Group 100 through Group 1,000; and
 - d. The applicant's radiation safety operating procedures are adequate for handling and disposal of the radioactive material involved in the authorized uses selected from Group 100 through Group 1,000.
2. Any licensee who is authorized to use radioactive material:
 - a. In unsealed form under Groups 100, 200, 300 or 1,000 listed in Exhibit A of this Article, shall do so using radiopharmaceuticals prepared in accordance with R9-7-311(I); or
 - b. In sealed source form under Groups 400, 500, 600, or 1,000 listed in Exhibit A of this Article, shall do so using sealed sources that have been manufactured and distributed in accordance with R9-7-311(K);
 - c. In any form under group 1,000 listed in Exhibit A of this Article, shall do so using sealed and unsealed sources that have been manufactured and distributed in accordance with the specific license issued by the Department.
 3. Any licensee who is licensed according to subsection (C)(1), for one or more of the medical use groups in Exhibit A also is authorized to use radioactive material under the general license in R9-7-306(E) for the specified *in vitro* uses without filing Form ARRA-9 as required by R9-7-306(E)(2); provided, that the licensee is subject to the other provisions of R9-7-306(E).
- D.** In addition to the other license application requirements in this Section, each applicant shall include in the radiation safety program required under subsection (A)(1) a system for ensuring that each syringe and vial that contains unsealed radioactive material is labeled in accordance with R9-7-431(D).

Historical Note

New Section R9-7-703 recodified from R12-1-703 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-704. Provisions for the Protection of Human Research Subjects

- A. A licensee may conduct basic research involving human research subjects and research involving patients receiving investigational new drugs or devices if the licensee only uses the radioactive material specified on the license for the uses authorized on the license.
- B. If research is conducted, funded, supported, or regulated by a federal agency that has implemented the federal Policy for Protection of Human Research Subjects (45 CFR 46, June 23, 2005, which is incorporated by reference, published by the Office of Federal Register, National Archives and Records Administration, Washington, DC 20408, on file with the Department, and contains no future editions or amendments), the licensee shall:
 1. Obtain review and approval of the research from an Institutional Review Board (IRB); and
 2. Obtain informed consent from the human research subject.
- C. If research will not be conducted, funded, supported, or regulated by a federal agency that has implemented the federal policy in subsection (B), a medical licensee shall, before conducting research, apply for and receive a specific amend-

ment to its use license. The amendment request shall include a written commitment that the licensee will, before conducting research:

- 1. Obtain review and approval of the research from an IRB, as defined and described in the federal policy; and
 - 2. Obtain informed consent from the human research subject.
- D.** Before conducting the research described in subsection (A) the licensee shall apply to the Department for and receive a specific amendment to its medical use license. The amendment request shall include a written commitment that the licensee will, before conducting research:
- 1. Obtain any review and approval required by this Section, and
 - 2. Obtain informed consent from the human research subject if applicable.
- E.** Nothing in this Section relieves a licensee from complying with the other requirements in this Article.

Historical Note

New Section R9-7-704 recodified from R12-1-704 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-705. Authority and Responsibilities for the Radiation Protection Program

- A. A licensee's management shall appoint in writing a radiation safety officer, who agrees, in writing, to be responsible for implementing the radiation protection program. The licensee, through the RSO, shall ensure that radiation safety activities are being performed in accordance with licensee-approved procedures and regulatory requirements. Each time the RSO is changed, the licensee shall provide to the Department within 30 days an amendment request and a copy of the correspondence between the licensee's management and the candidate, accepting the position of RSO.
- B. Licensees that are authorized for two or more different types of uses of radioactive material listed in Groups 300, 400, 600, and 1,000, or two or more types of units under group 600 or 1,000, shall establish a Radiation Safety Committee (RSC) to oversee all uses of radioactive material permitted by the license. At a minimum, the RSC shall include an authorized user of each type of use permitted by the license, the RSO, a representative of the nursing service, and a representative of management who is neither an authorized user nor a RSO.
- C. If a licensee or applicant is not a health care institution and is unable to meet the RSC membership requirements in subsection (B), the licensee or applicant may request an exemption in accordance with A.R.S. § 30-654(B)(13). The request for exemption shall be made to the Department in writing and list the reasons why the health care institution is unable to meet the requirements.
- D. A licensee shall ensure that the RSC meets, at a minimum, on an annual basis and maintain the RSC meeting minutes for Department review for three years after the date of the RSC meeting.

Historical Note

New Section R9-7-705 recodified from R12-1-705 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-706. Supervision

- A. For purposes of this rule, "supervision" means the exercise of control over or direction of the use of radioactive material in the practice of medicine by an authorized user named on a radioactive material license. Supervision does not require a supervising physician's constant physical presence if the supervising physician can be easily contacted by radio, telephone, or telecommunication.

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- B. A physician may use radioactive material if the person is licensed by the Arizona Medical Board or Board of Osteopathic Examiners in Medicine and Surgery and is listed as an authorized user on the Arizona radioactive material license under which the radioactive material is obtained.
- C. A licensee that permits the receipt, possession, use, or transfer of radioactive material by an individual under the supervision of an authorized user, shall:
1. Instruct the supervised individual in the licensee's written radiation protection procedures, written directive procedures, rules, and license conditions with respect to the use of radioactive material; and
 2. Require the supervised individual to follow the instructions of the supervising authorized user for medical uses of radioactive material, written radiation protection procedures established by the licensee, written directive procedures, rules, and license conditions with respect to the medical use of radioactive material.
- D. A licensee that permits the preparation of radioactive material for medical use by an individual who is supervised by an authorized nuclear pharmacist or a physician, who is an authorized user, shall:
1. Instruct the supervised individual in the preparation of radioactive material for medical use, as appropriate to that individual's involvement with radioactive material; and
 2. Require the supervised individual to follow the instructions of the supervising authorized user or authorized nuclear pharmacist regarding the preparation of radioactive material for medical use, written radiation protection procedures established by the licensee, the rules, and license conditions.
- E. A licensee that permits supervised activities under subsections (C) and (D) is responsible for the acts and omissions of the supervised individual.
- F. A limited-service nuclear pharmacy licensee shall dispense radiopharmaceuticals only to a physician listed as an authorized user on a valid radioactive material license issued by the Department, an Agreement State, or the NRC. For purposes of this rule "limited-service nuclear pharmacy" is defined in R4-23-110.

Historical Note

New Section R9-7-706 recodified from R12-1-706 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-707. Written Directives

- A. A licensee shall ensure that a written directive is dated and signed by an authorized user before the administration of I-131 sodium iodide greater than 1.11 MBq (30 microcuries (μ Ci)), any therapeutic dosage of unsealed radioactive material or any therapeutic dose of radiation from radioactive material. If, because of the emergent nature of the patient's condition, a delay in order to provide a written directive would jeopardize the patient's health, an oral directive is acceptable. The information contained in the oral directive shall be documented as soon as possible in writing in the patient's record. A written directive shall be prepared within 48 hours of the oral directive.
- B. A written directive shall contain the patient or human research subject's name and the following information:
1. For any administration of quantities greater than 1.11 MBq (30 μ Ci) of sodium iodide I-131: the dosage;
 2. For an administration of a therapeutic dosage of unsealed radioactive material other than sodium iodide I-131: the radiopharmaceutical, dosage, and route of administration;

3. For gamma stereotactic radiosurgery: the total dose, treatment site, and values for the target coordinate settings per treatment for each anatomically distinct treatment site;
4. For teletherapy: the total dose, dose per fraction, number of fractions, and treatment site;
5. For high dose-rate remote afterloading brachytherapy: the radionuclide, treatment site, dose per fraction, number of fractions, and total dose; or
6. For all other brachytherapy, including low, medium, and pulsed dose rate remote afterloaders:
 - a. Before implantation: treatment site, the radionuclide, and dose; and
 - b. After implantation but before completion of the procedure: the radionuclide, treatment site, number of sources, and total source strength and exposure time (or the total dose).

- C. The licensee shall retain a copy of the written directive for three years after creation of the record.

Historical Note

New Section R9-7-707 recodified from R12-1-707 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-708. Procedures for Administrations Requiring a Written Directive

For any administration requiring a written directive, the licensee shall develop, implement, and maintain written procedures to provide high confidence that:

1. The patient's or human research subject's identity is verified before each administration; and
2. Each administration is in accordance with the written directive.

Historical Note

New Section R9-7-708 recodified from R12-1-708 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-709. Sealed Sources or Devices for Medical Use

A licensee may only use:

1. Sealed sources, including teletherapy sources, or devices manufactured, labeled, packaged, and distributed in accordance with a license issued under Article 3 of this Chapter, equivalent regulations of the NRC or equivalent requirements of an Agreement State; or
2. Sealed sources or devices noncommercially transferred from another medical licensee; or
3. Teletherapy sources manufactured and distributed in accordance with a license issued by the Department, the NRC, or another Agreement State.

Historical Note

New Section R9-7-709 recodified from R12-1-709 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-710. Radiation Safety Officer Training

- A. A licensee shall require an individual fulfilling the responsibilities of the radiation safety officer, described in R9-7-705, to be an individual who:
1. Is certified by a specialty board whose certification process includes all of the requirements in subsection (A)(2) and whose certification has been recognized by the Department, the NRC, or an Agreement State. To have its certification process recognized, a specialty board shall require all candidates for certification to:
 - a. Meet the following minimum requirements:
 - i. Hold a bachelor's or graduate degree from an accredited college or university in physical science or engineering or biological science with a

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- minimum of 20 college credits in physical science;
- ii. Have five or more years of professional experience in health physics (graduate training may be substituted for no more than two years of the required experience) including at least three years in applied health physics; and
 - iii. Pass an examination administered by diplomats of the specialty board, which evaluates knowledge and competence in radiation physics and instrumentation, radiation protection, mathematics pertaining to the use and measurement of radioactivity, radiation biology, and radiation dosimetry; or
- b. Meet the following minimum requirements:
- i. Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;
 - ii. Have two years of full-time practical training and/or supervised experience in medical physics;
 - (1) Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the Commission or an Agreement State; or
 - (2) In clinical nuclear medicine facilities providing diagnostic and/or therapeutic services under the direction of physicians who meet the requirements for authorized users qualified under subsection (B), R9-7-721, or R9-7-723;
 - iii. Pass an examination, administered by diplomats of the specialty board, that assesses knowledge and competence in clinical diagnostic radiological or nuclear medicine physics and in radiation safety; or
2. Has completed a structured educational program consisting of both:
- a. 200 hours of didactic and laboratory training in the following areas:
 - i. Radiation physics and instrumentation;
 - ii. Radiation protection;
 - iii. Mathematics pertaining to the use and measurement of radioactivity;
 - iv. Radiation biology; and
 - v. Radiation dosimetry; and
 - b. One year of full-time radiation safety experience under the supervision of the individual identified as the radiation safety officer on a Department, a NRC, or an Agreement State license or permit issued by a NRC master material licensee that authorizes similar type(s) of use(s) of radioactive material involving the following:
 - i. Shipping, receiving, and performing related radiation surveys;
 - ii. Using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and instruments used to measure radionuclides;
 - iii. Securing and controlling radioactive material;
 - iv. Using administrative controls to avoid mistakes in the administration of radioactive material;
 - v. Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures;
- vi. Using emergency procedures to control radioactive material; and
 - vii. Disposing of radioactive material; or
- c. Has obtained written certification, signed by a preceptor radiation safety officer, that the individual has satisfactorily completed the requirements in subsection (A)(2)(a) and (A)(2)(b) and has achieved a level of radiation safety knowledge sufficient to function independently as a radiation safety officer for a medical use licensee; or
3. Is an authorized user, authorized medical physicist, or authorized nuclear pharmacist identified on the licensee's license and has experience with the radiation safety aspects of similar types of use of radioactive material for which the individual has radiation safety officer responsibilities.
- B. Exceptions.**
1. An individual identified as a radiation safety officer on a Department, a NRC, or an Agreement State license or a permit issued by the NRC or an Agreement State broad scope licensee or master material license permit or by a master material license permittee of broad scope before the effective date of these rules need not comply with the training requirements in subsections (A)(1) through (A)(3).
 2. A physician, dentist, or podiatrist identified as an authorized user for the medical use of radioactive material on a license issued by the Department, the NRC, or an Agreement State, a permit issued by a NRC master material licensee, a permit issued by the Department, the NRC, or an Agreement State broad scope licensee, or a permit issued by a NRC master material license broad scope permittee before the effective date of these rules need not comply with the training requirements in this Article.
- C. The training and experience required in this Section shall be obtained within the seven years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.**
- D. Individuals who, under subsection (B), need not comply with training requirements described in this Section may serve as preceptors for, and supervisors of, applicants seeking authorization on Department licenses for the same uses for which these individuals are authorized.**

Historical Note

New Section R9-7-710 recodified from R12-1-710 at 24

A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

Amended by final expedited rulemaking at 24 A.A.R. 2151, effective July 12, 2018 (Supp. 18-3).

R9-7-711. Authorized Medical Physicist Training

- A. A licensee shall require an authorized medical physicist to be an individual who:
1. Is certified by a specialty board whose certification process includes all of the training and experience requirements in subsection (A)(3)(b) and (A)(3)(c) and whose certification has been recognized by the Department, the NRC, or an Agreement State; or
 2. Training requirements.
 - a. Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;
 - b. Have two years of full-time practical training and/or supervised experience in medical physics;

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- i. Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the NRC or an Agreement State; or
 - ii. In clinical radiation facilities providing high-energy, external beam therapy (photons and electrons with energies greater than or equal to 1 million electron volts) and brachytherapy services under the direction of physicians who meet the requirements for authorized users in R9-7-710, R9-7-719, R9-7-721, R9-7-723, R9-7-727, R9-7-728, or R9-7-744; and
 - c. Pass an examination, administered by diplomates of the specialty board, that assesses knowledge and competence in clinical radiation therapy, radiation safety, calibration, quality assurance, and treatment planning for external beam therapy, brachytherapy, and stereotactic radiosurgery; or
3. Training requirements alternative.
 - a. Holds a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university; and has completed one year of full-time training in medical physics and an additional year of full-time work experience under the supervision of an individual who meets the requirements for an authorized medical physicist for the type(s) of use for which the individual is seeking authorization. This training and work experience must be conducted in clinical radiation facilities that provide high-energy, external beam therapy (photons and electrons with energies greater than or equal to 1 million electron volts) and brachytherapy services and must include:
 - i. Performing sealed source leak tests and inventories;
 - ii. Performing decay corrections;
 - iii. Performing full calibration and periodic spot checks of external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and
 - iv. Conducting radiation surveys around external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and
 - b. Has obtained written attestation that the individual has satisfactorily completed the requirements in both subsections (A)(2) and (A)(3)(c), or in both subsections (A)(3)(a) and (A)(3)(c); and has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written attestation must be signed by a preceptor authorized medical physicist who meets the requirements in section, or equivalent Agreement State requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status; and
 - c. Has training for the type(s) of use for which authorization is sought that includes hands-on device operation, safety procedures, clinical use, and the operation of a treatment planning system. This training requirement may be satisfied by satisfactorily completing either a training program provided by the vendor or by training supervised by an authorized medical physicist authorized for the type(s) of use for which the individual is seeking authorization.
- B.** Exceptions. An individual identified as a teletherapy or medical physicist on a Department, a NRC, or an Agreement State license or a permit issued by the NRC or an Agreement State broad scope licensee or master material license permit or by a master material license permittee of broad scope before the effective date of these rules need not comply with the training requirements in subsection (A).
- C.** The training and experience required in this Section shall be obtained within the seven years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.
- D.** Individuals who, under subsection (B), need not comply with training requirements described in this Section may serve as preceptors for, and supervisors of, applicants seeking authorization on Department licenses for the same uses for which these individuals are authorized.

Historical Note

New Section R9-7-711 recodified from R12-1-711 at 24

A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

Amended by final expedited rulemaking at 24 A.A.R.

2151, effective July 12, 2018 (Supp. 18-3).

R9-7-712. Authorized Nuclear Pharmacist Training

- A.** A licensee shall require the authorized nuclear pharmacist to be a pharmacist who:
1. Is certified as a nuclear pharmacist by a specialty board whose certification process has been recognized by the Department, the NRC, or an Agreement State. To have its certification process recognized, a specialty board shall require all candidates for certification to:
 - a. Have graduated from a pharmacy program accredited by the American Council on Pharmaceutical Education (ACPE) or have passed the Foreign Pharmacy Graduate Examination Committee (FPGEC) examination;
 - b. Hold a current, active license to practice pharmacy in Arizona;
 - c. Provide evidence of having acquired at least 4000 hours of training/experience in nuclear pharmacy practice. Academic training may be substituted for no more than 2000 hours of the required training and experience; and
 - d. Pass an examination in nuclear pharmacy administered by diplomates of the specialty board, that assesses knowledge and competency in procurement, compounding, quality assurance, dispensing, distribution, health and safety, radiation safety, provision of information and consultation, monitoring patient outcomes, research and development; or
 2. Has completed 700 hours in a structured educational program consisting of both:
 - a. 200 hours of classroom and laboratory training in the following areas:
 - i. Radiation physics and instrumentation;
 - ii. Radiation protection;
 - iii. Mathematics pertaining to the use and measurement of radioactivity;
 - iv. Chemistry of radioactive material for medical use; and
 - v. Radiation biology; and

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- b. Supervised practical experience in a nuclear pharmacy involving:
 - i. Shipping, receiving, and performing related radiation surveys;
 - ii. Using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;
 - iii. Calculating, assaying, and safely preparing dosages for patients or human research subjects;
 - iv. Using administrative controls to avoid medical events in the administration of radioactive material; and
 - v. Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures; and
 - 3. Has obtained written attestation, signed by a preceptor authorized nuclear pharmacist, that the individual has satisfactorily completed the requirements in subsection (A)(2) and has achieved a level of competency sufficient to function independently as an authorized nuclear pharmacist.
 - B.** Exceptions. An individual identified as a nuclear pharmacist on a Department, a NRC, or an Agreement State license or a permit issued by the NRC or an Agreement State broad scope licensee or master material license permit or by a master material license permittee of broad scope before the effective date of these rules need not comply with the training requirements in subsections (A)(1) through (A)(3).
 - C.** The training and experience required in this Section shall be obtained within the seven years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.
 - D.** Individuals who, under subsection (B), need not comply with training requirements described in this Section may serve as preceptors for, and supervisors of, applicants seeking authorization on Department licenses for the same uses for which these individuals are authorized.
- Historical Note**
New Section R9-7-712 recodified from R12-1-712 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).
- R9-7-713. Determination of Prescribed Dosages, and Possession, Use, and Calibration of Instruments**
- A.** A licensee shall determine and record the activity of each dosage before medical use.
 - B.** For a unit dosage, this determination shall be made by:
 1. Direct measurement of radioactivity; or
 2. Decay correction, based on the activity or activity concentration determined by:
 - a. A manufacturer or preparer licensed under R9-7-311 or equivalent NRC or Agreement State requirements; or
 - b. A Department, a NRC, or an Agreement State licensee for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by FDA or;
 - c. A PET radioactive drug producer licensed under 1 R9-7-311 or equivalent NRC or Agreement State requirements.
 - C.** For other than unit dosages, this determination shall be made by:
 1. Direct measurement of radioactivity;
 2. Combination of measurement of radioactivity and mathematical calculations; or
 3. Combination of volumetric measurements and mathematical calculations based on the measurement made by a manufacturer or preparer licensed under R9-7-311, or equivalent NRC or Agreement State requirements.
 - D.** Unless otherwise directed by the authorized user, a licensee may not use a dosage if the dosage does not fall within the prescribed dosage range or if the dosage differs from the prescribed dosage by more than 20 percent.
 - E.** A licensee shall retain a record of the dosage determination required by this Section for Department inspection for three years.
 - F.** For direct measurements performed in accordance with subsection (B)(1), a licensee shall possess and use instrumentation to measure the activity of the dosage before it is administered to each patient or human research subject.
 - G.** A licensee shall calibrate the instrumentation required in subsection (F) in accordance with nationally recognized standards, the manufacturer's instructions, or the following procedures.
 1. The procedures that may be followed are:
 - a. Check each dose calibrator for constancy with a dedicated check source at the beginning of each day of use;
 - b. Test each dose calibrator for accuracy upon installation and at least annually thereafter by assaying at least two sealed sources containing different radionuclides whose activity the manufacturer has determined within 5 percent of its stated activity, whose activity is at least 10 microcuries for radium-226 and 50 microcuries for any other photon-emitting radionuclide, and at least one of which has a principal photon energy between 100 keV and 500 keV;
 - c. Test each dose calibrator for linearity upon installation and at least quarterly thereafter over a range from the highest dosage that will be administered to a patient or human research subject to 1.1 megabecquerels (30 microcuries);
 - d. Test each dose calibrator for geometry dependence upon installation over the range of volumes and volume configurations for which it will be used. The licensee shall keep a record of this test for the duration of the use of the dose calibrator;
 - e. Perform appropriate checks and tests required by this Section following adjustment or repair of the dose calibrator; and
 - f. Mathematically correct dosage readings for any geometry or linearity error that exceeds 10 percent if the dosage is greater than 10 microcuries and shall repair or replace the dose calibrator if the accuracy or constancy error exceeds 10 percent.
 2. A licensee shall maintain the dose calibrator in accordance with this subsection, even though the dose calibrator is only used to "verify" a dosage prepared by a supplier authorized in subsection (B)(2).
 3. A licensee shall maintain on file for Department review nationally recognized standards or manufacturer's instructions used to maintain a dose calibrator and meet the requirements of subsection (G).
 - H.** A licensee shall calibrate the survey instruments before first use, annually, and following a repair that affects the calibration. A licensee shall:
 1. Calibrate all scales with readings up to 10 mSv (1000 mrem) per hour with a radiation source;

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2. Calibrate two separated readings on each scale or decade that will be used to show compliance; and
 3. Conspicuously note on the instrument the date of calibration.
- I. A licensee may not use survey instruments if the difference between the indicated exposure rate and the calculated exposure rate is more than 20 percent.
- J. A licensee shall retain records of instrument calibration for three years following the calibration.

Historical Note

New Section R9-7-713 recodified from R12-1-713 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-714. Authorization for Calibration, Transmission, and Reference Sources

Any person authorized by R9-7-703 for medical use of radioactive material may receive, possess, and use any of the following radioactive material for check, calibration, transmission, and reference use.

1. Sealed sources, not exceeding 1.11 GBq (30 mCi) each, manufactured and distributed by a person licensed under Article 3 of this Chapter or equivalent NRC or Agreement State regulations.
2. Sealed sources, not exceeding 1.11 GBq (30 mCi) each, redistributed by a licensee authorized to redistribute the sealed sources manufactured and distributed by a person licensed under Article 3 of this Chapter, providing the redistributed sealed sources are in the original packaging and shielding and are accompanied by the manufacturer's approved instructions.
3. Any radioactive material with a half-life not longer than 120 days in individual amounts not to exceed 0.56 GBq (15 mCi).
4. Any radioactive material with a half-life longer than 120 days in individual amounts not to exceed the smaller of 7.4 MBq (200 μ Ci) or 1000 times the quantities in Article 4, Appendix B of this Chapter.
5. Technetium-99m in amounts as needed.
6. A licensee is limited to five sources of radiation authorized under subsections (1) through (3), unless otherwise specified in the licensee's radioactive material license.

Historical Note

New Section R9-7-714 recodified from R12-1-714 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-715. Requirements for Possession of Sealed Sources and Brachytherapy Sources

- A licensee in possession of any sealed source or brachytherapy source shall follow the radiation safety and handling instructions supplied by the manufacturer.
- B. A licensee in possession of a sealed source shall test the source for leakage in accordance with R9-7-417.
- C. A licensee in possession of sealed sources or brachytherapy sources, except for gamma stereotactic radiosurgery sources, shall conduct a physical inventory every six months of all sources in its possession. During the period of time between the inventories, the licensee shall add each acquired sealed source to the inventory record and remove from the inventory record each source that leaves the licensee's control.
- D. A licensee shall document the inventories conducted under subsection (C) and maintain inventory records in accordance with R9-7-450.

Historical Note

New Section R9-7-715 recodified from R12-1-715 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-716. Surveys of Ambient Radiation Exposure Rate, Surveys for Contamination, and PET Radiation Exposure Concerns

- A. In addition to the surveys required in Article 4 of this Chapter, a licensee shall survey with a radiation detection survey instrument at the end of each day of use all areas where unsealed radioactive material, requiring a written directive, is prepared for use or administered. In areas of routine use, that are to be released for unrestricted use, a licensee shall perform a survey of the area using an instrument appropriate for detecting contamination before releasing the area for unrestricted use.
- B. A licensee shall obtain the services of a person, experienced in the principles of radiation protection and installation design, to design a PET facility and perform a radiation survey when the facility is ready for patient imaging. The licensee shall provide a copy of the installation radiation survey to the Department within 30 days of imaging the first patient.
- C. The licensee shall use engineering controls or shield each PET use area with protective barriers necessary to comply with the radiation exposure limits in R9-7-408 and R9-7-416.
 1. At the time of application for a new license or amendment to an existing license, and before imaging of the first patient, the licensee shall provide to the Department a copy of the installation report signed by the contractor who installed the shielding material recommended by a person meeting the requirements in subsection (B) and a copy of the installation radiation survey required in subsection (B).
 2. The licensee shall perform shielding calculations in accordance with *AAPM Task Group 108: PET and PET/CT Shielding Requirements*, in Medical Physics, Vol. 33, No. 1, January 2006, which is incorporated by reference, published by the American Association of Physicists in Medicine, One Physics Ellipse, College Park, MD 20740, and on file with the Department. This incorporation by reference contains no future editions or amendments. In lieu of these procedures, the licensee may use equivalent calculations approved by the Department.
- D. As part of the annual ALARA review required in R9-7-407, the licensee shall document a review of the PET patient workload and associated change, if any, in public exposure resulting from the installed facility shielding and other public radiation exposure controls in use at the time of the review.

Historical Note

New Section R9-7-716 recodified from R12-1-716 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-717. Release of Individuals Containing Radioactive Material or Implants Containing Radioactive Material

- A. A licensee may authorize the release from its control of any individual who has been administered unsealed radioactive material or implants containing radioactive material, if the total effective dose equivalent to any other individual from exposure to the released individual is not likely to exceed 5 millisieverts (0.5 rem).
- B. A licensee shall provide the released individual, or the individual's parent or guardian, with instructions, including written instructions, on actions recommended to maintain doses to other individuals as low as is reasonably achievable if the total effective dose equivalent to any other individual is likely to exceed 1 millisievert (0.1 rem). If the total effective dose equivalent to a nursing infant or child could exceed 1 mil-

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- lisievert (0.1 rem) assuming there were no interruption of breast-feeding, the instructions shall also include:
1. Guidance on the interruption or discontinuation of breast-feeding; and
 2. Information on the potential consequences, if any, of failure to follow the guidance.
- C. A licensee shall maintain a record of the basis for authorizing the release of an individual and instructions provided to a breast-feeding female for three years from the date of the administration performed under subsection (A). Nothing in this rule relieves the licensee from the personnel exposure requirements in Article 4.

Historical Note

New Section R9-7-717 recodified from R12-1-717 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-718. Mobile Medical Service

- A. A licensee providing mobile medical service shall:
1. Obtain a letter signed by the management of each client for which services are rendered that permits the use of radioactive material at the client's address and clearly delineates the authority and responsibility of the licensee and the client;
 2. Check instruments used to measure the activity of unsealed radioactive material for proper function before medical use at each client's address or on each day of use, whichever is more frequent. At a minimum, the check for proper function required by this subsection shall include a constancy check;
 3. Check survey instruments for proper operation with a dedicated check source before use at each client's address; and
 4. Before leaving a client's address, survey all areas of use to ensure compliance with the requirements in Article 4 of this Chapter.
- B. A mobile medical service may not have radioactive material delivered from the manufacturer or the distributor to the client unless the client has a license allowing its possession. If applicable, radioactive material delivered to the client shall be received and handled in conformance with the client's license.
- C. A licensee providing mobile medical services shall retain the letter required in subsection (A)(1) and the record of each survey required in subsection (A)(4) for three years from the date of the survey.

Historical Note

New Section R9-7-718 recodified from R12-1-718 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-719. Training for Uptake, Dilution, and Excretion Studies

- A. Except as provided in R9-7-710, the licensee shall require an authorized user of unsealed radioactive material for the uses authorized under Group 100 to be a physician who:
1. Is certified by a medical specialty board whose certification process has been recognized by the NRC or an Agreement State and who meets the requirements in subsection (A)(3). To have its certification process recognized, a specialty board shall require all candidates for certification to:
 - a. Complete 60 hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies as described in subsection (A)(3); and
 - b. Pass an examination, administered by diplomats of the specialty board, that assesses knowledge and

- competence in radiation safety, radionuclide handling, and quality control; or
2. Is an authorized user under R9-7-721, R9-7-723, the NRC, or equivalent Agreement State requirements; or
 3. Has completed 60 hours of training and experience, including a minimum of eight hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies. The training and experience must include:
 - a. Classroom and laboratory training in the following areas:
 - i. Radiation physics and instrumentation;
 - ii. Radiation protection;
 - iii. Mathematics pertaining to the use and measurement of radioactivity;
 - iv. Chemistry of radioactive material for medical use; and
 - v. Radiation biology; and
 - b. Work experience, under the supervision of an authorized user who meets the requirements in this Article, NRC, or equivalent Agreement State requirements, involving:
 - i. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
 - ii. Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;
 - iii. Calculating, measuring, and safely preparing patient or human research subject dosages;
 - iv. Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;
 - v. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and
 - vi. Administering dosages of radioactive drugs to patients or human research subjects; and
 - c. Has obtained written attestation, signed by a preceptor authorized user who meets the requirements of R9-7-719, R9-7-721, or R9-7-723, the NRC, or equivalent Agreement State requirements; that the individual has satisfactorily completed the requirements in subsection (A)(1) or (A)(3) and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under Exhibit A of this Article.
- B. The training and experience shall have been obtained within the seven years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.
- C. Individuals who, under R9-7-710(B), need not comply with training requirements described in this Section may serve as preceptors for, and supervisors of, applicants seeking authorization on Department licenses for the same uses for which these individuals are authorized.

Historical Note

New Section R9-7-719 recodified from R12-1-719 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

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Amended by final expedited rulemaking at 24 A.A.R.
2151, effective July 12, 2018 (Supp. 18-3).

R9-7-720. Permissible Molybdenum-99, Strontium-82, and Strontium-85 Concentrations

- A. A licensee may not administer to humans a radiopharmaceutical that contains more than 0.15 kilobecquerel of molybdenum-99 per megabecquerel of technetium-99m (0.15 microcurie of molybdenum-99 per millicurie of technetium-99m) or, more than 0.02 kilobecquerel of strontium-82 per megabecquerel of rubidium-82 chloride injection (0.02 microcurie of strontium-82 per millicurie of rubidium-82 chloride); or more than 0.2 kilobecquerel of strontium-85 per megabecquerel of rubidium-82 chloride injection (0.2 microcurie of strontium-85 per millicurie of rubidium-82).
- B. A licensee that uses molybdenum-99/technetium-99m generators for preparing a technetium-99m radiopharmaceutical shall measure the molybdenum-99 concentration of the first eluate after receipt of a generator to demonstrate compliance with subsection (A).
- C. A licensee that uses a strontium-82/rubidium-82 generator for preparing a rubidium-82 radiopharmaceutical shall, before the first patient use of the day, measure the concentration of radionuclides strontium-82 and strontium-85 to demonstrate compliance with subsection (A).
- D. A licensee shall maintain a record of each molybdenum-99 concentration measurement or strontium-82 and strontium-85 concentrations measurements for three years following completion of the measurement.

Historical Note

New Section R9-7-720 recodified from R12-1-720 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-721. Training for Imaging and Localization Studies Not Requiring a Written Directive

Except as provided in R9-7-710, the licensee shall require an authorized user of unsealed radioactive material for the uses authorized under Group 200 to be a physician who:

1. Is certified by a medical specialty board whose certification process has been recognized by the NRC or an Agreement State and who meets the requirements in subsection (3). To have its certification process recognized, a specialty board shall require all candidates for certification to:
 - a. Complete 700 hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for imaging and localization studies as described in subsection (3); and
 - b. Pass an examination, administered by diplomates of the specialty board, that assesses knowledge and competence in radiation safety, radionuclide handling, and quality control;
2. Is an authorized user under R9-7-723, the NRC, or equivalent Agreement State requirements; or
3. Has completed 700 hours of training and experience, including a minimum of 80 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for imaging and localization studies. The training and experience must include:
 - a. Classroom and laboratory training in the following areas:
 - i. Radiation physics and instrumentation;
 - ii. Radiation protection;
 - iii. Mathematics pertaining to the use and measurement of radioactivity;

- iv. Chemistry of radioactive material for medical use; and
- v. Radiation biology; and

- b. Work experience, under the supervision of an authorized user who meets the requirements in R9-7-710, R9-7-721, or R9-7-723 and in subsection (3)(b)(vii); the requirements of the NRC; or equivalent Agreement State requirements, involving:
 - i. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
 - ii. Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;
 - iii. Calculating, measuring, and safely preparing patient or human research subject dosages;
 - iv. Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;
 - v. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and
 - vi. Administering dosages of radioactive drugs to patients or human research subjects; and
 - vii. Eluting generator systems appropriate for preparation of radioactive drugs for imaging and localization studies, measuring and testing the elate for radionuclide purity, and processing the elate with reagent kits to prepare labeled radioactive drugs; and

- c. Has obtained written attestation, signed by a preceptor authorized user who meets the requirements as an authorized user for Exhibit A group 200 nuclides, NRC, or equivalent Agreement State requirements, that the individual has satisfactorily completed the requirements in subsection (1) or (3) and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under Exhibit A of this Article.

Historical Note

New Section R9-7-721 recodified from R12-1-721 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).
Amended by final expedited rulemaking at 24 A.A.R.
2151, effective July 12, 2018 (Supp. 18-3).

R9-7-722. Safety Instruction and Precautions for Use of Unsealed Radioactive Material Requiring a Written Directive

- A. A licensee shall provide radiation safety instruction, initially and at least annually, for all personnel caring for the patient or human research subject receiving radiopharmaceutical therapy and hospitalized for compliance with R9-7-717. To satisfy this requirement, the instruction shall describe the licensee's procedures for:
 1. Patient or human research subject control;
 2. Visitor control;
 3. Contamination control;
 4. Waste control; and
- B. For each patient or human research subject who cannot be released under R9-7-717, a licensee shall:
 1. Quarter the patient or the human research subject in a private room with a private sanitary facility;
 2. Visibly post the patient's or the human research subject's room with a "Radioactive Materials" sign.
 3. Note on the door or in the patient's or human research subject's chart where and how long visitors may stay in the patient's or the human research subject's room; and

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- 4. Monitor material and items removed from the patient's or the human research subject's room to determine that their radioactivity cannot be distinguished from the natural background radiation level with a radiation detection survey instrument set on its most sensitive scale and with no interposed shielding, or handle the material and items as radioactive waste.
- C. A licensee shall notify the radiation safety officer, or his or her designee, and the authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.
- D. A licensee shall retain records of instruction and safety procedures performed under this rule for three years from the date of the activity.

Historical Note

New Section R9-7-722 recodified from R12-1-722 at 24
A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-723. Training for Use of Unsealed Radioactive Material Requiring a Written Directive, Including Treatment of Hyperthyroidism, and Treatment of Thyroid Carcinoma

- A. Except as provided in R9-7-710, the licensee shall require an authorized user of unsealed radioactive material for the uses authorized under Group 300 to be a physician who:
 - 1. Is certified by a medical specialty board whose certification process has been recognized by the NRC or an Agreement State and who meets the requirements in subsection (A)(2). To have its certification process recognized, a specialty board shall require all candidates for certification to:
 - a. Successfully complete residency training in a radiation therapy or nuclear medicine training program or a program in a related medical specialty. These residency training programs must include 700 hours of training and experience as described in (A)(2). Eligible training programs must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Post-Graduate Training of the American Osteopathic Association; and
 - b. Pass an examination, administered by diplomates of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, and quality assurance, and clinical use of unsealed radioactive material for which a written directive is required; or
 - 2. Has completed 700 hours of training and experience, including a minimum of 200 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material requiring a written directive. The training and experience must include:
 - a. Classroom and laboratory training in the following areas:
 - i. Radiation physics and instrumentation;
 - ii. Radiation protection;
 - iii. Mathematics pertaining to the use and measurement of radioactivity;
 - iv. Chemistry of radioactive material for medical use; and
 - v. Radiation biology; and
 - b. Work experience, under the supervision of an authorized user who meets the requirements in this Article, NRC, or equivalent Agreement State requirements, involving:
- i. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
- ii. Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;
- iii. Calculating, measuring, and safely preparing patient or human research subject dosages;
- iv. Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;
- v. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures;
- vi. Administering dosages of radioactive drugs to patients or human research subjects involving a minimum of three cases in each of the following categories for which the individual is requesting authorized user status:
 - (1) Oral administration of less than or equal to 1.22 gigabecquerels (33 millicuries) of sodium iodide I-131, for which a written directive is required (Experience with at least three cases in Category (A)(2)(b)(vi)(2) also satisfies this requirement);
 - (2) Oral administration of greater than 1.22 gigabecquerels (33 millicuries) of sodium iodide I-131;
 - (3) Parenteral administration of any beta emitter, or a photon-emitting radionuclide with a photon energy less than 150 keV, for which a written directive is required; and/or
 - (4) Parenteral administration of any other radionuclide, for which a written directive is required; and
- c. Has obtained written attestation, signed by a preceptor authorized user who meets the requirements as an authorized user for Exhibit A group 300 nuclides, NRC, or equivalent Agreement State requirements, that the individual has satisfactorily completed the requirements in subsection (A)(1) or (A)(2) and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under Exhibit A of this Article. The written attestation must be signed by a preceptor authorized user who meets the requirements in this Section, NRC, or equivalent Agreement State requirements. The preceptor authorized user, who meets the requirements in subsection (B) must have experience in administering dosages in the same dosage category or categories as the individual requesting authorized user status.
- B. Except as provided in R9-7-710, a licensee shall require an authorized user of iodine-131 for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 gigabecquerels (33 millicuries) to be a physician who has completed the training requirements in 10 CFR 35.392, January 1, 2013, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.
- C. Except as provided in R9-7-710, a licensee shall require an authorized user of iodine-131 for the oral administration of sodium iodide I-131 requiring a written directive in quantities

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greater than 1.22 gigabecquerels (33 millicuries) to be a physician who has completed the training requirements in 10 CFR 35.394, January 1, 2013, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.

- D. Except as provided in R9-7-710, a licensee shall require an authorized user for the parenteral administration of unsealed radioactive material requiring a written directive to be a physician who has completed the training requirements in 10 CFR 35.396, January 1, 2013, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.
- E. The training and experience shall have been obtained within the seven years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.

Historical Note

New Section R9-7-723 recodified from R12-1-723 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-724. Surveys after Brachytherapy Source Implant and Removal; Accountability

- A. A licensee shall make a survey to locate and account for all sources that have not been implanted immediately after implanting sources in a patient or a human research subject.
- B. A licensee shall make a survey of the patient or the human research subject with a radiation detection survey instrument immediately after removing the last temporary implant source to confirm that all sources have been removed.
- C. A licensee shall maintain accountability at all times for all sources in storage or use.
- D. A licensee shall return brachytherapy sources to a secure storage area as soon as possible after removing sources from a patient or a human research subject.
- E. A licensee shall record the procedures performed in subsections (A) through (D) and retain the records for three years following completion of the record.

Historical Note

New Section R9-7-724 recodified from R12-1-724 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-725. Safety Instructions and Precautions for Brachytherapy Patients that Cannot be Released Under R9-7-717

- A. In addition to the training requirements in Article 10, a licensee shall provide radiation safety instruction, initially and at least annually, to personnel caring for patients or human research subjects who are receiving brachytherapy and cannot be released under R9-7-717. To satisfy this requirement, the instruction shall be commensurate with the duties of the personnel and include the:
 1. Size and appearance of the brachytherapy sources;
 2. Safe handling and shielding instructions;
 3. Patient or human research subject control;
 4. Visitor control, including both:
 - a. Routine visitation of hospitalized individuals in accordance with Article 4 of this Chapter;
 - b. Visitation authorized in accordance with Article 4 of this Chapter, and
 5. Notification of the radiation safety officer, or his or her designee, and an authorized user if the patient or the human research subject has a medical emergency or dies.
- B. For each patient or human research subject who is receiving brachytherapy and cannot be released under R9-7-717, a licensee shall:

- 1. Not quarter the patient or the human research subject in the same room as an individual who is not receiving brachytherapy;
- 2. Visibly post the patient's or human research subject's room with a "Radioactive Materials" sign; and
- 3. Note on the door or in the patient's or human research subject's chart where and how long visitors may stay in the patient's or human research subject's room.

- C. A licensee shall have applicable emergency response equipment available near each treatment room to respond to a source:
 1. Dislodged from the patient; and
 2. Lodged within the patient following removal of the source applicators.
- D. A licensee shall notify the radiation safety officer, or the RSO's designee, and an authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.
- E. A licensee shall record the instructions given under subsection (A) and retain the records for three years after recording the instructions.

Historical Note

New Section R9-7-725 recodified from R12-1-725 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-726. Calibration Measurements of Brachytherapy Sources, Decay of Sources Used for Ophthalmic Treatments, and Computerized Treatment Planning Systems

- A. Before the first medical use of a brachytherapy source after the effective date of this rule, a licensee shall have:
 1. Determined the source output or activity using a dosimetry system that meets the requirements of R9-7-733(A);
 2. Determined source positioning accuracy within applicators; and
 3. Used published protocols currently accepted by nationally recognized bodies to meet the requirements of subsections (A)(1) and (A)(2).
- B. A licensee may use measurements provided by the source manufacturer or by a calibration laboratory accredited by the American Association of Physicists in Medicine that are made in accordance with subsection (A).
- C. A licensee shall mathematically correct the outputs or activities determined in subsection (A) for physical decay at intervals consistent with one percent physical decay.
- D. Only an authorized medical physicist shall calculate the activity of each strontium-90 source that is used to determine the treatment times for ophthalmic treatments. The decay shall be based on the activity determined under subsection (A).
- E. A licensee shall perform acceptance testing on the treatment planning system of therapy-related computer systems in accordance with published protocols accepted by nationally recognized bodies. At a minimum, the acceptance testing shall include, as applicable, verification of:
 1. The source-specific input parameters required by the dose calculation algorithm;
 2. The accuracy of dose, dwell time, and treatment time calculations at representative points;
 3. The accuracy of isodose plots and graphic displays; and
 4. The accuracy of the software used to determine sealed source positions from radiographic images.
- F. A licensee shall retain records of each source activity determination and ophthalmic source decay correction, and documentation of the acceptance testing protocol required under subsection (E) for three years after the date of the procedure required in subsections (A) and (D), and for the records created in conjunction with subsection (E), the record shall be

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maintained for three years from the last date of the protocol's use.

Historical Note

New Section R9-7-726 recodified from R12-1-726 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-727. Training for Use of Manual Brachytherapy Sources and Training for the Use of Strontium-90 Sources for Treatment of Ophthalmic Disease

A. Except as provided in R9-7-710, the licensee shall require an authorized user of a manual brachytherapy source for the uses authorized under this Article to be a physician who:

1. Is certified by a medical specialty board whose certification process has been recognized by the NRC or an Agreement State and who meets the requirements in subsection (A)(2). To have its certification process recognized, a specialty board shall require all candidates for certification to:
 - a. Successfully complete a minimum of three years of residency training in a radiation oncology program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Post-Graduate Training of the American Osteopathic Association; and
 - b. Pass an examination, administered by diplomates of the specialty board, that tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of manual brachytherapy; or
2. Has completed a structured educational program in basic radionuclide handling techniques applicable to the use of manual brachytherapy sources that includes:
 - a. 200 hours of classroom and laboratory training in the following areas:
 - i. Radiation physics and instrumentation;
 - ii. Radiation protection;
 - iii. Mathematics pertaining to the use and measurement of radioactivity;
 - iv. Radiation biology; and
 - b. 500 hours of work experience, under the supervision of an authorized user who meets the requirements in this Section, or equivalent NRC or Agreement State requirements at a medical institution, involving:
 - i. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
 - ii. Checking survey meters for proper operation;
 - iii. Preparing, implanting, and removing brachytherapy sources;
 - iv. Maintaining running inventories of material on hand;
 - v. Using administrative controls to prevent a medical event involving the use of radioactive material;
 - vi. Using emergency procedures to control radioactive material; and
- c. Has completed three years of supervised clinical experience in radiation oncology, under an authorized user who meets the requirements in this Section, or equivalent Agreement State requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians

and Surgeons of Canada or the Committee on Post-doctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by subsection (A)(2)(b); and

- d. Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in this Section, NRC, or equivalent Agreement State requirements, that the individual has satisfactorily completed the requirements in subsection (A)(1) or (A)(2) and has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy sources for the medical uses authorized under Exhibit A of this Article.
- B. Except as provided in R9-7-710, a licensee shall require an authorized user of strontium-90 for ophthalmic radiotherapy to be a physician who has completed the training requirements in 10 CFR 35.491, January 1, 2013, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.
- C. The training and experience shall have been obtained within the seven years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.

Historical Note

New Section R9-7-727 recodified from R12-1-727 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-728. Training for Use of Sealed Sources for Diagnosis

A. Except as provided in R9-7-710, the licensee shall require the authorized user of a diagnostic sealed source for use in a device authorized under Group 500 to be a physician, dentist, or podiatrist who is certified by a medical specialty board whose certification process has been recognized by the NRC or an Agreement State and who meets the requirements in subsections (A)(1) and (2); or

1. Has completed eight hours of classroom and laboratory training in basic radionuclide handling techniques specifically applicable to the use of the device. The training must include:
 - a. Radiation physics and instrumentation;
 - b. Radiation protection;
 - c. Mathematics pertaining to the use and measurement of radioactivity;
 - d. Radiation biology; and
2. Has completed training in the use of the device for the uses requested.
- B. The training and experience shall have been obtained within the seven years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.

Historical Note

New Section R9-7-728 recodified from R12-1-728 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-729. Surveys of Patients and Human Research Subjects Treated with a Remote Afterloader Unit

A. Before releasing a patient or a human research subject from licensee control, a licensee shall survey the patient or the human research subject and the remote afterloader unit with a portable radiation detection survey instrument to confirm that each source has been removed from the patient or human research subject and returned to the safe shielded position.

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- B. A licensee shall make records of these surveys conducted under subsection (A) and retain them for three years from the date of each survey.

Historical Note

New Section R9-7-729 recodified from R12-1-729 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-730. Installation, Maintenance, Adjustment, and Repair of an Afterloader Unit, Teletherapy Unit, or Gamma Stereotactic Radiosurgery Unit

- A. Only a person specifically licensed by the Department, the NRC, or an Agreement State shall install, maintain, adjust, or repair a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit that involves work on any source shielding, the source's driving unit, or other electronic or mechanical component that could expose a source, reduce the shielding around a source, or compromise the radiation safety of a unit or a source.
- B. Except for low dose-rate remote afterloader units, only a person specifically licensed by the Department, the NRC, or an Agreement State shall install, replace, relocate, or remove a sealed source or source contained in other remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units.
- C. For a low dose-rate remote afterloader unit, only a person specifically licensed by the Department, the NRC, or an Agreement State or an authorized medical physicist shall install, replace, relocate, or remove a sealed source contained in the unit.
- D. A licensee shall retain a record of the installation, maintenance, adjustment, and repair of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units for three years from the completion date of the activity listed in this Section.

Historical Note

New Section R9-7-730 recodified from R12-1-730 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-731. Safety Procedures and Instructions for Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units

- A. A licensee shall:
1. Secure the unit, the console, the console keys, and the treatment room when not in use or unattended;
 2. Permit only individuals approved by the authorized user, radiation safety officer, or authorized medical physicist to be present in the treatment room during treatment with a source;
 3. Prevent dual operation of more than one radiation producing device in a treatment room if applicable; and
 4. Develop, implement, and maintain written procedures for responding to an abnormal situation when the operator is unable to place a source in the shielded position, or remove the patient or human research subject from the radiation field with controls from outside the treatment room. These procedures shall include:
 - a. Instructions for responding to equipment failures and the names of the individuals responsible for implementing corrective actions;
 - b. The process for restricting access to and posting of the treatment area to minimize the risk of inadvertent exposure; and
 - c. The names and telephone numbers of the authorized users, the authorized medical physicist, and the radiation safety officer to be contacted if the unit or console operates abnormally.

- B. A licensee shall post instructions at the unit console to inform the operator of:
1. The location of the procedures required by subsection (A)(4); and
 2. The names and telephone numbers of the authorized users, the authorized medical physicist, and the radiation safety officer to be contacted if the unit or console operates abnormally.
- C. A licensee shall provide instruction, initially and at least annually, to all individuals who operate the unit, as appropriate to the individual's assigned duties, in:
1. The procedures identified in subsection (A)(4); and
 2. The operating procedures for the unit.
- D. A licensee shall ensure that operators, authorized medical physicists, and authorized users participate in drills of the emergency procedures, initially and at least annually.
- E. A licensee shall retain a record of individuals receiving instruction required by subsection (C) for three years from the date of the instruction.
- F. A licensee shall maintain a copy of the procedures required by subsections (A)(4) and (C)(2) for Department review. The copy shall be maintained for three years beyond the termination date of the activities for which the procedures were written.

Historical Note

New Section R9-7-731 recodified from R12-1-731 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-732. Safety Precautions for Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units

- A. A licensee shall control access at each entrance to a treatment room.
- B. A licensee shall equip each entrance to the treatment room with an electrical interlock system that will:
1. Prevent the operator from initiating the treatment cycle unless each treatment room entrance door is closed;
 2. Cause each source to be shielded when an entrance door is opened; and
 3. Prevent any source from being exposed following an interlock interruption until all treatment room entrance doors are closed and the source's on-off control is reset at the console.
- C. A licensee shall require any individual entering the treatment room to assure, through the use of appropriate radiation monitors, that radiation levels have returned to ambient levels.
- D. Except for low-dose remote afterloader units, a licensee shall construct or equip each treatment room with viewing and intercom systems to permit continuous observation of the patient or the human research subject from the treatment console during irradiation.
- E. For licensed activities where sources are placed within the patient's or human research subject's body, a licensee shall only conduct treatments which allow for expeditious removal of a decoupled or jammed source.
- F. In addition to the requirements specified in subsections (A) through (E), a licensee shall:
1. For medium dose-rate and pulsed dose-rate remote afterloader units, require:
 - a. An authorized medical physicist and either an authorized user or a physician, under the supervision of an authorized user, who has been trained in the operation and emergency response for the unit, to be physically present during the initiation of all patient treatments involving the unit; and

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- b. An authorized medical physicist and either an authorized user or an individual, under the supervision of an authorized user, who has been trained to remove each source applicator in the event of an emergency involving the unit, to be immediately available during continuation of all patient treatments involving the unit.
- 2. For high dose-rate remote afterloader units, require:
 - a. An authorized user and an authorized medical physicist to be physically present during the initiation of all patient treatments involving the unit; and
 - b. An authorized medical physicist and either an authorized user or a physician, under the supervision of an authorized user, who has been trained in the operation and emergency response for the unit, to be physically present during continuation of all patient treatments involving the unit.
- 3. For gamma stereotactic radiosurgery units, require an authorized user and an authorized medical physicist to be physically present throughout all patient treatments involving the unit. As used in this provision, physically present means to be within hearing distance of normal voice, and does not include the use of portable communication devices, intercoms, or other devices that could be used to amplify the human voice.
- 4. Notify the radiation safety officer, or radiation safety officer's designee, and an authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.
- G. A licensee shall have applicable emergency response equipment available near each treatment room to respond to a source:
 - 1. Remaining in the unshielded position; or
 - 2. Lodged within the patient following completion of the treatment.

Historical Note

New Section R9-7-732 recodified from R12-1-732 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-733. Dosimetry Equipment

- A. Except for low dose-rate remote afterloader sources where the source output or activity is determined by the manufacturer, a licensee shall have a calibrated dosimetry system available for use. To satisfy this requirement, one of the following two conditions shall be met.
 - 1. The system shall have been calibrated using a system or source traceable to the National Institute of Science and Technology (NIST) and published protocols accepted by nationally recognized bodies; or by a calibration laboratory accredited by the American Association of Physicists in Medicine (AAPM). The calibration shall have been performed within the previous two years and after any servicing that may have affected system calibration; or
 - 2. The system shall have been calibrated within the previous four years. Eighteen to 30 months after that calibration, the system shall have been intercompared with another dosimetry system that was calibrated within the past 24 months by NIST or by a calibration laboratory accredited by the AAPM. The results of the intercomparison shall indicate that the calibration factor of the licensee's system had not changed by more than two percent. The licensee may not use the intercomparison result to change the calibration factor. When intercomparing dosimetry systems to be used for calibrating sealed sources for therapeutic units, the licensee shall use a comparable unit with beam attenuators or collimators, as applicable, and sources of the same radionuclide as the source used at the licensee's facility.
- B. The licensee shall have a dosimetry system available for use for spot-check output measurements, if applicable. To satisfy this requirement, the system may be compared with a system that has been calibrated in accordance with subsection (A). This comparison shall have been performed within the previous year and after each servicing that may have affected system calibration. The spot-check system may be the same system used to meet the requirement in subsection (A).
- C. The licensee shall retain, for three years from the date of the procedure, a record of each calibration, intercomparison, and comparison.

Historical Note

New Section R9-7-733 recodified from R12-1-733 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-734. Full Calibration Measurements on Teletherapy Units

- A. A licensee authorized to use a teletherapy unit for medical use shall perform full calibration measurements on each teletherapy unit:
 - 1. Before the first medical use of the unit; and
 - 2. Before medical use under the following conditions:
 - a. Whenever spot-check measurements indicate that the output differs by more than 5 percent from the output obtained at the last full calibration corrected mathematically for radioactive decay;
 - b. Following replacement of the source or following reinstallation of the teletherapy unit in a new location;
 - c. Following any repair of the teletherapy unit that includes removal of the source or major repair of the components associated with the source exposure assembly; and
 - 3. At intervals not exceeding one year.
- B. To satisfy the requirement of subsection (A), full calibration measurements shall include determination of:
 - 1. The output within ± 3 percent for the range of field sizes and for the distance or range of distances used for medical use;
 - 2. The coincidence of the radiation field and the field indicated by the light beam localizing device;
 - 3. The uniformity of the radiation field and its dependence on the orientation of the useful beam;
 - 4. Timer accuracy and linearity over the range of use;
 - 5. On-off error; and
 - 6. The accuracy of all distance measuring and localization devices in medical use.
- C. A licensee shall use the dosimetry system described in R9-7-733(A) to measure the output for one set of exposure conditions. The remaining radiation measurements required in subsection (B)(1) may be made using a dosimetry system that indicates relative dose rates.
- D. A licensee shall make full calibration measurements required by subsection (A) in accordance with published protocols accepted by nationally recognized bodies.
- E. A licensee shall mathematically correct the outputs determined in subsection (B)(1) for physical decay for intervals not exceeding one month for cobalt-60, six months for cesium-137, or at intervals consistent with 1 percent decay for all other nuclides.
- F. Full calibration measurements required by subsection (A) and physical decay corrections required by subsection (E) shall be performed by an authorized medical physicist.

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- G. A licensee shall retain a record of each calibration for three years from the date it was completed.

Historical Note

New Section R9-7-734 recodified from R12-1-734 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-735. Full Calibration Measurements on Remote After-loader Units

- A. A licensee authorized to use a remote afterloader unit for medical use shall perform full calibration measurements on each unit:
1. Before the first medical use of the unit;
 2. Before medical use under the following conditions:
 - a. Following replacement of the source or following reinstallation of the unit in a new location outside the facility; and
 - b. Following any repair of the unit that includes removal of the source or major repair of the components associated with the source exposure assembly; and
 3. At intervals not exceeding one quarter for high dose-rate, medium dose-rate, and pulsed dose-rate remote after-loader units with sources whose half-life exceeds 75 days; and
 4. At intervals not exceeding one year for low dose-rate remote afterloader units.
- B. To satisfy the requirement of subsection (A), full calibration measurements shall include, as applicable, determination of:
1. The output within ± 5 percent;
 2. Source positioning accuracy to within ± 1 millimeter;
 3. Source retraction with backup battery upon power failure;
 4. Length of the source transfer tubes;
 5. Timer accuracy and linearity over the typical range of use;
 6. Length of the applicators; and
 7. Function of the source transfer tubes, applicators, and transfer tube-applicator interfaces.
- C. A licensee shall use the dosimetry system described in R9-7-733(A) to measure the output.
- D. A licensee shall make full calibration measurements required by subsection (A) in accordance with published protocols accepted by nationally recognized bodies.
- E. In addition to the requirements for full calibrations for low dose-rate remote afterloader units in subsection (B), a licensee shall perform an autoradiograph of the sources to verify inventory and source arrangement at intervals not exceeding one quarter.
- F. For low dose-rate remote afterloader units, a licensee may use measurements provided by the source manufacturer that are made in accordance with subsections (A) through (E).
- G. A licensee shall mathematically correct the outputs determined in subsection (B)(1) for physical decay at intervals consistent with 1 percent physical decay.
- H. Full calibration measurements required by subsection (A) and physical decay corrections required by subsection (G) shall be performed by an authorized medical physicist.
- I. A licensee shall retain a record of each calibration for three years from the date it was completed.

Historical Note

New Section R9-7-735 recodified from R12-1-735 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-736. Full Calibration Measurements on Gamma Stereotactic Radiosurgery Units

- A. A licensee authorized to use a gamma stereotactic radiosurgery unit for medical use shall perform full calibration measurements on each unit:
1. Before the first medical use of the unit;
 2. Before medical use under the following conditions:
 - a. Whenever spot-check measurements indicate that the output differs by more than 5 percent from the output obtained at the last full calibration corrected mathematically for radioactive decay;
 - b. Following replacement of the sources or following reinstallation of the gamma stereotactic radiosurgery unit in a new location; and
 - c. Following any repair of the gamma stereotactic radiosurgery unit that includes removal of the sources or major repair of the components associated with the source assembly; and
 3. At intervals not exceeding one year, with the exception that relative helmet factors need only be determined before the first medical use of a helmet and following any damage to a helmet.
- B. To satisfy the requirement of subsection (A), full calibration measurements shall include determination of:
1. The output within ± 3 percent;
 2. Relative helmet factors;
 3. Isocenter coincidence;
 4. Timer accuracy and linearity over the range of use;
 5. On-off error;
 6. Trunnion centricity;
 7. Treatment table retraction mechanism, using backup battery power or hydraulic backups with the unit off;
 8. Helmet microswitches;
 9. Emergency timing circuits; and
 10. Stereotactic frames and localizing devices (trunnions).
- C. A licensee shall use the dosimetry system described in R9-7-733(A) to measure the output for one set of exposure conditions. The remaining radiation measurements required in subsection (B)(1) may be made using a dosimetry system that indicates relative dose rates.
- D. A licensee shall make full calibration measurements required by subsection (A) in accordance with published protocols accepted by nationally recognized bodies.
- E. A licensee shall mathematically correct the outputs determined in subsection (B)(1) at intervals not exceeding one month for cobalt-60 and at intervals consistent with 1 percent physical decay for all other radionuclides.
- F. Full calibration measurements required by subsection (A) and physical decay corrections required by subsection (E) shall be performed by an authorized medical physicist.
- G. A licensee shall retain a record of each calibration for three years from the date of the procedure.

Historical Note

New Section R9-7-736 recodified from R12-1-736 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-737. Periodic Spot-checks for Teletherapy Units

- A. A licensee authorized to use teletherapy units for medical use shall perform output spot-checks on each teletherapy unit once in each calendar month that include determination of:
1. Timer accuracy, and timer linearity over the range of use;
 2. On-off error;
 3. The coincidence of the radiation field and the field indicated by the light beam localizing device;
 4. The accuracy of all distance measuring and localization devices used for medical use;

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- 5. The output for one typical set of operating conditions measured with the dosimetry system described in R9-7-733(B); and
- 6. The difference between the measurement made in subsection (A)(5) and the anticipated output, expressed as a percentage of the anticipated output.
- B. A licensee shall perform measurements required by subsection (A) in accordance with written procedures established by an authorized medical physicist. That individual need not actually perform the spot-check measurements.
- C. A licensee shall have an authorized medical physicist review the results of each spot-check within 15 days. The authorized medical physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.
- D. A licensee authorized to use a teletherapy unit for medical use shall perform safety spot-checks of each teletherapy facility once in each calendar month and after each source installation to assure proper operation of:
 - 1. Electrical interlocks at each teletherapy room entrance;
 - 2. Electrical or mechanical stops installed for the purpose of limiting use of the primary beam of radiation (restriction of source housing angulation or elevation, carriage or stand travel and operation of the beam on-off mechanism);
 - 3. Source exposure indicator lights on the teletherapy unit, on the control console, and in the facility;
 - 4. Viewing and intercom systems;
 - 5. Treatment room doors from inside and outside the treatment room; and
 - 6. Electrically assisted treatment room doors with the teletherapy unit electrical power turned off.
- E. If the results of the checks required in subsection (D) indicate the malfunction of any system, a licensee shall lock the control console in the off position and not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.
- F. A licensee shall retain a record of each spot-check required by subsections (A) and (D) for three years from the date of the procedure, and a copy of the procedures required by subsection (B) until licensee terminates all medical activities involving the teletherapy unit.

Historical Note

New Section R9-7-737 recodified from R12-1-737 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-738. Periodic Spot-checks for Remote Afterloader Units

- A. A licensee authorized to use a remote afterloader unit for medical use shall perform spot-checks of each remote afterloader facility and on each unit:
 - 1. Before the first use of a high dose-rate, medium dose-rate, or pulsed dose-rate remote afterloader unit on a given day;
 - 2. Before each patient treatment with a low dose-rate remote afterloader unit; and
 - 3. After each source installation.
- B. A licensee shall perform the measurements required by subsection (A) in accordance with written procedures established by an authorized medical physicist. That individual need not actually perform the spot-check measurements.
- C. A licensee shall have an authorized medical physicist review the results of each spot-check within 15 days. The authorized medical physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.
- D. To satisfy the requirements of subsection (A), spot-checks shall, at a minimum, assure proper operation of:

- 1. Electrical interlocks at each remote afterloader unit room entrance;
- 2. Source exposure indicator lights on the remote afterloader unit, on the control console, and in the facility;
- 3. Viewing and intercom systems in each high dose-rate, medium dose-rate, and pulsed dose-rate remote afterloader facility;
- 4. Emergency response equipment;
- 5. Radiation monitors used to indicate the source position;
- 6. Timer accuracy;
- 7. Clock (date and time) in the unit's computer; and
- 8. Decayed source activity in the unit's computer.
- E. If the results of the checks required in subsection (D) indicate the malfunction of any system, a licensee shall lock the control console in the off position and not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.
- F. A licensee shall retain a record of each spot-check required by subsections (A) and (D) for three years from the date of the procedure, and a copy of the procedures required by subsection (B) until licensee terminates all medical activities involving the afterloader unit.

Historical Note

New Section R9-7-738 recodified from R12-1-738 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-739. Periodic Spot-checks for Gamma Stereotactic Radiosurgery Units

- A. A licensee authorized to use a gamma stereotactic radiosurgery unit for medical use shall perform spot-checks of each gamma stereotactic radiosurgery facility and on each unit:
 - 1. Monthly;
 - 2. Before the first use of the unit on a given day; and
 - 3. After each source installation.
- B. A licensee shall:
 - 1. Perform the measurements required by subsection (A) in accordance with written procedures established by an authorized medical physicist. That individual need not actually perform the spot-check measurements.
 - 2. Have the authorized medical physicist review the results of each spot-check within 15 days. The authorized medical physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.
- C. To satisfy the requirements of subsection (A)(1), spot-checks shall, at a minimum:
 - 1. Assure proper operation of:
 - a. Treatment table retraction mechanism, using backup battery power or hydraulic backups with the unit off;
 - b. Helmet microswitches;
 - c. Emergency timing circuits; and
 - d. Stereotactic frames and localizing devices (trunnions).
 - 2. Determine:
 - a. The output for one typical set of operating conditions measured with the dosimetry system described in R9-7-733(B);
 - b. The difference between the measurement made in subsection (C)(2)(a) and the anticipated output, expressed as a percentage of the anticipated output;
 - c. Source output against computer calculation;
 - d. Timer accuracy and linearity over the range of use;
 - e. On-off error; and
 - f. Trunnion centricity.
 - D. To satisfy the requirements of subsections (A)(2) and (A)(3), spot-checks shall assure proper operation of:

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1. Electrical interlocks at each gamma stereotactic radiosurgery room entrance;
 2. Source exposure indicator lights on the gamma stereotactic radiosurgery unit, on the control console, and in the facility;
 3. Viewing and intercom systems;
 4. Timer termination;
 5. Radiation monitors used to indicate room exposures; and
 6. Emergency off buttons.
- E.** A licensee shall arrange for the repair of any system identified in subsection (C) that is not operating properly as soon as possible.
- F.** If the results of the checks required in subsection (D) indicate the malfunction of any system, a licensee shall lock the control console in the off position and not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.
- G.** A licensee shall retain a record of each check required by subsections (C) and (D) for three years from the date of the procedure, and a copy of the procedures required by subsection (B) until licensee terminates all medical activities involving the radiosurgery unit.

Historical Note

New Section R9-7-739 recodified from R12-1-739 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-740. Additional Requirements for Mobile Remote Afterloader Units

- A.** A licensee providing mobile remote afterloader service shall:
1. Check survey instruments before medical use at each address of use or on each day of use, whichever is more frequent; and
 2. Account for all sources before departure from a client's address of use.
- B.** In addition to the periodic spot-checks required by R9-7-738, a licensee authorized to use mobile afterloaders for medical use shall perform checks on each remote afterloader unit before use at each address of use. At a minimum, checks shall be made to verify the operation of:
1. Electrical interlocks on treatment area access points;
 2. Source exposure indicator lights on the remote afterloader unit, on the control console, and in the facility;
 3. Viewing and intercom systems;
 4. Applicators, source transfer tubes, and transfer tube-applicator interfaces;
 5. Radiation monitors used to indicate room exposures;
 6. Source positioning (accuracy); and
 7. Radiation monitors used to indicate whether the source has returned to a safe shielded position.
- C.** In addition to the requirements for checks in subsection (B), a licensee shall ensure overall proper operation of the remote afterloader unit by conducting a simulated cycle of treatment before use at each address of use.
- D.** If the results of the checks required in subsection (B) indicate the malfunction of any system, a licensee shall lock the control console in the off position and not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.
- E.** A licensee shall retain a record of each check required by subsection (B) for three years from the date of the procedure.

Historical Note

New Section R9-7-740 recodified from R12-1-740 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-741. Additional Radiation Surveys of Sealed Sources used in Radiation Therapy

- A.** In addition to the survey requirement in Article 4 of this Chapter, a person licensed to use sealed sources in the practice of radiation therapy shall make surveys to ensure that the maximum radiation levels and average radiation levels from the surface of the main source safe with each source in the shielded position do not exceed the levels stated in the Sealed Source and Device Registry.
- B.** A licensee shall make the survey required by subsection (A) at installation of a new source and following repairs to any source shielding, a source's driving unit, or other electronic or mechanical component that could expose the source, reduce the shielding around a source, or compromise the radiation safety of the unit or the source.
- C.** A licensee shall retain a record of the radiation surveys required by subsection (A) for three years from the date of each survey.

Historical Note

New Section R9-7-741 recodified from R12-1-741 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-742. Five-year Inspection for Teletherapy and Gamma Stereotactic Radiosurgery Units

- A.** A licensee shall have each teletherapy unit and gamma stereotactic radiosurgery unit fully inspected and serviced during source replacement or at intervals not to exceed five years, whichever comes first, to assure proper functioning of the source exposure mechanism.
- B.** This inspection and servicing may only be performed by persons specifically licensed to do so by the Department, the NRC, or an Agreement State.
- C.** A licensee shall keep a record of each five-year inspection for three years from the date of the inspection, if the inspection determined that service was unnecessary, and three years from the date of the completed service if the inspection determined that service was needed.

Historical Note

New Section R9-7-742 recodified from R12-1-742 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-743. Therapy-related Computer Systems

The licensee shall perform acceptance testing on the treatment planning system of therapy-related computer systems in accordance with published protocols accepted by nationally recognized bodies. At a minimum, the acceptance testing shall include, as applicable, verification of:

1. The source-specific input parameters required by the dose calculation algorithm;
2. The accuracy of dose, dwell time, and treatment time calculations at representative points;
3. The accuracy of isodose plots and graphic displays;
4. The accuracy of the software used to determine sealed source positions from radiographic images; and
5. The accuracy of electronic transfer of the treatment delivery parameters to the treatment delivery unit from the treatment planning system.

Historical Note

New Section R9-7-743 recodified from R12-1-743 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-744. Training for Use of Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units

- A.** Except as provided in R9-7-710, a licensee shall require an authorized user of a sealed source for a use authorized under Group 600 to be a physician who:

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1. Is certified by a medical specialty board whose certification process has been recognized by the NRC or an Agreement State and who meets the requirements in subsection (A)(2). To have its certification process recognized, a specialty board shall require all candidates to:
 - a. Successfully complete a minimum of three years of residency training in a radiation therapy program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Post-Graduate Training of the American Osteopathic Association; and
 - b. Pass an examination, administered by diplomates of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of stereotactic radiosurgery, remote afterloaders and external beam therapy; or
 2. Has completed a structured educational program in basic radionuclide techniques applicable to the use of a sealed source in a therapeutic medical unit that includes:
 - a. 200 hours of classroom and laboratory training in the following areas:
 - i. Radiation physics and instrumentation;
 - ii. Radiation protection;
 - iii. Mathematics pertaining to the use and measurement of radioactivity;
 - iv. Chemistry of radioactive material for medical use; and
 - v. Radiation biology; and
 - b. 500 hours of work experience, under the supervision of an authorized user who meets the requirements in this Section, or equivalent Agreement State or NRC requirements at a medical institution, involving:
 - i. Reviewing full calibration measurements and periodic spot-checks;
 - ii. Preparing treatment plans and calculating treatment doses and times;
 - iii. Using administrative controls to prevent a medical event involving the use of radioactive material;
 - iv. Implementing emergency procedures to be followed in the event of the abnormal operation of the medical unit or console;
 - v. Checking and using survey meters; and
 - vi. Selecting the proper dose and how it is to be administered; and
 - c. Has completed three years of supervised clinical experience in radiation therapy, under an authorized user who meets the requirements in this Section, or equivalent Agreement State or NRC requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Post-doctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by subsection (A)(2)(b); and
 - d. Has obtained written attestation that the individual has satisfactorily completed the requirements in subsection (A)(1) or (A)(2), and has achieved a level of competency sufficient to function independently as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The written attestation must be signed by a preceptor authorized user who meets the requirements in this Section, or equivalent Agreement State or NRC requirements for an authorized user for each type of therapeutic medical unit for which the individual is requesting authorized user status; and
- e. Has received training in device operation, safety procedures, and clinical use for the type(s) of use for which authorization is sought. This training requirement may be satisfied by satisfactory completion of a training program provided by the vendor for new users or by receiving training supervised by an authorized user or authorized medical physicist, as appropriate, who is authorized for the type(s) of use for which the individual is seeking authorization.
- B. The training and experience shall have been obtained within the seven years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.

Historical Note

New Section R9-7-744 recodified from R12-1-744 at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-745. Report and Notification of a Medical Event

- A. A licensee shall report any "medical" event, except for an event that results from patient intervention, in which the administration of radioactive material or radiation from radioactive material results in:
1. A dose that differs from the prescribed dose or dose that would have resulted from the prescribed dosage by more than 0.05 Sv (5 rem) effective dose equivalent, 0.5 Sv (50 rem) to an organ or tissue, or 0.5 Sv (50 rem) shallow dose equivalent to the skin; and
 - a. The total dose delivered differs from the prescribed dose by 20 percent or more;
 - b. The total dosage delivered differs from the prescribed dosage by 20 percent or more or falls outside the prescribed dosage range; or
 - c. The fractionated dose delivered differs from the prescribed dose, for a single fraction, by 50 percent or more.
 2. A dose that exceeds 0.05 Sv (5 rem) effective dose equivalent, 0.5 Sv (50 rem) to an organ or tissue, or 0.5 Sv (50 rem) shallow dose equivalent to the skin from any of the following:
 - a. An administration of a wrong radiopharmaceutical containing radioactive material;
 - b. An administration of a radiopharmaceutical containing radioactive material by the wrong route of administration;
 - c. An administration of a dose or dosage to the wrong individual or human research subject;
 - d. An administration of a dose or dosage delivered by the wrong mode of treatment; or
 - e. A leaking sealed source.
 3. A dose to the skin or an organ or tissue other than the treatment site that exceeds by 0.5 Sv (50 rem) to an organ or tissue and 50 percent or more of the dose expected from the administration defined in the written directive (excluding, for permanent implants, seeds that were implanted in the correct site but migrated outside the treatment site).

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- B. A licensee shall report any event resulting from intervention of a patient or human research subject in which the administration of radioactive material or radiation from radioactive material results or will result in unintended permanent functional damage to an organ or a physiological system, as determined by a physician.
- C. The licensee shall notify by telephone the Department no later than the next calendar day after discovery of the medical event.
- D. The licensee shall submit a written report to the Department within 15 days after discovery of the medical event.
1. The written report shall include:
 - a. The licensee's name;
 - b. The name of the prescribing physician;
 - c. A brief description of the event;
 - d. Why the event occurred;
 - e. The effect, if any, on each individual who received the administration;
 - f. What actions, if any, have been taken or are planned to prevent recurrence; and
 - g. Certification that the licensee notified each individual (or the individual's responsible relative or guardian), and if not, why not.
 2. The report may not contain an individual's name or any other information that could lead to identification of the individual.
- E. The licensee shall provide notification of the event to the referring physician and also notify the individual who is the subject of the medical event no later than 24 hours after its discovery, unless the referring physician personally informs the licensee either that he or she will inform the individual or that, based on medical judgment, telling the individual would be harmful. The licensee is not required to notify the individual without first consulting the referring physician. If the referring physician or the affected individual cannot be reached within 24 hours, the licensee shall notify the individual as soon as possible thereafter. The licensee may not delay any appropriate medical care for the individual, including any necessary remedial care as a result of the medical event, because of any delay in notification. To meet the requirements of this subsection, the notification of the individual who is the subject of the medical event may be made instead to that individual's responsible relative or guardian. If a verbal notification is made, the licensee shall inform the individual, or appropriate responsible relative or guardian, that a written description of the event can be obtained from the licensee upon request. The licensee shall provide such a written description if requested.
- F. Aside from the notification requirement, nothing in this Section affects any rights or duties of licensees and physicians in relation to each other, to individuals affected by the medical event, or to that individual's responsible relatives or guardians.
- G. A licensee shall:
1. Annotate a copy of the report provided to the Department with the:
 - a. Name of the individual who is the subject of the event; and
 - b. Social Security number or other identification number, if one has been assigned, of the individual who is the subject of the event; and
 2. Provide a copy of the annotated report to the referring physician, if other than the licensee, no later than 15 days after the discovery of the event.

Historical Note

New Section R9-7-745 recodified from R12-1-745 at 24
A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-746. Report and Notification of a Dose to an Embryo, Fetus, or Nursing Child

- A. A licensee shall report any dose to an embryo/fetus that is greater than 50 mSv (5 rem) dose equivalent that is a result of an administration of radioactive material or radiation from radioactive material to a pregnant individual unless the dose to the embryo/fetus was specifically approved, in advance, by the authorized user.
- B. A licensee shall report any dose to a nursing child that is a result of an administration of radioactive material to a breast-feeding individual that:
 1. Is greater than 50 mSv (5 rem) total effective dose equivalent; or
 2. Has resulted in unintended permanent functional damage to an organ or a physiological system of the child, as determined by a physician.
- C. The licensee shall notify the Department by telephone no later than the next calendar day after discovery of a dose to the embryo, fetus, or nursing child that requires a report in subsections (A) or (B).
- D. The licensee shall submit a written report to the Department within 15 days after discovery of a dose to the embryo, fetus, or nursing child that requires a report in subsections (A) or (B). The written report shall include:
 1. The licensee's name;
 2. The name of the prescribing physician;
 3. A brief description of the event;
 4. Why the event occurred;
 5. The effect, if any, on the embryo/fetus or the nursing child;
 6. What actions, if any, have been taken or are planned to prevent recurrence; and
 7. Certification that the licensee notified the pregnant individual or mother (or the mother's or child's responsible relative or guardian), and if not, why not.
- E. The report, required in subsection (D), shall not contain the individual's or child's name or any other information that could lead to identification of the individual or child.
- F. The licensee shall provide notification of the event to the referring physician and also notify the pregnant individual or mother, both hereafter referred to as the mother, no later than 24 hours after discovery of an event that would require reporting under subsections (A) or (B), unless the referring physician personally informs the licensee either that he or she will inform the mother or that, based on medical judgment, telling the mother would be harmful. The licensee is not required to notify the mother without first consulting with the referring physician. If the referring physician or mother cannot be reached within 24 hours, the licensee shall make the appropriate notifications as soon as possible thereafter. The licensee shall not delay any appropriate medical care for the embryo, fetus, or for the nursing child, including any necessary remedial care as a result of the event, because of any delay in notification. To meet the requirements of this subsection, the notification may be made to the mother's or child's responsible relative or guardian instead of the mother. If a verbal notification is made, the licensee shall inform the mother, or the mother's or child's responsible relative or guardian, that a written description of the event can be obtained from the licensee upon request. The licensee shall provide the written description upon request.
- G. A licensee shall:

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1. Make a copy of the report provided to the Department and include with it the:
 - a. Name of the pregnant individual or the nursing child who is the subject of the event; and
 - b. Social Security number or other identification number, if one has been assigned, of the pregnant individual or the nursing child who is the subject of the event; and
2. Provide the copy of the information required in subsection (G)(1) to the referring physician, if other than the licensee, no later than 15 days after the discovery of the event.

Historical Note

New Section R9-7-746 recodified from R12-1-746 at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

Exhibit A. Medical Use Groups**Group 100**

Included is the use of any unsealed radioactive material for use in uptake, dilution, or excretion studies and not requiring a written directive: The radioactive material in this group shall be:

1. Obtained from a manufacturer or preparer licensed under R9-7-703(C)(2)(a), or equivalent NRC or Agreement State requirements; or
2. Obtained from a PET radioactive drug producer licensed under R9-7-703 or equivalent NRC or an Agreement State license excluding production of PET radionuclides prepared by an authorized nuclear pharmacist who meets the requirements in R9-7-712, a physician who is an authorized user and who meets the requirements specified in R9-7-721, or R9-7-723 and R9-7-721(3)(b)(vii), or an individual under the supervision of either as specified in R9-7-706; or
3. If a research protocol:
 - a. Obtained from and prepared by an Agreement State or NRC licensee for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by FDA; or
 - b. Prepared by the licensee for use in research in accordance with a Radioactive Drug Research Committee-approved application or an Investigational New Drug (IND) protocol accepted by FDA.

Group 200

Included is the use of any unsealed radioactive material for use in imaging and localization not requiring a written directive. PET radiopharmaceuticals may be used if the licensee meets the requirements in R9-7-716. The radioactive material in this group shall be:

1. Obtained from a manufacturer or preparer licensed under R9-7-703(C)(2)(a), or equivalent NRC or Agreement State requirements; or
2. Obtained from a PET radioactive drug producer licensed under R9-7-703 or an equivalent NRC or Agreement State license excluding production of PET radionuclides prepared by an authorized nuclear pharmacist who meets the requirements in R9-7-712, a physician who is an authorized user and who meets the requirements specified in R9-7-721, or R9-7-723 and R9-7-721(3)(b)(vii), or an individual under the supervision of either as specified in R9-7-706; or
3. If a research protocol:
 - a. Obtained from and prepared by an Agreement State or NRC licensee for use in research in accordance with a Radioactive Drug Research Committee-approved application or an Investigational New Drug (IND) protocol accepted by FDA; or

- b. Prepared by the licensee for use in research in accordance with a Radioactive Drug Research Committee-approved application or an Investigational New Drug (IND) protocol accepted by FDA.

Group 300

Included is the use of any unsealed radioactive material for medical use (radiopharmaceutical) for which a written directive is required. The radioactive material in this group shall be:

1. Obtained from a manufacturer or preparer licensed under R9-7-703(C)(2)(a) or equivalent NRC or Agreement State requirements; or
2. Obtained from a PET radioactive drug producer licensed under R9-7-703 or equivalent NRC or an Agreement State license excluding production of PET radionuclides prepared by an authorized nuclear pharmacist who meets the requirements in R9-7-712, a physician who is an authorized user and who meets the requirements specified in R9-7-721 or R9-7-723, or an individual under the supervision of either as specified in R9-7-706; or
3. If a research protocol:
 - a. Obtained from and prepared by an Agreement State or NRC licensee for use in research in accordance with an Investigational New Drug (IND) protocol accepted by FDA; or
 - b. Prepared by the licensee for use in research in accordance with an Investigational New Drug (IND) protocol accepted by FDA.

Group 400

Included is the use of any brachytherapy source for therapeutic medical use that is manufactured in accordance with R9-7-703(C)(2)(b) and:

1. Approved for therapeutic use in the Sealed Source and Device Registry; or
2. Part of a research protocol that is approved for therapeutic use under an active Investigational Device Exemption (IDE) application accepted by the FDA, and meets the requirements of R9-7-709.

Group 500

Included is the use of any sealed source that is manufactured in accordance with R9-7-703(C)(2)(b), and is approved for diagnostic use in the Sealed Source and Device Registry.

Group 600

Included is the use of sealed sources in photon emitting remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units that are manufactured in accordance with R9-7-703(C)(2)(b) and:

1. Approved for therapeutic use in the Sealed Source and Device Registry; or
2. Part of a research protocol that is approved for therapeutic use under an active Investigational Device Exemption (IDE) application accepted by the FDA and meets the requirements of R9-7-709.

Group 1000

A licensee may use radioactive material or a radiation source approved for medical use which is not specifically addressed in R9-7-309(4) if:

1. The applicant or licensee has submitted the information required by this Article; and
2. The applicant or licensee has received written approval from the Department in a license or license amendment and uses the material in accordance with the rules and specific conditions the Department considers necessary for the medical use of the material.

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Historical Note

New Article 7, Exhibit A recodified from 12 A.A.C. 1., Article 7, Exhibit A at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1). Exhibit A, Group 100, Group 200, and Group 1000 amended by final exempt rulemaking at 24 A.A.R. 2151, effective July 12, 2018 (Supp. 18-3).

ARTICLE 8. RADIATION SAFETY REQUIREMENTS FOR ANALYTICAL X-RAY OPERATIONS**R9-7-801. Scope**

The rules in this Article establish requirements for the use of analytical x-ray equipment by persons registered under R9-7-204. The provisions of this Article supplement other applicable provisions of this Chapter.

Historical Note

New Section R9-7-801 recodified from R12-1-801 at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-802. Definitions

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

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

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

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

“Local component” means part of an analytical x-ray system and includes each area that is struck by x-rays, such as radiation source housings, port and shutter assemblies, collimators, sample holders, cameras, goniometers, detectors and shielding, but does not include power supplies, transformers, amplifiers, readout devices, and control panels.

“Normal operating procedures” means instructions or procedures including, but not limited to, sample insertion and manipulation, equipment alignment, routine maintenance by the registrant, and data recording procedures which are related to radiation safety.

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

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

Historical Note

New Section R9-7-802 recodified from R12-1-802 at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-803. Enclosed-beam X-ray Systems

A. Enclosed beam x-ray systems are exempt from other equipment requirements contained in this Article provided the enclosed beam x-ray systems are designed and constructed so that radiation levels measured at 5 cm from any accessible surface of the enclosure housing the x-ray source do not exceed 5 μSv (0.5 mrem) in one hour.

- B. A registrant using enclosed beam x-ray systems shall comply with applicable provisions R9-7-804(A), R9-7-805(B), and 9 A.A.C. 7, Article 4.
- C. A person who maintains or services analytical x-ray systems, shall:
 1. Obtain permission in advance from the radiation safety officer before bypassing interlocks or other safety devices,
 2. Label equipment as “out of service” until maintenance or service is completed,
 3. Wear extremity personnel monitoring devices, and
 4. Ensure that interlocks or other safety devices are operating upon completion of maintenance or service.

Historical Note

New Section R9-7-803 recodified from R12-1-803 at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

R9-7-804. Open-beam X-ray Systems

- A. A registrant shall label open beam x-ray systems with a readily discernible sign or signs bearing the radiation symbol and the words:
 1. “CAUTION -- HIGH INTENSITY X-RAY BEAM,” or a similar warning, on the x-ray source housing; and
 2. “CAUTION RADIATION -- THIS EQUIPMENT PRODUCES RADIATION WHEN ENERGIZED” or a similar warning, near any switch that energizes an x-ray tube if the radiation source is an x-ray tube.
- B. A registrant shall ensure that an open beam x-ray system has all of the following warning devices:
 1. X-ray tube status (On-Off) indicator in systems where the primary beam is controlled in this fashion;
 2. Shutter status (Open-Closed) indicators near each port on the radiation housing for systems which control the primary beam; and
 3. A clearly visible warning light labeled with the words “X-RAY ON,” or a similar warning located near any switch that energizes an x-ray tube, illuminated only when the tube is energized; and
 4. The warning devices in subsections (B)(1) through (3) shall be labeled so that their purpose is easily identified.
- C. A registrant shall ensure that any apparatus utilized in beam alignment procedures is designed in such a way that excessive radiation will not strike the operator. Particular attention shall be given to viewing devices, in order to ascertain that lenses and other transparent components attenuate the beam to an acceptable level.
- D. A registrant shall provide an interlock device which prevents entry of any portion of an individual’s body into the primary beam or causes the primary beam to be shut off upon entry into its path on all open-beam x-ray systems. A registrant may apply to the Department for an exemption from the requirements of a safety device. An application for exemption shall include:
 1. A description of the various safety devices that have been evaluated;
 2. The reason each device cannot be used; and
 3. A description of the alternative methods that will be used to minimize accidental exposure, including procedures to assure that operators and others in the area will be informed of the absence of safety devices.
- E. A registrant shall use only systems constructed so that:
 1. Each x-ray tube housing is equipped with an interlock that automatically shuts off the tube if the tube is removed from the radiation source housing or the housing is disassembled; and

Statutory Authority for Rules in 9 A.A.C. 7, Article 7

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.

30-656. Authority for governor to enter into agreements with federal government; effect on federal licenses

- A. The governor, on behalf of this state, may enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to sources of radiation and the assumption of the responsibilities by this state.
- B. Any person that, on the effective date of an agreement entered into under subsection A of this section, possesses a license issued by the federal government shall be deemed to possess a like license issued under this chapter, which shall expire either ninety days after receipt from the department of a notice of expiration of the license or on the date of expiration specified in the federal license, whichever is earlier.

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, chiropodist 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.

30-672.01. Registration of persons who install or service radiation machines; exception; roster of registrants

- A. A person who is in the business of installing or servicing radiation machines that are required to be registered by the department shall register with the department on a form provided by the department.
- B. Notwithstanding subsection A of this section, a person who is subject to the jurisdiction of the department and who operates a radiation machine is not required to register with the department.
- C. The registration form required pursuant to subsection A of this section shall be limited to the following information:
 1. The full business name of the registrant.
 2. The names of the owners if the registrant is a corporation or partnership.
 3. The names of employees who carry out installation or service work for the registrant.
 4. The business address of the registrant.
- D. The department shall maintain a roster of all registrants, including the date of initial registration. The roster shall be available for public inspection.
- E. A registrant must reregister with the department if there is a change in the information provided under subsection C of this section.

30-681. Inspections

- A. The department or its duly authorized representatives may enter at all reasonable times on any private or public property for the purpose of determining whether there is compliance with or a violation of this chapter and rules adopted under this chapter, except that entry into areas under the jurisdiction of the federal government shall be effected only with the concurrence of the federal government or its duly designated representative.
- B. If the director determines that there is reasonable cause to believe that a radiation source is not in compliance with the licensing requirements of this chapter, the director or the director's designee or agent may enter on and into the premises of any radiation source that is licensed or required to be licensed pursuant to this chapter at any reasonable time to determine compliance with this chapter and rules adopted pursuant to this chapter. An application for licensure under this chapter constitutes permission for and complete acquiescence in any entry or inspection of the premises during the pendency of the application and, if licensed, during the term of the license. If the inspection shows that the radiation source is not adhering to the licensing requirements of this chapter, the director may take action authorized by this chapter. A radiation source whose license has been suspended or revoked in accordance with this subsection is subject to inspection when applying for relicensure or reinstatement of the license.

30-683. Intergovernmental agreements; inspections; training programs; mammography facilities

- A. The department, subject to the approval of the governor, may enter into agreements with the federal government, other states or interstate agencies to perform on a cooperative basis with the federal government, other states or interstate agencies inspections or other functions relating to control of sources of radiation.
- B. The department may institute training programs for the purpose of qualifying personnel to carry out this chapter and make such personnel available for participation in any program of the federal government, other states or interstate agencies in furtherance of the purposes of this chapter.
- C. The department shall annually inspect facilities that provide diagnostic or screening mammography examinations.

30-684. Conflicting ordinances by municipality or county

Ordinances, resolutions or regulations, now or hereafter in effect, of the governing body of a municipality or county or board of health relating to sources of radiation shall not be superseded by this chapter, provided, such

ordinances or regulations are and continue to be consistent with the provisions of this chapter, amendments thereto and rules and regulations thereunder.

30-686. Appeal; hearing

A person who is denied licensure or registration under article 2 of this chapter or who is denied an exception from licensure or registration under article 2 of this chapter may appeal the denial by making a written request for a hearing pursuant to title 41, chapter 6, article 10. The department shall give notice of such an action pursuant to title 41, chapter 6, article 10, and the notice shall state the person's right to make a written request for a hearing.

30-687. Assessment; civil penalty; enforcement; appeals; collection

A. The director may assess a civil penalty against a person that violates this chapter or a rule adopted pursuant to this chapter in an amount not to exceed five thousand dollars for each violation. Each day a violation occurs constitutes a separate violation. The maximum amount of any assessment is twenty-five thousand dollars for any thirty-day period.

B. The director may issue a notice of assessment that includes the proposed amount of the assessment. In determining the amount of a civil penalty assessed against a person under subsection A of this section, the department shall consider all of the following:

1. Repeated violations of statutes and rules.
2. Patterns of noncompliance.
3. Types of violations.
4. The severity of the violations.
5. The potential for and occurrences of actual harm.
6. Threats to health and safety.
7. The number of persons affected by the violations.
8. The number of violations.
9. The length of time the violations have been occurring.

C. A person may appeal the assessment by requesting a hearing pursuant to title 41, chapter 6, article 10. If the assessment is appealed, the director may not take further action to enforce and collect the assessment until after the hearing.

D. Actions to enforce the collection of civil penalties assessed pursuant to subsection A of this section shall be brought by the attorney general or the county attorney in the name of the state in the justice court or the superior court in the county in which the violation occurred.

E. The department shall deposit, pursuant to sections 35-146 and 35-147, civil penalties collected pursuant to this section in the state general fund.

30-688. Emergency action

A. If the director finds that the public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in an order, the director may:

1. Order the summary suspension of a license pending proceedings for revocation or another action. These proceedings shall be promptly instituted and determined.
2. Order the impoundment of sources of radiation in the possession of any person that is not equipped to comply with or that fails to comply with this chapter or any rule adopted pursuant to this chapter.

B. The director may apply to the superior court for an injunction to restrain a person from violating a provision of this chapter or a rule adopted pursuant to this chapter. The court shall grant a temporary restraining order, a preliminary injunction or a permanent injunction without bond. The person may be served in any county of this state. The action shall be brought on behalf of the director by the attorney general or the county attorney of the county in which the violation is occurring.

30-689. Violation; classification

A. Any person who violates any provision of this chapter or any rule, regulation or order placed in effect pursuant thereto by the commission is guilty of a class 2 misdemeanor.

B. The provisions of subsection A shall not apply to any emergency regulation or order unless or until the person so violating such regulation or order has had actual knowledge of the regulation or order.

30-721. Adoption and text of compact

The southwestern low-level radioactive waste disposal compact is adopted and enacted into law as follows:

Article 1. Compact Policy and Formation

The party states hereby find and declare all of the following:

(A) The United States Congress, by enacting the low-level radioactive waste policy act, Public Law 96-573, as amended by the low-level radioactive waste policy amendments act of 1985 (42 U.S.C. sec. 2021b to 2021j, incl.), has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste.

(B) It is the purpose of this compact to provide the means for such a cooperative effort between or among party states to protect the citizens of the states and the states' environments.

(C) It is the policy of party states to this compact to encourage the reduction of the volume of low-level radioactive waste requiring disposal within the compact region.

(D) It is the policy of the party states that the protection of the health and safety of their citizens and the most ecological and economical management of low-level radioactive wastes can be accomplished through cooperation of the states by minimizing the amount of handling and transportation required to dispose of these wastes and by providing facilities that serve the compact region.

(E) Each party state, if an agreement state pursuant to section 2021 of title 42 of the United States Code, or the nuclear regulatory commission if not an agreement state, is responsible for the primary regulation of radioactive materials within its jurisdiction.

Article 2. Definitions

As used in this compact, unless the context clearly indicates otherwise, the following definitions apply:

(A) "Commission" means the southwestern low-level radioactive waste commission established in article 3 of this compact.

(B) "Compact region" or "region" means the combined geographical area within the boundaries of the party states.

(C) "Disposal" means the permanent isolation of low-level radioactive waste pursuant to requirements established by the nuclear regulatory commission and the environmental protection agency under applicable laws, or by a party state if that state hosts a disposal facility.

(D) "Generate," when used in relation to low-level radioactive waste, means to produce low-level radioactive waste.

(E) "Generator" means a person whose activity, excluding the management of low-level radioactive waste, results in the production of low-level radioactive waste.

(F) "Host county" means a county, or other similar political subdivision of a party state, in which a regional disposal facility is located or being developed.

(G) "Host state" means a party state in which a regional disposal facility is located or being developed. The state of California is the host state under this compact for the first thirty years from the date the California regional disposal facility commences operations.

(H) "Institutional control period" means that period of time in which the facility license is transferred to the disposal site owner in compliance with the appropriate regulations for long-term observation and maintenance following the postclosure period.

(I) "Low-level radioactive waste" means regulated radioactive material that meets all of the following requirements:

(1) The waste is not high-level radioactive waste, spent nuclear fuel, or by-product material (as defined in section 11e(2) of the atomic energy act of 1954 (42 U.S.C. sec. 2014(e) (2))).

(2) The waste is not uranium mining or mill tailings.

(3) The waste is not any waste for which the federal government is responsible pursuant to subdivision (b) of section 3 of the low-level radioactive waste policy amendments act of 1985 (42 U.S.C. sec. 2021c(b)).

(4) The waste is not an alpha emitting transuranic nuclide with a half-life greater than five years and with a concentration greater than one hundred nanocuries per gram, or plutonium-241 with a concentration greater than three thousand five hundred nanocuries per gram, or curium-242 with a concentration greater than twenty thousand nanocuries per gram.

(J) "Management" means collection, consolidation, storage, packaging, or treatment.

(K) "Major generator state" means a party state which generates ten per cent of the total amount of low-level radioactive waste produced within the compact region and disposed of at the regional disposal facility. If no party state other than California generates at least ten per cent of the total amount, "major generator state" means the party state which is second to California in the amount of waste produced within the compact region and disposed of at the regional disposal facility.

(L) "Operator" means a person who operates a regional disposal facility.

(M) "Party state" means any state that has become a party in accordance with article 7 of this compact.

(N) "Person" means an individual, corporation, partnership, or other legal entity, whether public or private.

(O) "Postclosure period" means that period of time after completion of closure of a disposal facility during which the licensee shall observe, monitor, and carry out necessary maintenance and repairs at the disposal facility to assure that the disposal facility will remain stable and will not need ongoing active maintenance. This period ends with the beginning of the institutional control period.

(P) "Regional disposal facility" means a nonfederal low-level radioactive waste disposal facility established and operated under this compact.

(Q) "Site closure and stabilization" means the activities of the disposal facility operator taken at the end of the disposal facility's operating life to assure the continued protection of the public from any residual radioactive or other potential hazards present at the disposal facility.

(R) "Transporter" means a person who transports low-level radioactive waste.

(S) "Uranium mine and mill tailings" means waste resulting from mining and processing of ores containing uranium.

Article 3. The Commission

(A) There is hereby established the southwestern low-level radioactive waste commission.

(1) The commission shall consist of one voting member from each party state to be appointed by the governor, confirmed by the senate of that party state, and to serve at the pleasure of the governor of each party state, and one voting member from the host county. The appointing authority of each party state shall notify the commission in writing of the identity of the member and of any alternates. An alternate may act in the member's absence.

(2) The host state shall also appoint that number of additional voting members of the commission which is necessary for the host state's members to compose at least fifty-one per cent of the membership on the commission. The host state's additional members shall be appointed by the host state governor and confirmed by the host state senate. If there is more than one host state, only the state in which is located the regional disposal facility actively accepting low-level radioactive waste pursuant to this compact may appoint these additional members.

(3) If the host county has not been selected at the time the commission is appointed, the governor of the host state shall appoint an interim local government member, who shall be an elected representative of a local government. After a host county is selected, the interim local government member shall resign and the governor shall appoint the host county member pursuant to paragraph (4).

(4) The governor shall appoint the host county member from a list of at least seven candidates compiled by the board of supervisors of the host county.

(5) In recommending and appointing the host county member pursuant to paragraph (4), the board of supervisors and the governor shall give first consideration to recommending and appointing the member of the board of supervisors in whose district the regional disposal facility is located or being developed. If the board of supervisors of the host county does not provide a list to the governor of at least seven candidates from which to choose, the governor shall appoint a resident of the host county as the host county member.

(6) The host county member is subject to confirmation by the senate of that party state and shall serve at the pleasure of the governor of the host state.

(B) The commission is a legal entity separate and distinct from the party states and shall be so liable for its actions. Members of the commission shall not be personally liable for actions taken in their official capacity. The liabilities of the commission shall not be deemed liabilities of the party states.

(C) The commission shall conduct its business affairs pursuant to the laws of the host state and disputes arising out of commission action shall be governed by the laws of the host state. The commission shall be located in the capital city of the host state in which the regional disposal facility is located.

(D) The commission's records shall be subject to the host state's public records law, and the meetings of the commission shall be open and public in accordance with the host state's open meeting law.

(E) The commission members are public officials of the appointing state and shall be subject to the conflict of interest laws, as well as any other law, of the appointing state. The commission members shall be compensated according to the appointing state's law.

(F) Each commission member is entitled to one vote. A majority of the commission constitutes a quorum. Unless otherwise provided in this compact, a majority of the total number of votes on the commission is necessary for the commission to take any action.

(G) The commission has all of the following duties and authority:

(1) The commission shall do, pursuant to the authority granted by this compact, whatever is reasonably necessary to ensure that low-level radioactive wastes are safely disposed of and managed within the region.

(2) The commission shall meet at least once a year and otherwise as business requires.

(3) The commission shall establish a compact surcharge to be imposed upon party state generators. The surcharge shall be based upon the cubic feet of low-level radioactive waste and the radioactivity of the low-level radioactive waste and shall be collected by the operator of the disposal facility. The host state shall set, and the commission shall impose, the surcharge after congressional approval of the compact. The amount of the surcharge shall be sufficient to establish and maintain at a reasonable level funds for all of the following purposes:

(a) The activities of the commission and commission staff.

(b) At the discretion of the host state, a third-party liability fund to provide compensation for injury to persons or property during the operational, closure, stabilization, and postclosure and institutional control periods of the regional disposal facility. This subparagraph does not limit the responsibility or liability of the operator, who shall comply with any federal or host state statutes or regulations regarding third-party liability claims.

(c) A local government reimbursement fund, for the purpose of reimbursing the local government entity or entities hosting the regional disposal facility for any costs or increased burdens on the local governmental entity for services, including, but not limited to, general fund expenses, the improvement and maintenance of roads and bridges, fire protection, law enforcement, monitoring by local health officials, and emergency preparation and response related to the hosting of the regional disposal facility.

(4) The surcharges imposed by the commission for purposes of subparagraphs (b) and (c) of paragraph (3) and surcharges pursuant to paragraph (3) of subdivision (E) of article 4 shall be transmitted on a monthly basis to the host state for distribution to the proper accounts.

(5) The commission shall establish a fiscal year which conforms to the fiscal years of the party states to the extent possible.

(6) The commission shall keep an accurate account of all receipts and disbursements. An annual audit of the books of the commission shall be conducted by an independent certified public accountant, and the audit report shall be made a part of the annual report of the commission.

(7) The commission shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the subsequent fiscal year.

(8) The commission may accept any grants, equipment, supplies, materials, or services, conditional or otherwise, from the federal or state government. The nature, amount and condition, if any, of any donation, grant, or other resources accepted pursuant to this paragraph and the identity of the donor or grantor shall be detailed in the annual report of the commission. However, the host state shall receive, for the uses specified in subparagraph (E) of paragraph (2) of subsection (d) of section 2021e of title 42 of the United States Code, any payments paid from the special escrow account for which the secretary of energy is trustee pursuant to subparagraph (A) of paragraph (2) of subsection (d) of section 2021e of title 42 of the United States Code.

(9) The commission shall submit communications to the governors and to the presiding officers of the legislatures of the party states regarding the activities of the commission, including an annual report to be submitted on or before January 15 of each year. The commission shall include in the annual report a review of, and recommendations for, low-level radioactive waste disposal methods which are alternative technologies to the shallow land burial of low-level radioactive waste.

(10) The commission shall assemble and make available to the party states, and to the public, information concerning low-level radioactive waste management needs, technologies, and problems.

(11) The commission shall keep a current inventory of all generators within the region, based upon information provided by the party states.

(12) The commission shall keep a current inventory of all regional disposal facilities, including information on the size, capacity, location, specific low-level radioactive wastes capable of being managed, and the projected useful life of each regional disposal facility.

(13) The commission may establish advisory committees for the purpose of advising the commission on the disposal and management of low-level radioactive waste.

(14) The commission may enter into contracts to carry out its duties and authority, subject to projected resources. No contract made by the commission shall bind a party state.

(15) The commission shall prepare contingency plans, with the cooperation and approval of the host state, for the disposal and management of low-level radioactive waste in the event that any regional disposal facility should be closed.

(16) The commission may sue and be sued and, when authorized by a majority vote of the members, may seek to intervene in an administrative or judicial proceeding related to this compact.

(17) The commission shall be managed by an appropriate staff, including an executive director. Notwithstanding any other provision of law, the commission may hire or retain, or both, legal counsel.

(18) The commission may, subject to applicable federal and state laws, recommend to the appropriate host state authority suitable land and rail transportation routes for low-level radioactive waste carriers.

(19) The commission may enter into an agreement to import low-level radioactive waste into the region only if both of the following requirements are met:

(a) The commission approves the importation agreement by a two-thirds vote of the commission.

(b) The commission and the host state assess the affected regional disposal facilities' capability to handle imported low-level radioactive wastes and any relevant environmental or economic factors, as defined by the host state's appropriate regulatory authorities.

(20) The commission may, upon petition, allow an individual generator, a group of generators, or the host state of the compact, to export low-level radioactive wastes to a low-level radioactive waste disposal facility located outside the region. The commission may approve the petition only by a two-thirds vote of the commission. The permission to export low-level radioactive wastes shall be effective for that period of time and for the amount of low-level radioactive waste, and subject to any other term or condition, which may be determined by the commission.

(21) The commission may approve, only by a two-thirds vote of the commission, the exportation outside the region of material, which otherwise meets the criteria of low-level radioactive waste, if the sole purpose of the exportation is to process the material for recycling.

(22) The commission shall, not later than ten years before the closure of the initial or subsequent regional disposal facility, prepare a plan for the establishment of the next regional disposal facility.

Article 4. Rights, Responsibilities, and Obligations of Party States

(A) There shall be regional disposal facilities sufficient to dispose of the low-level radioactive waste generated within the region.

(B) Low-level radioactive waste generated within the region shall be disposed of at regional disposal facilities and each party state shall have access to any regional disposal facility without discrimination.

(C) (1) Upon the effective date of this compact, the state of California shall serve as the host state and shall comply with the requirements of subdivision (E) for at least thirty years from the date the regional disposal facility begins to accept low-level radioactive waste for disposal. The extension of the obligation and duration shall be at the option of the state of California. If the state of California does not extend this obligation, the party state, other than the state of California, which is the largest major generator state shall then serve as the host state for the second regional disposal facility. The obligation of a host state which hosts the second regional disposal facility shall also run for thirty years from the date the second regional disposal facility begins operations.

(2) The host state may close its regional disposal facility when necessary for public health or safety.

(D) The party states of this compact cannot be members of another regional low-level radioactive waste compact entered into pursuant to the low-level radioactive waste policy act, as amended by the low-level radioactive waste policy amendments act of 1985 (42 U.S.C. secs. 2021b to 2021j, incl.).

(E) A host state shall do all of the following:

(1) Cause a regional disposal facility to be developed on a timely basis.

(2) Ensure by law, consistent with any applicable federal laws, the protection and preservation of public health and safety in the siting, design, development, licensing, regulation, operation, closure, decommissioning, and long-term care of the regional disposal facilities within the state.

(3) Ensure that charges for disposal of low-level radioactive waste at the regional disposal facility are reasonably sufficient to do all of the following:

(a) Ensure the safe disposal of low-level radioactive waste and long-term care of the regional disposal facility.

(b) Pay for the cost of inspection, enforcement, and surveillance activities at the regional disposal facility.

(c) Assure that charges are assessed without discrimination as to the party state of origin.

(4) Submit an annual report to the commission on the status of the regional disposal facility including projections of the facility's anticipated future capacity.

(5) The host state and the operator shall notify the commission immediately upon the occurrence of any event which could cause a possible temporary or permanent closure of a regional disposal facility.

(F) Each party state is subject to the following duties and authority:

(1) To the extent authorized by federal law, each party state shall develop and enforce procedures requiring low-level radioactive waste shipments originating within its borders and destined for a regional disposal facility to conform to packaging and transportation requirements and regulations. These procedures shall include, but are not limited to, all of the following requirements:

(a) Periodic inspections of packaging and shipping practices.

(b) Periodic inspections of low-level radioactive waste containers while in the custody of transporters.

(c) Appropriate enforcement actions with respect to violations.

(2) A party state may impose a surcharge on the low-level radioactive waste generators within the state to pay for activities required by paragraph (1).

(3) To the extent authorized by federal law, each party state shall, after receiving notification from a host state that a person in a party state has violated packaging, shipping, or transportation requirements or regulations, take appropriate actions to ensure that these violations do not continue. Appropriate actions may include, but are not

limited to, requiring that a bond be posted by the violator to pay the cost of repackaging at the regional disposal facility and prohibit future shipments to the regional disposal facility.

(4) Each party state shall maintain a registry of all generators within the state that may have low-level radioactive waste to be disposed of at a regional disposal facility, including, but not limited to, the amount of low-level radioactive waste and the class of low-level radioactive waste generated by each generator.

(5) Each party state shall encourage generators within its borders to minimize the volume of low-level radioactive waste requiring disposal.

(6) Each party state may rely on the good faith performance of the other party states to perform those acts which are required by this compact to provide regional disposal facilities, including the use of the regional disposal facilities in a manner consistent with this compact.

(7) Each party state shall provide the commission with any data and information necessary for the implementation of the commission's responsibilities, including taking those actions necessary to obtain this data or information.

(8) Each party state shall agree that only low-level radioactive waste generated within the jurisdiction of the party states shall be disposed of in the regional disposal facility, except as provided in paragraph (19) of subdivision (G) of article 3.

(9) Each party state shall agree that if there is any injury to persons or property resulting from the operation of a regional disposal facility, the damages resulting from the injury may be paid from the third-party liability fund pursuant to subparagraph (b) of paragraph (3) of subdivision (G) of article 3, only to the extent that the damages exceed the limits of liability insurance carried by the operator. No party state, by joining this compact, assumes any liability resulting from the siting, operation, maintenance, long-term care, or other activity relating to a regional facility, and no party state shall be liable for any harm or damage resulting from a regional facility not located within the state.

Article 5. Approval of Regional Facilities

A regional disposal facility shall be approved by the host state in accordance with its laws. This compact does not confer any authority on the commission regarding the siting, design, development, licensure, or other regulation, or the operation, closure, decommissioning, or long-term care of, any regional disposal facility within a party state.

Article 6. Prohibited Acts and Penalties

(A) No person shall dispose of low-level radioactive waste within the region unless the disposal is at a regional disposal facility, except as otherwise provided in paragraphs (20) and (21) of subdivision (G) of article 3.

(B) No person shall dispose of or manage any low-level radioactive waste within the region unless the low-level radioactive waste was generated within the region, except as provided in paragraphs (19), (20), and (21) of subdivision (G) of article 3.

(C) Violations of this section shall be reported to the appropriate law enforcement agency within the party state's jurisdiction.

(D) Violations of this section may result in prohibiting the violator from disposing of low-level radioactive waste in the regional disposal facility, as determined by the commission or the host state.

Article 7. Eligibility, Entry into Effect, Congressional Consent, Withdrawal, Exclusion

(A) The states of Arizona, North Dakota, South Dakota, and California are eligible to become parties to this compact. Any other state may be made eligible by a majority vote of the commission and ratification by the legislatures of all of the party states by statute, and upon compliance with those terms and conditions for eligibility which the host state may establish. The host state may establish all terms and conditions for the entry of any state, other than the states named in this subparagraph, as a member of this compact.

(B) Upon compliance with the other provisions of this compact, an eligible state may become a party state by legislative enactment of this compact or by executive order of the governor of the state adopting this compact. A state becoming a party state by executive order shall cease to be a party state upon adjournment of the first general session of its legislature convened after the executive order is issued, unless before the adjournment the legislature enacts this compact.

(C) A party state, other than the host state, may withdraw from the compact by repealing the enactment of this compact, but this withdrawal shall not become effective until two years after the effective date of the repealing

legislation. If a party state which is a major generator of low-level radioactive waste voluntarily withdraws from the compact pursuant to this subdivision, that state shall make arrangements for the disposal of the other party states' low-level radioactive waste for a time period equal the period of time it was a member of this compact. If the host state withdraws from the compact, the withdrawal shall not become effective until five years after the effective date of the repealing legislation.

(D) A party state may be excluded from this compact by a two-thirds vote of the commission members, acting in a meeting, if the state to be excluded has failed to carry out any obligations required by compact.

(E) This compact shall take effect upon the enactment by statute by the legislatures of the state of California and at least one other eligible state and upon the consent of Congress and shall remain in effect until otherwise provided by federal law. This compact is subject to review by Congress and the withdrawal of the consent of Congress every five years after its effective date, pursuant to federal law.

Article 8. Construction and Severability

(A) The provisions of this compact shall be broadly construed to carry out the purposes of the compact, but the sovereign powers of a party state shall not be infringed unnecessarily.

(B) This compact does not affect any judicial proceeding pending on the effective date of this compact.

(C) If any provision of this compact or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the compact which can be given effect without the invalid provision or application, and to this end the provisions of this compact are severable.

(D) Nothing in this compact diminishes or otherwise impairs the jurisdiction, authority, or discretion of either of the following:

(1) The nuclear regulatory commission pursuant to the atomic energy act of 1954, as amended (42 U.S.C. sec. 2011 et seq.).

(2) An agreement state under section 274 of the atomic energy act of 1954, as amended (42 U.S.C. sec. 2021).

(E) Nothing in this compact confers any new authority on the states or commission to do any of the following:

(1) Regulate the packaging or transportation of low-level radioactive waste in a manner inconsistent with the regulations of the nuclear regulatory commission or the United States department of transportation.

(2) Regulate health, safety, or environmental hazards from source, by-product, or special nuclear material.

(3) Inspect the activities of licensees of the agreement states or of the nuclear regulatory commission.

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) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.
- (h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.
- (i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.
13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.
14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".
- J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.
- K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.
- L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.
- M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.
- N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.
- O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.
- P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.
- Q. For the purposes of this section:
1. "Cottage food product":
 - (a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.
 - (b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.
 2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

D-6

DEPARTMENT OF HEALTH SERVICES (R19-1207)

Title 9, Chapter 6, Article 4, AIDS Drug Assistance Program

Amend: R9-6-401, R9-6-403, R9-6-404, R9-6-405, R9-6-406, R9-6-407,
R9-6-408, R9-6-409



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: December 3, 2019

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

FROM: Council Staff

DATE: November 8, 2019

SUBJECT: **DEPARTMENT OF HEALTH SERVICES (R19-1207)**

Title 9, Chapter 6, Article 4, AIDS Drug Assistance Program

Amend: R9-6-401, R9-6-403, R9-6-404, R9-6-405, R9-6-406, R9-6-407,
R9-6-408, R9-6-409

Summary:

This regular rulemaking from the Arizona Department of Health Services (“Department”) seeks to amend rules in Title 9, Chapter 6, Article 4 related to the AIDS Drug Assistance Program.

A.R.S. § 36-136(I)(1) requires the Department to make rules defining and prescribing “reasonably necessary measures for detecting, reporting, preventing, and controlling communicable and preventable diseases.” The AIDS Drug Assistance Program (ADAP) helps people living with HIV to obtain necessary prescription drugs to prevent the occurrence of, or to alleviate, disability and death from HIV-related diseases, including AIDS, and to reduce the spread of the disease. The Department indicates that the rules related to ADAP, were last revised in 2007, are outdated, and do not reflect the manner in which ADAP is now carried out. The Department indicates changes required by the Ryan White CARE Act, through which ADAP is primarily funded, are not currently included in the rules. The Department also notes that the rules do not contain provisions related to individuals obtaining prescription drug coverage through health insurance plans under the federal Affordable Care Act.

The Department is also proposing changes to increase the effectiveness of the rules including adding requirements related to the Department's ability to leverage federal funds, health insurance plan drug coverage, and drug manufacturers' rebates to help ensure that individuals have access to HIV-related drugs that may reduce infectivity or disability from HIV-related diseases. The rulemaking also updates and clarifies requirements, eliminates redundancies in definitions, and amends rules that are not being enforced as written as outlined in more detail in the Department's NFR.

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

Yes. The Department cites to both general and specific 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 review or rely on any study in conducting this rulemaking.

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

The rulemaking is changing the rules to make them consistent with how ADAP is currently implemented, in compliance with the requirements of the Ryan White CARE Act (RWCA), which provides the bulk of funding for ADAP. The changes add requirements related to the Department's ability to leverage federal funds, health insurance plan drug coverage, and drug manufacturers' rebates to help ensure that individuals have access to HIV-related drugs that may reduce infectivity or disability from HIV-related diseases. Stakeholders include the Department, case managers and the agencies employing them, HIV-care providers, the contract pharmacy, other pharmacies through which an individual may receive their drugs through ADAP, persons living with HIV applying for participation or enrolled in ADAP and the families, and the general public.

The Department indicates that last year they received 829 applications for initial enrollment in ADAP and conducted approximately 2,791 applications for continuing enrollment. The Department received \$9,862,981 in federal funds for ADAP in federal fiscal year 2017 and \$10,213,613 in federal funds for ADAP in federal fiscal year 2018. For each of these years, the Department receive \$750,000 from the state budget for ADAP.

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

The Department believe there are no less intrusive or less costly alternative for achieving the purpose of the rule.

6. What are the economic impacts on stakeholders?

The Department believes the changes improve clarity of the rules and the specifications of the types of documentation that may be submitted to support application for ADAP may encourage persons living with HIV, who are currently not applying for enrollment in ADAP, to apply, increasing the number of persons living with HIV receiving drugs through ADAP. The Department believes that by making it easier for persons living with HIV to enroll in ADAP, continue enrollment, and obtain drugs necessary to control HIV-infection and related diseases, the proposed rules may provide a significant benefit to the general public. The new rules simplify the administrative requirements and make them more consistent with current practice and should benefit small businesses. There are no probable impacts on private and public employment in businesses, agencies, and political subdivisions.

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

No. The Department indicates it only made changes to correct grammatical errors and clarify wording between the Notice of Proposed Rulemaking and Notice of Final Rulemaking.

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

The Department indicates that it did not receive any written comments during the public comment period. Furthermore, the Department indicates it held oral proceedings for the proposed rules on October 21, 2019, which no stakeholder or member of the public attended.

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

Not applicable.

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

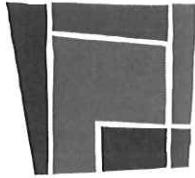
Not applicable.

11. Conclusion

The Department is conducting this rulemaking to update its rules to reflect the manner in which ADAP is currently carried out. The Department indicates changes required by the Ryan White CARE Act, through which ADAP is primarily funded, are not currently included in the rules. The Department also notes that the rules do not contain provisions related to individuals obtaining prescription drug coverage through health insurance plans under the federal Affordable Care Act.

The Department is also proposing changes to increase the effectiveness of the rules including adding requirements related to the Department's ability to leverage federal funds, health insurance plan drug coverage, and drug manufacturers' rebates to help ensure that individuals have access to HIV-related drugs that may reduce infectivity or disability from HIV-related diseases. The rulemaking also updates and clarifies requirements, eliminates redundancies in definitions, and amends rules that are not being enforced as written as outlined in more detail in the Department's NFR.

The Department is requesting an immediate effective date pursuant to A.R.S. § 41-1032(A)(1) and (4). Specifically, under A.R.S. § 41-1032(A)(1), a rule may be effective immediately “to preserve the public peace, health or safety.” Under A.R.S. § 41-1032(A)(4), a rule may be effective immediately “to provide a benefit to the public and a penalty is not associated with a violation of the rule.” Council staff finds the Department has provided adequate justification to support an immediate effective date for these rules. Council staff recommends approval of this rulemaking.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

October 22, 2019

VIA EMAIL: grrc@azdoa.gov

Nicole Sorensen, Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 6, Article 4, Regular Rulemaking

Dear Ms. Sorensen:

1. The close of record date: October 21, 2019
2. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C. 4 relates to a five-year-review report that was submitted to the Council on August 27, 2019.
3. Whether the rulemaking establishes a new fee and, if so, the statute authorizing the fee:
The rulemaking does not establish a new fee.
4. Whether the rulemaking contains a fee increase:
The rulemaking does not contain a fee increase.
5. Whether an immediate effective date is requested pursuant to A.R.S. 41-1032:
The Department is requesting an immediate effective date for the rules.

The Department certifies that the Preamble of this rulemaking discloses a reference to any study relevant to the rule that the Department reviewed and either did or did not rely on in its evaluation of or justification for the rule.

The Department certifies that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule.

The following documents are enclosed:

- a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule;

- b. An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055;
- c. General and specific statutes authorizing the rules, including relevant statutory definitions; and
- d. Other statutes and rules referred to in a definition.

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

Sincerely,



Robert Lane
Director's Designee

RL:rms

Enclosures

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

NOTICE OF FINAL RULEMAKING
TITLE 9. HEALTH SERVICES
CHAPTER 6. DEPARTMENT OF HEALTH SERVICES
COMMUNICABLE DISEASES AND INFESTATIONS

PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| R9-6-401 | Amend |
| R9-6-403 | Amend |
| R9-6-404 | Amend |
| R9-6-405 | Amend |
| R9-6-406 | Amend |
| R9-6-407 | Amend |
| R9-6-408 | Amend |
| R9-6-409 | Amend |
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
- Authorizing statutes: A.R.S. §§ 36-132(A)(1) and 36-136(G)
Implementing statutes: A.R.S. § 36-136(I)(1)
- 3. The effective date of the rules:**
- The Arizona Department of Health Services (Department) requests an immediate effective date, under A.R.S. § 41-1032(A)(1) and (4). Since the new rules reflect how the Department is currently enforcing the rules and many of the new requirements are less stringent than current requirements, enabling the Department and stakeholders to implement the new rules upon filing of the rules will allow the Department and stakeholders to receive the benefits of the new rules as quickly as possible.
- 4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rule:**
- Notice of Rulemaking Docket Opening: 25 A.A.R. 1342, May 31, 2019
Notice of Proposed Rulemaking: 25 A.A.R. 2327, September 13, 2019
- 5. The agency's contact person who can answer questions about the rulemaking:**
- Name: Ricardo Fernandez, Ryan White Part B/ADAP Program Director
Address: Arizona Department of Health Services
Public Health Preparedness

150 N. 18th Ave., Suite 110
Phoenix, AZ 85007

Telephone: (602) 364-3854
Fax: (602) 542-1155
E-mail: Ricardo.Fernandez@azdhs.gov
or
Name: Robert Lane, Office Chief
Address: Arizona Department of Health Services
Office of Administrative Counsel and Rules
150 N. 18th Ave., Suite 200
Phoenix, AZ 85007

Telephone: (602) 542-1020
Fax: (602) 364-1150
E-mail: Robert.Lane@azdhs.gov

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

Arizona Revised Statutes (A.R.S.) § 36-136(I)(1) requires the Department to make rules defining and prescribing “reasonably necessary measures for detecting, reporting, preventing, and controlling communicable and preventable diseases.” The AIDS Drug Assistance Program (ADAP) helps people living with HIV to obtain necessary prescription drugs to prevent the occurrence of, or to alleviate, disability and death from HIV-related diseases, including AIDS, and to reduce the spread of the disease. The Department has adopted rules for ADAP in 9 A.A.C. 6, Article 4. The rules in 9 A.A.C. 6, Article 4, were last revised in 2007, are very outdated, and do not reflect the manner in which ADAP is now carried out. Changes required by the Ryan White CARE Act, through which ADAP is primarily funded, are not currently included in the rules. The rules also do not contain provisions related to individuals obtaining prescription drug coverage through health insurance plans under the federal Affordable Care Act. After receiving an exception from the Governor’s rulemaking moratorium established by Executive Order 2019-01, the Department has revised the rules in 9 A.A.C. 6, Article 4, to address these issues and other issues identified by stakeholders as part of the rulemaking process and increase effectiveness. Changes made to the rules in 9 A.A.C. 6, Article 4, include adding requirements related to the Department’s ability to leverage federal funds, health insurance plan drug coverage, and drug manufacturers’ rebates to help ensure that individuals have access to HIV-related drugs that may reduce infectivity or disability from HIV-related diseases. The rulemaking also updates and

clarifies requirements, eliminates redundancies in definitions, and amends rules that are not being enforced as written. The rule changes conform to rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

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

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

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

Not applicable

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

The Department anticipates that the rulemaking may affect the Department, case managers and the agencies employing them, HIV-care providers, the contract pharmacy, other pharmacies through which an individual may receive their drugs through ADAP, persons living with HIV applying for participation or enrolled in ADAP and their families, and the general public. Annual costs/revenues changes are designated as minimal when more than \$0 and \$1,000 or less, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification.

This rulemaking is changing the rules in 9 A.A.C. 6, Article 4, to make them consistent with how ADAP is currently implemented, in compliance with the requirements of the Ryan White CARE Act (RWCA), which provides the bulk of funding for ADAP. Eligibility requirements are being changed to include individuals who have health insurance coverage that is inadequate or unaffordable and to raise the income ceiling from 300% to 400% of the federal poverty level. In addition, the timing of continuing enrollment is being changed to conform to federal funding requirements. Since ADAP is collaborating more closely with other RWCA-funding recipients to improve continuity of services, a consolidated/universal application form has been developed, which is used by an applicant for any RWCA-funded program and is accessible to other RWCA-funded programs. Use of this form requires an applicant to allow sharing of information among the programs, so the new rules include this requirement. If the Department were not already implementing ADAP according to these requirements, the Department believes that these changes might cause the Department to incur a minimal-to-moderate increase in costs due to more

individuals being eligible for ADAP. However, since ADAP is already complying with the RWCA requirements to retain funding, the changes provide a significant benefit to the Department through a reduction in confusion with conflicting requirements. Making the rules consistent with current practice may also provide a significant benefit to all other stakeholder groups. Updating and clarifying definitions, cross-references, and formatting make the rules clearer and more understandable and may also provide a significant benefit to all stakeholder groups.

The new rules may provide a minimal benefit to HIV-care providers by removing requirements for notifying the Department of certain changes with an enrolled individual who is a patient and the vendor/contract pharmacy of other changes. The new rules also add a method by which an HIV-care provider may request ADAP coverage of a drug not paid for by insurance and revise the method for requesting coverage of a drug not on the ADAP formulary. These changes may provide a significant benefit to an HIV-care provider, who is not aware that the Department has already adopted this practice, by allowing the HIV-care provider to provide better care to the patient. The Department believes that the vendor/contract pharmacy and other pharmacies, through which an enrolled individual may receive their drugs through ADAP, may receive a significant benefit from clarification of requirements for receiving prescription orders from HIV-care providers and dispensing drugs to individuals enrolled in ADAP.

The Department anticipates that the new rules would provide a significant benefit to a case manager, if these practices were not already implemented by the Department, since they clarify requirements and provide additional documentation options for individuals applying for enrollment or continuing enrollment in ADAP, which may result in a case manager being able to complete application forms with the applicants or enrolled individuals in a more efficient manner. By removing requirements for a case manager to notify the Department of a change in HIV-care provider and to attest that information on an application is accurate and complete, the changes in the new rules result in less time being spent by the case manager and, thus, provide a minimal benefit to the case manager.

Because the current rules restrict eligibility to individuals with no other method to pay for drugs, the Department believes that changing the rules to allow individuals who have health insurance coverage that is inadequate or unaffordable to participate in ADAP would provide up to a substantial benefit to these individuals, if the Department had not already implemented this practice. Similarly, raising the eligibility ceiling from 300% to 400% of the federal poverty level makes those individuals whose income is within the gap eligible for ADAP and would provide these individuals with up to a substantial benefit, if not already being done. Having these changes

in the rules may make persons living with HIV, who believed they were ineligible for ADAP based on the current rules, aware that they are now eligible, providing them with up to a substantial benefit. Other changes, such as allowing an enrolled individual with health insurance coverage to obtain drugs at a pharmacy other than the vendor/contract pharmacy and reducing application and notification requirements, provide a minimal benefit to an applicant or enrolled individual. However, the Department estimates that changing the time periods for continuing enrollment to those currently used may impose a minimal burden on an enrolled individual.

Persons living with HIV who are in care and are able to obtain drugs to control HIV-infection and related diseases are healthier and more productive citizens. Because their viral load is generally less, they are also less likely to infect others. Therefore, the Department believes that by making it easier for persons living with HIV to enroll in ADAP, continue enrollment, and obtain drugs necessary to control HIV-infection and related diseases, the new rules may provide a significant benefit to the general public.

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

Only changes to correct grammatical errors or clarify wording were made to the rules between the proposed rulemaking and the final rulemaking.

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

No written comments were received about the rulemaking during the public comment period. The Department held an oral proceeding for the proposed rules on October 21, 2019, which no stakeholder/member of the public attended.

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

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

The rules do not require a permit.

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

Not applicable

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

No business competitiveness analysis was received by the Department.

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

Not applicable

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

Not applicable

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

TITLE 9. HEALTH SERVICES
CHAPTER 6. DEPARTMENT OF HEALTH SERVICES
COMMUNICABLE DISEASES AND INFESTATIONS

ARTICLE 4. AIDS DRUG ASSISTANCE PROGRAM (ADAP)

Section

- R9-6-401. Definitions
- R9-6-403. Eligibility Requirements
- R9-6-404. Initial Application Process
- R9-6-405. Enrollment Process; Provisional Pre-approved Enrollment Status
- R9-6-406. Notification Requirements
- R9-6-407. Continuing Enrollment
- R9-6-408. Termination from ADAP Services
- R9-6-409. Drug Prescription and Distribution Requirements

ARTICLE 4. AIDS DRUG ASSISTANCE PROGRAM (ADAP)

R9-6-401. Definitions

In this Article, unless otherwise specified:

1. "ADAP" means the AIDS Drug Assistance Program.
2. "Adult" means an individual who is:
 - a. Eighteen or more years old;
 - b. Married; or
 - c. Emancipated, as specified in A.R.S. Title 12, Chapter 15.
3. "~~Advocacy~~" means the act of supporting, recommending, or arguing in favor of a cause or course of action for the benefit of an individual or group of individuals.
- 4.3. "AHCCCS" means the Arizona Health Care Cost Containment System.
5. "~~Annual family income~~" means combined yearly gross earned income and unearned income of all adult individuals within a family unit.
4. "Annual household income" means the adjusted gross income of all adult individuals within a household, as would be reported on the federal income tax return for an individual in the household, modified to include:
 - a. Federal taxable wages,
 - b. Tips,
 - c. Unemployment compensation,
 - d. Social security income,
 - e. Self-employment income,
 - f. Social security disability income,
 - g. Retirement or pension income,
 - h. Capital gains,
 - i. Investment income,
 - j. Rental and royalty income,
 - k. Excluded (untaxed) foreign income, and
 - l. Alimony.
- 6.5. "Applicant" means an individual for whom a request for initial enrollment in ADAP is submitted to the Department, as specified in R9-6-404.
- 7.6. "Applying for a low-income subsidy" means submitting forms and supporting documentation to the Social Security Administration for determining eligibility for receiving a low-income subsidy.
8. "~~Biological substance~~" means a compound made by or derived from a plant or animal.

- ~~source.~~
9. "~~Business day~~" means any day of the week other than a Saturday, Sunday, legal holiday, or day on which the Department is authorized or obligated by law or executive order to close.
- 10.7. "Calendar day" means any day of the week, including a Saturday, Sunday, or legal holiday.
11. "~~Case management services~~" means the activities performed by a case manager for an HIV infected individual or the individuals in the HIV infected individual's family unit.
- 12.8. "Case manager" means an individual who:
- a. Assesses the needs of an HIV infected individual ~~a person living with HIV for health services, housing, support services, and financial assistance~~:
 - i. ~~Medical services, nursing services, or health-related services, as defined in A.R.S. § 36-401;~~
 - ii. ~~Services not related to the treatment of HIV infection, intended to maintain or improve the physical, mental, or psychosocial capabilities of a person living with HIV or an individual in the person living with HIV's household;~~
 - iii. ~~Housing; or~~
 - iv. ~~Financial assistance;~~
 - b. Assists If applicable, assists the HIV infected individual ~~person living with HIV~~ with obtaining ~~health services, housing, support services, or financial assistance~~, as applicable ~~housing, financial assistance, or the services specified in subsection (8)(a)(i) and (ii);~~
 - c. Coordinates the interaction of the HIV infected individual ~~person living with HIV~~ with service providers ~~individuals providing the services specified in subsection (8)(a)(i) and (ii); and~~
 - d. Monitors the interaction of the HIV infected individual ~~person living with HIV~~ with service providers ~~individuals providing the services specified in subsection (8)(a)(i) and (ii) to:~~
 - i. Determine the effects of each service provider's ~~the activities of individuals providing the services specified in subsection (8)(a)(i) and (ii)~~ on the needs of the HIV infected individual ~~person living with HIV~~, and
 - ii. Develop strategies to reduce unmet needs.

- 13.9. "CD4-T-lymphocyte count" means the number of a specific type of white blood cell in a cubic millimeter of blood.
14. "~~Community service organization~~" means a nonprofit entity that assists an individual who is infected with HIV or affected by another individual's infection with HIV by providing the services listed below or coordinating the interaction of the individual with service providers to obtain or retain:
- a. Rehabilitation services;
 - b. Case management services;
 - c. Support services;
 - d. Advocacy;
 - e. Financial assistance, or
 - f. Housing.
15. "~~Confirmatory test~~" means a laboratory analysis, such as a Western blot analysis, approved by the U.S. Food and Drug Administration to be used after a screening test to diagnose or monitor the progression of HIV infection.
10. "Contract pharmacy" means an entity that has a legally binding agreement with the Department to dispense drugs through ADAP to enrolled individuals.
- 16.11. "Current" means within the six months before the date on which an:
- a. Date of application Individual submits the documents specified in R9-6-404 to the Department as an application for initial enrollment in ADAP, or
 - b. Date on which an enrolled Enrolled individual submits to the Department the documents required in R9-6-407 for continuing enrollment.
- 17.12. "Date of application" means the month, day, and year that an individual submits the documents specified in R9-6-404 to the Department as an application for initial receives the documents specified in R9-6-404 for enrollment in ADAP.
18. "Diagnosis" means an identification of a communicable disease by an individual authorized by law to make the identification.
- 19.13. "Drug" means a chemical or biological substance or a compound made by or derived from a plant or animal source that:
- a. Has been determined by the U.S. Food and Drug Administration to be useful in the treatment of individuals with HIV infection, and
 - b. Is available only through a prescription order.
20. "Earned income" means monetary payments received by an individual as a result of work performed or rental of property owned or leased by the individual, including:

- a. Wages;
 - b. Commissions and fees;
 - c. Salaries and tips;
 - d. Profit from self employment;
 - e. Profit from rent received from a tenant or boarder, and
 - f. Any other monetary payments received by an individual for work performed or rental of property.
21. "Employed" means working for a person for money in the form of wages or a salary.
22. "Enrolling in a Medicare drug plan" means submitting information to the Centers for Medicare and Medicaid Services during an initial enrollment period or general enrollment period and selecting a Medicare drug plan.
23. "Family unit" means:
- a. A group of individuals residing together who are related by birth, marriage, or adoption; or
 - b. An individual who:
 - i. Does not reside with another individual; or
 - ii. Resides only with another individual or group of individuals to whom the individual is unrelated by birth, marriage, or adoption.
- 24.14. "Formulary" means a list of drugs that are available to an individual through the individual's health insurance or ADAP.
25. "General enrollment period" means the interval of time between November 15 and December 31 of each calendar year during which an individual:
- a. May enroll in a Medicare drug plan if the individual, before May 15, 2006:
 - i. Was enrolled in Medicare;
 - ii. Was eligible to enroll in a Medicare drug plan, and
 - iii. Did not enroll in a Medicare drug plan; or
 - b. Currently enrolled in a Medicare drug plan may select a different Medicare drug plan.
26. "Gift" means something given voluntarily by an individual to another individual without payment in return.
27. "Guardian" means an individual appointed as a legal guardian by a court of competent jurisdiction.
15. "Health insurance enrollment period" means an interval of time during which an individual may apply for health insurance coverage, including:

- a. An annual interval of time, and
 - b. Any additional intervals of time due to a change in the individual's situation or circumstances.
28. "Health-related services" means the same as in A.R.S. § 36-401.
29. "Health services" means ~~medical services, nursing services, or health related services, as provided to an individual.~~
- 30.16. "HIV infection" means the same as in A.R.S. § 36-661.
17. "HIV-care provider" means the physician, registered nurse practitioner, or physician assistant who is treating an applicant or enrolled individual for HIV infection.
31. "Homeless" means having a primary nighttime sleeping place that is not:
 - a. ~~Designed to be a sleeping place for human beings, or~~
 - b. ~~Ordinarily used as a primary nighttime sleeping place for human beings.~~
18. "Household" means an applicant or enrolled individual and any of the following individuals, as applicable, residing with the applicant or enrolled individual:
 - a. The applicant's or enrolled individual's spouse;
 - b. A dependent parent;
 - c. A parent of a child who is:
 - i. The applicant or enrolled individual, and
 - ii. Claimed as a dependent by the parent;
 - d. A dependent sibling or other relative;
 - e. A dependent child of the applicant or enrolled individual, regardless of age and including an adopted child or a foster child;
 - f. A non-dependent child or other relative if claimed or could be claimed as a dependent on the applicant's or enrolled individual's taxes; and
 - g. A child who is a part of a shared custody agreement of the applicant or enrolled individual, in years for which the child is claimed or could be claimed as a dependent on the applicant's or enrolled individual's taxes.
32. "Initial enrollment period" means the interval of time during which an individual may first enroll in a Medicare drug plan.
- 33.19. "Job" means a position in which an individual is employed.
- 34.20. "Low-income subsidy" means Medicare-provided assistance that may partially or fully cover the costs of drugs and is based on the annual household income of for an individual and, if applicable, the individual's spouse.
35. "Medical services" means the same as in A.R.S. § 36-401.

- 36.21. "Medicare" means a federal health insurance program established under Title XVIII of the Social Security Act.
- 37.22. "Medicare drug plan" means insurance approved by Medicare to cover some of the costs of drugs for individuals enrolled in Medicare.
- 38.23. "Non-permanent housing" means a ~~living~~ situation in which an individual is:
- a. Living in a place that is not designed to be a sleeping place for human beings or ordinarily used as a primary nighttime sleeping place for human beings, or
 - b. Living in a shelter or other temporary living arrangement.
39. "~~Nonprofit~~" means ~~owned and operated under the direction of an entity that is recognized as exempt under § 501 of the U.S. Internal Revenue Code.~~
40. "~~Nursing services~~" means the same as in A.R.S. § 36-401.
24. "Person living with HIV" means an individual who is HIV-infected.
- 41.25. "Physician" means an individual licensed as a:
- a. ~~as a doctor~~ Doctor of allopathic medicine under A.R.S. Title 32, Chapter 13, or through a similar licensing board in another state; or
 - b. ~~as a doctor~~ Doctor of osteopathic medicine under A.R.S. Title 32, Chapter 17, or through a similar licensing board in another state.
- 42.26. "Physician assistant" means an individual licensed under A.R.S. Title 32, Chapter 25, or through a similar licensing board in another state.
- 43.27. "Poverty level" means the annual ~~family~~ household income for a ~~family~~ unit ~~household~~ of a particular size, as specified in the poverty guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services.
28. "Pre-approved enrollment status" means that an applicant may receive drugs or other services through ADAP on a temporary basis.
- 44.29. "Prescription order" means the same as in A.R.S. § 32-1901.
45. "~~Primary care provider~~" means ~~the physician, registered nurse practitioner, or physician-assistant who is treating an applicant or enrolled individual for HIV infection.~~
46. "Provisional enrollment" means an interval of time, determined by the Department, during which an individual who meets the eligibility criteria specified in R9-6-403(1) through (4) may receive drugs on the ~~ADAP formulary through the vendor pharmacy while the individual is waiting for:~~
- a. ~~An eligibility determination for AHCCCS enrollment or a low income subsidy;~~
~~or~~
 - b. Enrollment in a Medicare drug plan.

47. "Public assistance" means a government program that provides a monetary payment, or that supplies goods or services that have a monetary value, to individuals, based on need, such as Supplemental Security Income, Temporary Aid to Needy Families, Food Stamps, or non-federally funded General Assistance.
- 48.30. "Registered nurse practitioner" means an individual who meets the definition of registered nurse practitioner in A.R.S. § 32-1601 and is licensed under A.R.S. Title 32, Chapter 15, or through a similar licensing board in another state.
- 49.31. "Regular" means recurring at fixed intervals.
50. "Rehabilitation services" means the same as in A.A.C. R9-10-201.
- 51.32. "Representative" means the:
- a. Guardian of an individual;
 - b. Parent of an individual who is not an adult; or
 - c. Person designated as an agent for an individual through a power of attorney, as specified in A.R.S. Title 14, Chapter 5, Article 5.
52. "Reservist" means a member of the Reserves of the U.S. Army, Air Force, Navy, Marine Corps, or Coast Guard.
- 53.33. "Resident" means an individual who has a place of habitation in Arizona and lives is living in Arizona as other than a tourist.
54. "Restricted drug" means a drug on the ADAP formulary that is approved by the Department on a case-by-case basis for enrolled individuals who meet medical indications for the use of the drug.
55. "Routine training" means military education and related hands-on activities designed to make an individual ready for the tasks the individual would be expected to perform as a member of the U.S. Air Force, Army, Coast Guard, Marine Corps, or Navy.
56. "Screening test" means a laboratory analysis approved by the U.S. Food and Drug Administration as an initial test to indicate the possibility that an individual is HIV-infected.
- 57.34. "Self-employed" means receiving money as a direct result of the work performed by an individual rather than from wages or a salary paid to the individual.
58. "Service provider" means an individual who provides medical services, nursing services, health-related services, or support services for an HIV-infected individual.
59. "Shelter" means a facility that provides individuals with a temporary place to sleep at night with the expectation that the individual will go elsewhere during the daylight hours.
60. "Support services" means activities, not related to the treatment of HIV infection,

~~intended to maintain or improve the physical, mental, or psychosocial capabilities of an HIV-infected individual or the individual's family unit and that may include:~~

- a. ~~Providing opportunities for social interactions for HIV infected individuals;~~
 - b. ~~Taking care of a child of an HIV infected individual while the HIV infected individual receives medical services;~~
 - c. ~~Providing food or meals to an HIV infected individual in the residence; or~~
 - d. ~~Providing information about available support services or materials about how to reduce the risk of spreading HIV.~~
61. ~~"Temporary"~~ means transient, with no expectation of permanence.
62. ~~"Third party payor"~~ means a person other than an HIV infected individual, such as health insurance or an employer, that is responsible for paying a portion of the costs of drugs for the HIV infected individual.
63. ~~"Tourist"~~ means an individual who is living in Arizona but maintains a place of habitation outside of Arizona and lives outside of Arizona for more than six months during a calendar year.
64. ~~"Treatment"~~ means the administration to an individual of health services intended to relieve illness or injury.
65. ~~"Unearned income"~~ means monetary payments received by an individual that are not compensation for work performed or rental of property owned or leased by the individual, including:
- a. ~~Unemployment insurance;~~
 - b. ~~Workers' compensation;~~
 - c. ~~Disability payments;~~
 - d. ~~Payments from the Social Security Administration;~~
 - e. ~~Payments from public assistance;~~
 - f. ~~Periodic insurance or annuity payments;~~
 - g. ~~Retirement or pension payments;~~
 - h. ~~Strike benefits from union funds;~~
 - i. ~~Training stipends;~~
 - j. ~~Child support payments;~~
 - k. ~~Alimony payments;~~
 - l. ~~Military family allotments;~~
 - m. ~~Regular support payments from a relative or other individual not residing in the household;~~

- n. Investment income;
 - o. Royalty payments;
 - p. Periodic payments from estates or trusts; and
 - q. Any other monetary payments received by an individual that are not:
 - i. As a result of work performed or rental of property owned by the individual,
 - ii. Gifts,
 - iii. Lump sum capital gains payments,
 - iv. Lump sum inheritance payments,
 - v. Lump sum insurance payments, or
 - vi. Payments made to compensate for personal injury.
35. “Valid” means still in effect or having legal force.
66. “Vendor pharmacy” means an entity that contracts with the Department to perform the activities specified in R9-6-409(C).
67. “Veteran” means an individual who has served in the United States Armed Forces.
36. “Viral load” means the amount of HIV circulating in the body of an individual.
68. “Viral load test” means a laboratory analysis to determine the amount of HIV circulating in the body of an individual.

R9-6-403. Eligibility Requirements

An individual is eligible to enroll in ADAP if the individual:

1. Has a diagnosis of HIV infection from a physician, registered nurse practitioner, or physician assistant;
2. Is a resident of Arizona, as established by documentation that complies with R9-6-404(A)(9) R9-6-404(A)(8);
3. Has an annual family household income that is less than or equal to 300% 400% of the poverty level; and
4. Satisfies one of the following:
 - a. Has no health insurance coverage;
 - b. Has inadequate health insurance coverage, which may include Medicare or an AHCCCS health plan, limiting the ability of the individual to obtain drugs, such as health insurance coverage that:
 - i. Does not cover drugs, or
 - ii. Does not include on its formulary at least one of the drugs prescribed for the individual that is on the ADAP formulary, or

- iii. Requires the use of specific pharmacies or higher co-payments for obtaining a drug;
- c. Has health insurance that is unaffordable because premiums exceed 9.5% of the applicant's annual household income;
- e-d. Is an American Indian or Alaska Native who:
 - i. Is eligible for, but chooses not to use, the Indian Health Service or a clinic operated by a sovereign tribal nation to receive drugs; and
 - ii. Either has no other health insurance coverage or has other health insurance coverage that is inadequate or unaffordable, as described in subsections (4)(b) and (c):
 - (1) ~~Does not cover drugs, or~~
 - (2) ~~Does not include on its formulary at least one of the drugs prescribed for the individual that is on the ADAP formulary;~~ or
- d-e. Is a ~~veteran~~ an individual who has served in the United States Armed Forces and who:
 - i. Is eligible for, but chooses not to use, Veterans Health Administration benefits to receive drugs; and
 - ii. Either has no other health insurance coverage or has other health insurance coverage that is inadequate or unaffordable, as described in subsections (4)(b) and (c):
 - (1) ~~Does not cover drugs, or~~
 - (2) ~~Does not include on its formulary at least one of the drugs prescribed for the individual that is on the ADAP formulary;~~
- 5. Is ~~ineligible for enrollment in AHCCCS, as established by documentation issued by AHCCCS;~~ and
- 6. If ~~eligible for Medicare:~~
 - a. Is ~~ineligible for a full low income subsidy, as established by documentation issued by the Social Security Administration;~~ and
 - b. Has enrolled in a Medicare drug plan.

R9-6-404. Initial Application Process

- A. An applicant for initial enrollment in ADAP or the applicant's representative shall submit to the Department the following ~~documents~~ application packet:
- 1. A ~~Department provided form~~ An application in a Department-provided format, completed by the applicant or the applicant's representative, containing:

- a. The applicant's name, date of birth, and gender;
- b. Except as provided in subsection (A)(1)(c), the applicant's residential address and mailing address;
- c. If the applicant is in non-permanent housing, the address of a ~~community service organization person~~ that has agreed to receive written communications for the applicant;
- d. If applicable, the address in Arizona to which the applicant would want drugs to be shipped;
- e. If applicable, the name of the applicant's representative and the mailing address of the applicant's representative, if different from the applicant's mailing address;
- f. Either:
 - i. The telephone number of the applicant or a person that has agreed to receive telephone communications for the applicant, or
 - ii. An email address for the applicant;
- g. The number of individuals in the applicant's ~~family unit~~ household that can be claimed on the applicant's income taxes and the names and ages of the individuals;
- h. The names of individuals, other than the persons specified in subsection (A)(1)(e)(iii) (A)(1)(s)(v), with whom the applicant authorizes the Department to speak about the applicant's enrollment in ADAP;
- i. The applicant's annual ~~family household~~ income;
- j. The applicant's race and ethnicity;
- k. Whether the applicant or an adult in the applicant's ~~family unit~~ household:
 - i. Is employed;
 - ii. Is self-employed;
 - iii. ~~Is receiving public assistance;~~
 - iv. Is receiving regular monetary payments from a source not specified in subsection (A)(1)(j)(i) through subsection (A)(1)(j)(iii) subsection (A)(1)(k)(i) or (ii) and, if so, an identification of the source of the monetary payments; or
 - v. Is using a source not specified in subsection (A)(1)(j)(i) through subsection (A)(1)(j)(iv) subsections (A)(1)(k)(i) through (iii) or savings to assist the applicant in obtaining food, water, housing, or clothing for the applicant and if so, an identification of the source;

- k.l. Whether the applicant is receiving ~~benefits~~ health insurance coverage from AHCCCS and:
- i. If so, the name of the AHCCCS health plan and the date enrolled; and
 - ii. If the applicant's eligibility determination for AHCCCS is pending, the date the application for AHCCCS was submitted;
- l. ~~The date the applicant or the applicant's representative is scheduled to meet with AHCCCS to discuss eligibility for AHCCCS, if applicable;~~
- m. Whether the applicant is eligible for Medicare ~~benefits~~ health insurance coverage and, if not, the date on which the applicant will be eligible for Medicare ~~benefits~~ health insurance coverage;
- n. If the applicant is eligible for Medicare ~~benefits~~ health insurance coverage, whether:
- i. The applicant, or the applicant's representative has applied for a low-income subsidy for the applicant and, if so, the date of the application for the low-income subsidy; and
 - ii. Either:
 - (1) The applicant or the applicant's representative has applied for a Medicare drug plan for the applicant and, if so, the date of the application for the Medicare drug plan; or
 - (2) The applicant is enrolled in a Medicare drug plan;
- o. Whether the applicant or the applicant's spouse has or is eligible to enroll in ~~health insurance coverage~~ other than AHCCCS or Medicare that would pay for drugs on the ADAP formulary;
- p. ~~Whether the applicant has served on active duty:~~
- i. ~~In the U.S. Air Force, Army, Coast Guard, Marine Corps, or Navy;~~
 - ii. ~~In the Army National Guard or Air National Guard; or~~
 - iii. ~~As a reservist serving on active duty other than for routine training purposes;~~
- p. If the applicant or the applicant's spouse is eligible to enroll in health insurance coverage other than Medicare that would pay for drugs on the ADAP formulary but enrollment is closed, the date the next health insurance enrollment period begins;
- q. Whether the applicant is eligible to receive benefits from:
- i. The Indian Health Service or a clinic operated by a sovereign tribal

- nation, or
- ii. The Veterans Health Administration;
- r. Whether the applicant is living in non-permanent housing or is in another situation in which the applicant's financial records to verify annual household income, as specified in subsection (A)(6), are not available to the applicant;
- q.s. A statement by the applicant or the applicant's representative confirming that the applicant or the applicant's representative:
- i. Understands that, if the annual household income of the applicant is at an amount that may make the applicant eligible for enrollment in AHCCCS, the applicant or the applicant's representative is required to submit to the Department ~~proof of ineligibility for enrollment in AHCCCS and for a low-income subsidy within 30 calendar days after the date of application documentation stating the applicant's status for enrollment in AHCCCS before the end of the month after the month in which the applicant applied for ADAP~~, if not provided to the Department with the application;
- ii. Understands Except as provided in R9-6-405(E), if the applicant is eligible for Medicare, understands that the applicant or the applicant's representative is required to submit to the Department proof of enrollment in a Medicare drug plan, if the applicant is eligible for Medicare, within 30 calendar days after the date of application before the end of the month after the month in which the applicant applied for ADAP, if not provided to the Department with the application;
- iii. Except as provided in R9-6-405(E), if the applicant is eligible for Medicare and the annual household income of the applicant is less than 175% of the poverty level, understands that the applicant or the applicant's representative is required to submit to Department documentation of the applicant's status for a low-income subsidy before the end of the month after the month in which the applicant applied for ADAP, if not provided to the Department with the application;
- iv. Except as provided in R9-6-405(E), if the applicant or the applicant's spouse has or is eligible for health insurance coverage other than AHCCCS or Medicare, understands that the applicant or the applicant's representative is required to submit to the Department information about

the health insurance coverage to enable the Department to determine if the health insurance coverage is inadequate, according to R9-6-403(4)(b), or unaffordable, according to R9-6-403(4)(c), before the end of the month after the month in which the applicant applied for ADAP, if not provided to the Department with the application;

iii.v. Grants permission to the Department to discuss the information provided to the Department under subsection (A) with:

- (1) AHCCCS, for the purpose of determining AHCCCS eligibility;
- (2) Medicare and the Social Security Administration, for the purpose of determining eligibility for a low-income subsidy and enrollment in a Medicare drug plan;
- (3) The applicant's primary care HIV-care provider or designee;
- (4) The vendor contract pharmacy or a pharmacy at which the applicant or the applicant's representative may request a drug through ADAP, to assist with drug distribution;
- (5) Other providers of services for persons living with HIV that are funded through Ryan White;
- (6) Other providers of HIV-related services, as applicable to the applicant; and
- (5)(7) Any other entity as necessary to establish eligibility for enrollment in ADAP or assist with drug distribution to the applicant or payment of prescription co-payment costs;

iv.v. Understands that the applicant or the applicant's representative is required to submit to the Department proof of the applicant's annual family household income as part of the application; and

v.vi. Understands that the applicant or the applicant's representative is required to notify the Department of changes specified in R9-6-406(A);

r.t. A statement by the applicant or the applicant's representative attesting that:

- i. To the best of the knowledge and belief of the applicant or the applicant's representative, the information and documents provided to the Department as specified in subsection (A), including the information in the documents accompanying the form specified in subsection (A)(1), in the application packet is accurate and complete;
- ii. The applicant meets the eligibility criteria specified in R9-6-403; and

- iii. The applicant or applicant's representative understands that eligibility does not guarantee that the Department will be able to provide drugs and understands that an individual's enrollment in ADAP may be terminated as specified in R9-6-408; and
- s-u. The dated signature of the applicant or the applicant's representative;
2. The ~~Department provided form information~~ specified in subsection (B), completed by the applicant's ~~primary care HIV-care provider in a Department-provided format~~;
3. ~~A written prescription order signed by the applicant's primary care provider or a copy of the written prescription order for each drug on the list specified in subsection (B)(5);~~
- 4.3. ~~A If the annual household income of the applicant is an amount that may make the applicant eligible for enrollment in AHCCCS, a copy of current documentation from AHCCCS, dated within 60 calendar days before the date of application, stating that the status of the applicant's eligibility for enrollment in AHCCCS has not yet been determined or that AHCCCS is denying eligibility to the applicant;~~
- 5.4. If the applicant is eligible for Medicare, a copy of ~~current valid documentation from the Social Security Administration stating that the applicant's eligibility for a low-income subsidy has not yet been determined or that the applicant is ineligible for a full low-income subsidy:~~
- a. The applicant's enrollment in a Medicare drug plan; and
- b. If the applicant's annual household income is at or below 175% of the poverty level, the status of the applicant's eligibility for a low-income subsidy;
5. If the applicant or the applicant's spouse has or is eligible for health insurance coverage other than AHCCCS or Medicare:
- a. Information about the health insurance coverage to enable the Department to determine whether the health insurance coverage is inadequate, according to R9-6-403(4)(b), or unaffordable, according to R9-6-403(4)(c); and
- b. If the applicant has other health insurance coverage, documentation confirming the health insurance coverage;
6. If the applicant is eligible for Medicare, a copy of the applicant's Medicare prescription card or copy of a letter from the company providing the applicant's Medicare drug plan, confirming that the applicant has applied for or is enrolled in a Medicare drug plan;
- 7.6. Proof Except as provided in subsection (C), proof of the applicant's annual family household income, including the following items as applicable to the applicant's family unit household:

- a. An income tax return submitted by the applicant for the previous tax year to the U.S. Internal Revenue Service or the Arizona Department of Revenue;
 - b. For If an income tax return in subsection (A)(6)(a) is not available, for each job held by an adult in the family unit household:
 - i. Paycheck stubs from ~~the 30~~ within 60 calendar days before the date of application, or
 - ii. A statement from the employer listing gross wages for the 30 calendar days before the date of application;
 - b.c. From If an income tax return in subsection (A)(6)(a) is not available, from each self-employed adult in the family unit household, documentation of the current net income from self-employment, such as:
 - i. An income tax return submitted for the previous tax year to the U.S. Internal Revenue Service or the Arizona Department of Revenue;
 - ii.i. The Internal Revenue Service Forms 1099 prepared for the previous tax year for the self-employed adult in the family unit household;
 - iii.ii. A profit and loss statement for the self-employed adult's business, covering a period ending no earlier than three months before the date of application; or
 - iv.iii. Bank statements from the self-employed adult's checking and savings accounts, covering a period ending no earlier than three months before the date of application;
 - e. A letter from each entity providing public assistance to an adult in the family unit, describing payments from public assistance;
 - d. A letter from an entity providing a monetary award to an adult in the family unit to cover educational expenses other than tuition, describing the monetary award; and
 - e.d. Documentation showing the amount and source of any regular monetary payments received by an adult in the family unit household from sources other than those specified in subsection (A)(7)(a) (A)(6)(a) through subsection (A)(7)(d) (A)(6)(c);
- 8.7. If the applicant or the applicant's representative has stated on the form specified in according to subsection (A)(1) (A)(1)(k)(v) that the applicant has no source of regular monetary payments and is unable to provide any of the documentation specified in subsection (A)(7) (A)(6), a Department provided form the following, in a Department-

provided format, completed and signed within 30 calendar days before the date of application, containing:

- a. Information completed by the applicant or the applicant's representative stating whether:
 - i. An adult in the applicant's family unit household receives money from intermittent work performed by the adult in the family unit household for which no paycheck stub is received and, if so, the average monthly earnings, and the adult's occupation;
 - ii. The applicant is ~~homeless or~~ living in ~~a shelter~~ non-permanent housing;
 - iii. The applicant is receiving assistance from another individual; and
 - iv. The applicant has another source of assistance for obtaining food, water, housing, and clothing, and, if so, an identification of the source;
- b. A statement by the applicant or the applicant's representative attesting that, to the best of the knowledge and belief of the applicant or the applicant's representative, the information submitted under subsection (A)(8)(a) (A)(7)(a) is accurate and complete; and
- c. The dated signature of the applicant or the applicant's representative;
- d. ~~A statement by the applicant's case manager or primary care provider attesting that to the best of the knowledge and belief of the applicant's case manager or primary care provider the information submitted under subsection (A)(8)(a) is accurate and complete; and~~
- e. ~~The dated signature of the applicant's case manager or primary care provider;~~

9.8. Proof that the applicant is a resident of Arizona that includes:

- a. One of the following that shows the Arizona residential address ~~included on the Department provided form~~ specified in according to subsection (A)(1) (A)(1)(b) and the name of the applicant or an adult in the applicant's family unit household:
 - i. Documentation issued by a governmental entity related to ~~participation in public assistance~~ the applicant's eligibility for benefits, dated within 60 calendar days before the date of application;
 - ii. ~~Current documentation from AHCCCS related to the applicant's eligibility for enrollment in AHCCCS;~~
 - iii-ii. ~~Current Valid~~ documentation from the Social Security Administration or the Department of Veterans Affairs related to the applicant's eligibility for benefits;

- iv. ~~Current documentation from the Arizona Department of Economic Security related to the applicant's eligibility for unemployment insurance benefits;~~
 - v.iii. A property tax statement for the most recent tax year issued by a governmental entity;
 - vi.iv. A homeowners' association assessment or fee statement, dated within 60 calendar days before the date of application;
 - vii.v. A ~~current valid~~ lease agreement; or
 - viii.vi. A mortgage statement for the most recent tax year;
 - vii. ~~A letter issued by an entity providing non-permanent housing to the applicant, dated within 30 calendar days before the date of application;~~
- b. If the applicant is ~~unable to produce documentation that satisfies subsection (A)(9)(a), two of the following that show the Arizona residential address included on the Department provided form specified in subsection (A)(1) and the name of the applicant or an adult in the applicant's family unit:~~
 - i. ~~A utility bill dated within 60 calendar days before the date of application;~~
 - ii. ~~A tax statement, other than a property tax statement, issued by a governmental entity for the most recent tax year;~~
 - iii. ~~An Internal Revenue Service Form W-2 for the most recent tax year;~~
 - iv. ~~A check stub or statement of direct deposit issued by an employer for the most recent pay period;~~
 - v. ~~A bank or credit union statement dated within 60 calendar days before the date of application;~~
 - viii. ~~Any document or mail dated within 60 calendar days before the date of application and received by the applicant, including a utility bill, check stub, or statement of direct deposit issued by an employer, a bank or credit union statement, a credit card statement, a mobile telephone company billing statement, a billing statement or receipt from an HIV care provider's office, or a document from an insurance company;~~
 - vi.ix. ~~A non-expired Arizona driver license issued by the Arizona Department of Transportation's Motor Vehicle Division within the previous 12 months;~~
 - vii.x. ~~A non-expired Arizona vehicle registration issued by the Arizona Department of Transportation's Motor Vehicle Division within the~~

- previous 12 months;
- viii.-xi. A non-expired Arizona identification card issued by the Arizona Department of Transportation's Motor Vehicle Division within the previous 12 months; or
- ix.-xii. A tribal enrollment card or other type of tribal identification; or
- *. A current immigration identification card issued by U.S. Citizenship and Immigration Services; or
- e.b. If the applicant is unable to produce documentation that satisfies either subsection (A)(9)(a) or (b) (A)(8)(a), two one of the following that include includes the name of the applicant or an adult in the applicant's family unit household and is dated within 30 calendar days before the date of application:
- i. A document listed in subsection (A)(9)(b)(i) through subsection (A)(9)(b)(x) that includes the Arizona residential address shown on the Department provided form specified in subsection (A)(1);
 - ii. A letter issued by an entity providing non permanent housing to the applicant, including the Arizona residential address of the non permanent housing that is the same as the Arizona residential address for the applicant shown on the Department provided form specified in subsection (A)(1);
 - iii.i. A written statement issued by a community service organization the applicant's case manager verifying that the applicant is homeless living in non-permanent housing and a resident of Arizona;
 - iv. A credit card, primary care provider's office, insurance company, or mobile telephone company billing statement dated within 60 calendar days before the date of application, including the Arizona residential address shown on the Department provided form specified in subsection (A)(1);
 - v. A current vehicle insurance card, including the Arizona residential address shown on the Department provided form specified in subsection (A)(1);
 - vi. An official document, such as an Arizona voter registration card, issued by a governmental entity and including the Arizona residential address shown on the Department provided form specified in subsection (A)(1);
 - vii.ii. A written statement issued by the applicant's case manager indicating

that the case manager has conducted a home visit with the applicant at the Arizona residential address ~~shown on the Department provided form specified in according to subsection (A)(1) (A)(1)(b) within 30 calendar days before the date of application~~; or

viii.ii. A written statement issued by the applicant's ~~primary care HIV-care provider~~, verifying that the applicant is a resident of Arizona; and

10.9. If the applicant or the applicant's representative has stated ~~on the Department provided form specified in according to subsection (A)(8) (A)(7)~~ that the applicant receives assistance from another individual, a letter from the individual to support the statement of the applicant or the applicant's representative.

B. The ~~primary care HIV-care provider~~ of an applicant for initial enrollment in ADAP shall ~~complete provide~~:

1. ~~The following information for the applicant a Department provided form containing in a Department-provided format:~~
 - 1.a. The applicant's name;
 - 2.b. The ~~primary care HIV-care provider's name, business address, telephone number, email address, fax number, and professional license number;~~
 - 3.c. A statement that the applicant has been diagnosed with HIV infection;
 4. ~~The dates of and results for the most recent confirmatory test, CD4 T-lymphocyte count, and, if available, viral load test conducted for the applicant;~~
 - 5.d. A list of each drug ~~from the current ADAP formulary~~ prescribed for the applicant by the ~~primary care HIV-care provider~~;
 6. ~~A statement by the primary care provider that the primary care provider understands that the primary care provider is required to notify the Department of changes specified in R9-6-406(B);~~
 - 7.e. A statement by the ~~primary care HIV-care provider~~ attesting that, to the best of the ~~primary care HIV-care provider's knowledge and belief~~, the information provided to the Department as specified in subsection (B) is accurate and complete; and
 - 8.f. The dated signature of the ~~primary care HIV-care provider~~;
2. ~~Documentation confirming HIV-infection of the applicant; and~~
3. ~~A copy of the most recent laboratory report of a test for viral load and, if available, CD4-T-lymphocyte count conducted for the applicant.~~

C. For purposes of enrollment in ADAP, an applicant or the applicant's representative may report

~~annual family income using actual family income for the most recent 12 months or estimated annual family income determined by multiplying the most recent monthly family income by 12.~~

- C. If an applicant or the applicant's representative stated in subsection (A)(1)(r) that the applicant is in a situation in which the applicant's financial records to verify annual household income, as required in subsection (A)(6), are not available to the applicant, the applicant or the applicant's representative may submit to the Department a statement describing the applicant's situation and provide whatever documentation the applicant has available to demonstrate the applicant's annual household income.

R9-6-405. Enrollment Process; Provisional Pre-approved Enrollment Status

- A. The Department shall:
1. Review the documents submitted by an applicant as required in R9-6-404(A);
 2. Determine whether the applicant is eligible under R9-6-403;
 3. Grant or deny enrollment based on applicant eligibility, the date of application, and the availability of funds; and
 4. Notify the applicant or the applicant's representative of the Department's decision within five ~~business~~ working days after receiving the documents specified in R9-6-404(A).
- B. An applicant or the applicant's representative shall execute any consent forms or releases of information necessary for the Department to verify eligibility.
- C. The Department shall send an applicant or the applicant's representative a written notice of denial, setting forth the information required under A.R.S. § 41-1092.03, if:
1. ~~The applicant or the applicant's representative fails to provide documentation establishing eligibility for enrollment in ADAP does not qualify for enrollment in ADAP, based on the documentation provided to establish eligibility;~~
 2. The documentation submitted to the Department under R9-6-404 is found to contain false information; or
 3. The Department does not have funds available to enroll the applicant in ADAP.
- D. The Department shall grant a ~~30-day provisional pre-approved~~ enrollment status in ADAP to an applicant, ~~lasting until the end of the month after the month in which an applicant applied for ADAP,~~ if:
1. The Department determines that the applicant meets the ~~requirements of requirement~~ in R9-6-403(1) through (4); and
 2. The applicant, ~~whose annual household income is an amount that may make the applicant eligible for enrollment in AHCCCS, or the applicant's representative attests in writing that the applicant has applied for AHCCCS enrollment and, if eligible for Medicare, a~~

- ~~low-income subsidy and a Medicare drug plan, but is unable to provide documentation that complies with R9-6-403(5) or (6) or both states the status of the applicant's enrollment in AHCCCS;~~
3. ~~Except as provided in subsection (E), the applicant, who is eligible for Medicare or other health insurance coverage, or the applicant's representative attests in writing that the applicant has applied for, but is unable to provide documentation of, enrollment in Medicare and a Medicare drug plan or in other health insurance coverage, as applicable; and~~
4. ~~The applicant or the applicant's representative attests in writing that the applicant or the applicant's representative will provide, before the end of the period during which the applicant has pre-approved enrollment status, a missing component of:~~
- a. ~~Proof of the applicant's annual household income, according to R9-6-404(A)(6) or (7); or~~
- b. ~~Proof of residency, according to R9-6-404(A)(8).~~
- E. ~~The Department shall grant pre-approved enrollment status in ADAP, lasting until the end of the month after the month in which an applicant may apply for Medicare or other health insurance, if the applicant or the applicant's representative provides documentation that the applicant would be eligible for Medicare or other health insurance coverage during the next health insurance enrollment period, but that enrollment was closed on the date of application for ADAP.~~
- E.F. ~~The Department shall provide an applicant to whom the Department has granted provisional pre-approved enrollment status in ADAP with the drugs on the list specified in R9-6-404(B)(5)-ADAP formulary during the provisional enrollment period during which the applicant has pre-approved enrollment status.~~
- E.G. ~~Except as specified in subsection (H) (I), to continue ADAP enrollment beyond a 30-day provisional enrollment the period in subsection (D) or (E) during which the applicant has pre-approved enrollment status, an applicant or the applicant's representative shall provide to the Department, before the end of the 30-day provisional enrollment period, documentation that complies with R9-6-403(5) and, if applicable, R9-6-403(6) establishes eligibility according to R9-6-403.~~
- G.H. ~~Except as specified in subsection (H) (I), if an applicant with provisional pre-approved enrollment status or the applicant's representative fails to provide documentation as required in subsection (F) (G) to the Department before the end of a 30-day provisional enrollment the period during which the applicant has pre-approved enrollment status, the Department shall send the applicant or the applicant's representative a written notice of denial, setting forth the information required~~

under A.R.S. § 41-1092.03.

- H.** ~~The Department may grant an extension of provisional enrollment to an applicant beyond a 30-day provisional enrollment period if the applicant or the applicant's representative provides documentation to the Department that the applicant has applied for AHCCCS enrollment and, if eligible for Medicare, a low income subsidy and Medicare drug plan and:~~
- ~~1. AHCCCS has not yet determined whether the applicant is eligible for AHCCCS enrollment; or~~
 - ~~2. If the applicant is eligible for Medicare:~~
 - ~~a. The Social Security Administration has not yet determined whether the applicant is eligible for a low income subsidy, or~~
 - ~~b. The applicant cannot enroll in a Medicare drug plan until the next general enrollment period.~~
- I.** ~~The Department may grant an extension of pre-approved enrollment status to an applicant beyond the period in subsection (D) or (E) if the applicant or the applicant's representative provides a justification for needing more time to obtain the required documentation to verify eligibility because of missing:~~
- ~~1. Documentation of health insurance coverage;~~
 - ~~2. Financial records to verify annual household income, specified in R9-6-404(A)(6);~~
 - ~~3. Proof of residency, specified in R9-6-404(A)(8); or~~
 - ~~4. Viral load test results on the laboratory report required in R9-6-404(B)(2).~~
- J.** ~~Based on the information provided by an applicant about the applicant's health insurance coverage and except as provided in R9-6-409(F), the Department shall:~~
- ~~1. For an applicant with no health insurance coverage, provide a drug on the ADAP formulary through the contract pharmacy;~~
 - ~~2. For an applicant with health insurance coverage that is inadequate, according to R9-6-403(4)(b), provide a drug on the ADAP formulary that is not covered by the applicant's health insurance, as documented according to R9-6-409(E), through the contract pharmacy; or~~
 - ~~3. For an applicant with health insurance coverage that is unaffordable, according to R9-6-403(4)(c), provide a drug on the ADAP formulary with no copayment cost to the applicant when requesting the filling of a prescription for the drug or obtaining a refill of the drug through ADAP.~~

R9-6-406. Notification Requirements

- A.** An enrolled individual or the enrolled individual's representative shall notify the Department in

writing or by telephone and comply with the applicable requirements specified in R9-6-407 within 30 calendar days after any of the following occurs:

1. The residential or mailing address or the telephone number of the enrolled individual changes from that provided to the Department under R9-6-404(A)(1) or R9-6-407;
 2. The enrolled individual adds or ~~deletes~~ removes an individual with whom the Department may speak about the enrolled individual's ADAP enrollment from the list specified in ~~R9-6-404(A)(1)(g)~~ R9-6-404(A)(1)(h);
 3. ~~The enrolled individual begins receiving treatment for HIV infection from a primary care provider different from the primary care provider who completed:~~
 - a. ~~The form specified in R9-6-404(B), or~~
 - b. ~~The most recent form specified in R9-6-407(D);~~
- 4.3. The enrolled individual has:
- a. Lost health insurance coverage;
 - b. Been determined eligible for and enrolled to receive drug coverage through AHCCCS;
 - b.c. ~~Received notification of drug coverage from a third party payor~~ Been determined eligible for or obtained health insurance coverage, other than through AHCCCS, the Indian Health Service, or the Veterans Health Administration, or the health insurance coverage previously used by the enrolled individual; or
 - e.d. Been determined eligible for a low-income subsidy;
- 5.4. The enrolled individual's annual family household income has changed:
- a. ~~Increased to an amount above 300% of the poverty level, or~~
 - b. ~~Decreased to an amount that may make the enrolled individual eligible for enrollment in AHCCCS; or~~
- 6.5. The enrolled individual establishes residency outside Arizona.

B. An enrolled individual's primary care provider shall:

1. Notify the Department in writing or by telephone:
 - a. ~~That the enrolled individual has died, within 14 calendar days after the primary care provider learns of the death; and~~
 - b. ~~That the enrolled individual is receiving treatment for HIV infection from a different primary care provider, within 14 calendar days after the primary care provider learns of the change in primary care provider; and~~
2. Include in the notification:
 - a. ~~The name and date of birth of the enrolled individual;~~

- b. If notifying under subsection (B)(1)(a), the date of death; and
 - c. If notifying under subsection (B)(1)(b), the name, business address, and telephone number of the new primary care provider.
- C. An enrolled individual's primary care provider shall notify the vendor pharmacy, as specified in R9-6-409(A):
 - 1. When prescribing a new drug for the enrolled individual, or
 - 2. Within seven calendar days after discontinuing a drug that was contained in the list completed by the enrolled individual's primary care provider under R9-6-404(B) or R9-6-407(D).
- B. Within 30 calendar days after an enrolled individual loses health insurance coverage, the enrolled individual shall provide to the Department documentation stating the loss of health insurance coverage.
- D.C. An enrolled individual's case manager shall notify the Department in writing or by telephone within 30 calendar days after the case manager learns that:
 - 1. The residential or mailing address or the telephone number of the enrolled individual has changed from that provided to the Department under R9-6-404(A)(1) or R9-6-407;
 - 2. The enrolled individual has begun receiving treatment for HIV infection from a primary care provider who is different from the primary care provider who completed:
 - a. The form specified in R9-6-404(B), or
 - b. The most recent form specified in R9-6-407(D);
- 3.2. The enrolled individual has:
 - a. Been Has been determined eligible for and enrolled to receive drug coverage through AHCCCS;
 - b. Received notification of drug coverage from a third-party payor Obtained health insurance coverage other than AHCCCS, the Indian Health Service, or the Veterans Health Administration; or
 - c. Been Has been determined eligible for a low-income subsidy;
- 4.3. The enrolled individual's annual family household income has changed:
 - a. Increased to an amount above 300% of the poverty level; or
 - b. Decreased to an amount that may make the enrolled individual eligible for enrollment in AHCCCS;
- 5.4. The enrolled individual has established residency outside Arizona; or
- 6.5. The enrolled individual has died.

R9-6-407. Continuing Enrollment

- A. To continue enrollment in ADAP, an enrolled individual or the enrolled individual's representative shall:
1. When the enrolled individual's residential ~~or mailing~~ address changes, comply with subsection (B);
 2. ~~When the enrolled individual's primary care provider changes, comply with subsection (C);~~
 - 3.2. ~~When the enrolled individual's annual family household income decreases to an amount that may make the individual eligible for enrollment in AHCCCS changes, comply with subsection (E)(C);~~
 - 4.3. ~~When the enrolled individual becomes eligible for Medicare or other health insurance coverage, comply with subsection (F)(D);~~
 - 5.4. ~~Before the expiration of each six month period after an individual's initial enrollment end of the month that is six months after the enrolled individual's month of birth, comply with subsection (G)(E); and~~
 - 6.5. ~~Before the expiration of each 24 month period end of the enrolled individual's month of birth each year after an individual's initial enrollment, comply with subsection (H)(F).~~
- B. When an enrolled individual's residential ~~or mailing~~ address changes, the enrolled individual or the enrolled individual's representative shall submit to the Department:
1. ~~Complete a Department provided form containing for the enrolled individual the information specified in R9-6-404(A)(1)(a) through R9-6-404(A)(1)(h) and R9-6-404(A)(1)(j), (k), (m), (n), and (o);~~
 2. ~~Attest on the form specified in subsection (B)(1) that:~~
 - a. ~~To the best of the knowledge and belief of the enrolled individual or the enrolled individual's representative, the information submitted in the form and the documents submitted with the form are accurate and complete;~~
 - b. ~~The enrolled individual meets the eligibility criteria specified in R9-6-403; and~~
 - c. ~~The enrolled individual or the enrolled individual's representative understands that eligibility does not guarantee that the Department will be able to provide drugs and that an individual's enrollment in ADAP may be terminated as specified in R9-6-408;~~
 3. ~~Grant permission on the form specified in subsection (B)(1) for the Department to discuss the enrolled individual's enrollment with:~~
 - a. ~~AHCCCS, for the purpose of determining AHCCCS eligibility;~~

- b. ~~Medicare and the Social Security Administration, for the purpose of determining eligibility for a low income subsidy and enrollment in a Medicare drug plan;~~
 - e. ~~The applicant's primary care provider or designee;~~
 - d. ~~The vendor pharmacy, to assist with drug distribution; and~~
 - e. ~~Any other entity as necessary to establish eligibility for enrollment in ADAP or assist with drug distribution;~~
- 4. ~~Sign and date the form specified in subsection (B)(1); and~~
- 5. ~~Submit to the Department within 30 calendar days of the change:~~
 - a. ~~The form specified in subsection (B)(1); and~~
- 1. The following information for the enrolled individual in a Department-provided format:
 - a. The enrolled individual's name and date of birth;
 - b. The new residential address and mailing address for the enrolled individual;
 - c. If the enrolled individual is in non-permanent housing, the address of a person that has agreed to receive written communications for the enrolled individual; and
 - d. If applicable, the address in Arizona to which the enrolled individual would want drugs to be shipped; and
- b.2. ~~Proof of Arizona residency, as specified in R9-6-404(A)(9) R9-6-404(A)(8), showing the new Arizona residential address included on the form specified in subsection (B)(1) (B)(1)(b).~~
- C. ~~When an enrolled individual's primary care provider changes, the enrolled individual or the enrolled individual's representative shall:~~
 - 1. ~~Comply with subsections (B)(1) through (4);~~
 - 2. ~~Obtain from the new primary care provider the Department provided form specified in subsection (D), completed by the new primary care provider; and~~
 - 3. ~~Submit the form specified in subsection (B)(1) and the form specified in subsection (C)(2) to the Department within 30 calendar days after the change.~~
- D. ~~The primary care provider of an enrolled individual shall complete for the enrolled individual a Department provided form containing:~~
 - 1. ~~The information required under R9-6-404(B)(1), (2), and (5) through (8); and~~
 - 2. ~~The dates of and results for the most recent CD4 T lymphocyte count and, if available, viral load test conducted for the enrolled individual.~~
- E.C. ~~When an enrolled individual's annual family household income decreases to an amount that may make the individual eligible for enrollment in AHCCCS changes, the enrolled individual or the~~

enrolled individual's representative shall:

1. Submit to the Department, within 30 calendar days after the change, documentation of the enrolled individual's annual household income, as specified in R9-6-404(A)(6) or (7); and
2. If the enrolled individual's annual household income has decreased to an amount that may make the individual eligible for enrollment in AHCCCS:
 - 1.a. Apply for enrollment in AHCCCS within 30 calendar days after the change in annual family household income; and
 - 2.b. If the enrolled individual is determined to be ineligible for AHCCCS enrollment, submit to the Department, within 30 calendar days after the change, documentation that complies with R9-6-403(5) states the status of the enrolled individual's enrollment in AHCCCS.

F.D. When an enrolled individual becomes eligible for Medicare or other health insurance coverage, the enrolled individual or the enrolled individual's representative shall, within 30 calendar days after the enrolled individual becomes eligible for Medicare or other health insurance coverage:

1. Apply for a low-income subsidy and for a Medicare drug plan; and
2. If the enrolled individual is determined to be ineligible for a low-income subsidy, submit to the Department documentation that complies with R9-6-403(6).
 1. If eligible for Medicare:
 - a. Enroll in a Medicare drug plan; and
 - b. If the enrolled individual's annual household income is at or below 175% of the poverty level, apply for a low-income subsidy; and
 - c. Submit to the Department a copy of valid documentation stating:
 - i. The enrolled individual's enrollment in a Medicare drug plan; and
 - ii. If the enrolled individual's annual household income is at or below 175% of the poverty level, the status of the enrolled individual's eligibility for a low-income subsidy; and
 2. If eligible for other health insurance coverage, submit to the Department information about the health insurance coverage to enable the Department to determine if the health insurance coverage is inadequate, according to R9-6-403(4)(b), or unaffordable, according to R9-6-403(4)(c).

G. Before the expiration of each six-month period after an individual's initial enrollment, the enrolled individual or the enrolled individual's representative shall submit to the Department:

 1. Proof of annual family income, as specified in R9-6-404(A)(7) or (8); and

2. ~~Proof that the enrolled individual is a resident of Arizona, as specified in R9-6-404(A)(9).~~

H.E. Before the ~~expiration of each 24 month period after an individual's initial enrollment~~ end of the month that is six months after the enrolled individual's month of birth, the enrolled individual or the enrolled individual's representative shall:

1. ~~Comply with subsections (B)(1) through (4); Either:~~
 - a. ~~Submit to the Department an attestation, in a Department-provided format, that there have been no changes specified in subsection (A)(1), (2), or (3); or~~
 - b. ~~Comply with subsections (B), (C), and (D), as applicable; and~~
2. Obtain from the enrolled individual's ~~primary care HIV-care provider~~ Department-provided form completed as specified in subsection (D) and submit to the Department a copy of the most recent laboratory report of a test for viral load, and, if available, CD4-T-lymphocyte count conducted for the applicant; and
3. ~~Submit to the Department:~~
 - a. ~~The form specified in subsection (H)(1);~~
 - b. ~~The form specified in subsection (H)(2);~~
 - c. ~~Proof of annual family income, as specified in R9-6-404(A)(7) or (8), and~~
 - d. ~~Proof that the enrolled individual is a resident of Arizona, as specified in R9-6-404(A)(9).~~

F. Before the end of an enrolled individual's month of birth each year, an enrolled individual or the enrolled individual's representative shall submit to the Department the application packet required in R9-6-404(A).

I.G. The Department shall:

1. Review information about an enrolled individual and determine eligibility for continuing enrollment for the enrolled individual:
 - a. ~~Every six months after the individual's initial enrollment; At the end of the enrolled individual's month of birth each year,~~
 - b. At the end of the month that is six months after the enrolled individual's month of birth each year,
 - b.c. When the Department receives information from the enrolled individual or the enrolled individual's representative under subsection (A)₅₂ or
 - e.d. When the Department no longer has sufficient funds to provide continuing enrollment to all enrolled individuals;
2. Grant continuing enrollment to an enrolled individual, subject to the availability of funds, when:

- a. The enrolled individual or the enrolled individual's representative complies with subsection (A); and
 - b. The Department determines that:
 - i. The information in the documents submitted to the Department is accurate and complete, and
 - ii. The enrolled individual is eligible under R9-6-403; and
3. Notify the enrolled individual or the enrolled individual's representative of the Department's decision within five ~~business working~~ days after receipt of the documents required in subsection (A).

H. The Department may grant pre-approved enrollment status in ADAP, according to R9-6-405(D) or (E) and ending according to R9-6-405(G), to an enrolled individual who is missing documentation to establish eligibility under R9-6-403.

J.I. If the Department denies continuing enrollment to an enrolled individual, the Department shall send to the enrolled individual or the enrolled individual's representative a written notice of denial setting forth the information required under A.R.S. § 41-1092.03.

R9-6-408. Termination from ADAP Services

- A. The Department may terminate an enrolled individual's enrollment in ADAP if:
 1. The Department learns that information submitted to the Department by the enrolled individual or the enrolled individual's representative under R9-6-404(A) or (C), R9-6-407(A), or R9-6-409(E) or (F) is inaccurate or incomplete;
 2. The ~~vendor pharmacy does not receive a request from the enrolled~~ individual or the enrolled individual's representative ~~for any does not request~~ a refill of a any drug through ADAP for a period of 90 calendar days; or
 3. The enrolled individual or the enrolled individual's representative exhibits violent or threatening behavior to an employee of the Department, ~~or the vendor contract~~ pharmacy, ~~or a pharmacy in which the enrolled individual or the enrolled individual's representative is filling a prescription for a drug or requesting a refill of a drug through ADAP,~~ as established by documentation such as a police report or a written document from the individual.
- B. The Department may terminate approval of a ~~restricted~~ drug ~~for an individual enrolled in ADAP approved under R9-6-409(E) or (F) for an enrolled individual if the Department learns that the enrolled individual: funding is no longer available to pay for the drug approved under R9-6-409(E) or (F).~~
4. ~~Is not following the instructions of the enrolled individual's primary care provider~~

- ~~regarding the use of the restricted drug; or~~
2. ~~Has not had additional laboratory analyses performed, as required in R9-6-409(E)(1)(i)(ii), to support continuing use of the restricted drug.~~
- C. The Department shall send to an enrolled individual or the enrolled individual's representative a written notice of termination setting forth the information required under A.R.S. § 41-1092.03 if the Department terminates:
1. The enrolled individual's enrollment in ADAP, or
 2. Approval of a ~~restricted~~ drug approved under R9-6-409(E) or (F) for the enrolled individual.

R9-6-409. Drug Prescription and Distribution Requirements

- A. A primary care HIV-care provider shall:
1. Issue a prescription order:
 - a. For each drug ~~from~~ on the ADAP formulary prescribed for an applicant or enrolled individual by the primary care HIV-care provider; and
 - b. For dispensing up to a 30-day supply of the drug; and
 - e. ~~To authorize no more than a six month supply of the drug, including the original prescription order and all refills;~~
 2. Submit:
 - a. ~~A written prescription order or copy of a written prescription order to the Department as specified in R9-6-404(A)(3); and~~
 - b. ~~A written or oral prescription order to the vendor pharmacy when:~~
 - i. ~~Prescribing a drug for a newly enrolled individual;~~
 - ii. ~~Prescribing a new drug for an enrolled individual, or~~
 - iii. ~~Authorizing an additional six month supply of a drug for an enrolled individual; and~~
 3. Notify the vendor pharmacy when discontinuing a drug for an enrolled individual.
 2. Provide a written prescription order to the applicant or enrolled individual or an electronic prescription order to the contract pharmacy or a pharmacy at which the applicant or enrolled individual may request a drug through ADAP.
- B. The Department shall forward a written prescription order submitted to the Department as specified in subsection (A)(2)(a) to the vendor pharmacy within three business days of approving an individual for initial enrollment.
- C. The vendor pharmacy shall:
1. Maintain a supply of the drugs on the ADAP formulary available for dispensing;

2. ~~Receive prescription orders issued by an enrolled individual's primary care provider;~~
 3. ~~Before dispensing drugs, verify:~~
 - a. ~~With an enrolled individual or the enrolled individual's representative the address to which the enrolled individual or the enrolled individual's representative wants the drugs delivered, and~~
 - b. ~~An individual's enrollment status;~~
4. ~~Dispense up to a 30-day supply of a drug to an enrolled individual:~~
 - a. ~~Upon receipt of a:~~
 - i. ~~Prescription order as specified in subsection (C)(2), or~~
 - ii. ~~Request from the enrolled individual or the enrolled individual's representative for a refill of the drug;~~
 - b. ~~To the address identified, as specified in subsection (C)(3)(a); and~~
 - c. ~~So the drug is dispensed to the enrolled individual no later than three business days after the vendor pharmacy:~~
 - i. ~~Receives a prescription order or request for refill, as specified in subsection (C)(4)(a);~~
 - ii. ~~Has verified the address to which the drug is to be delivered, as specified in subsection (C)(3)(a); and~~
 - iii. ~~Has verified the individual's enrollment status, as specified in subsection (C)(3)(b); and~~
5. ~~Notify the Department upon receiving a request for dispensing a drug for an individual who is neither enrolled nor provisionally enrolled in ADAP.~~

B. The Department shall:

1. Except as specified in subsection (D), provide up to a 30-day supply of a drug to an enrolled individual; and
2. Ensure that a drug to be shipped to an enrolled individual is sent to the address in Arizona provided by the enrolled individual according to R9-6-404(A)(1)(d) or R9-6-407(B)(1)(d).

D.C. The Department may authorize replacement of a drug when:

1. The drug has been dispensed by the vendor contract pharmacy or a pharmacy in which the enrolled individual or the enrolled individual's representative requested a refill of the drug through ADAP to an enrolled individual; and
2. The enrolled individual or the enrolled individual's representative claims the dispensed drug was lost, stolen, or damaged.

D. The Department may authorize an enrolled individual to receive more than a 30-day supply of a drug if the enrolled individual:

1. Submits to the Department:
 - a. The enrolled individual's name and date of birth;
 - b. The number of days for which the enrolled individual is requesting a supply of the drug; and
 - c. A justification for receiving more than a 30-day supply of a drug, such as that:
 - i. The enrolled individual will be out of Arizona for more than 30 days without changing residency, or
 - ii. The enrolled individual's health insurance coverage will allow for more than a 30-day supply of a drug; and
2. Is expected to continue to be enrolled in ADAP:
 - a. Past the number of days for which the enrolled individual is requesting a supply of the drug, and
 - b. Without needing to submit information or documentation for continuing enrollment, according to R9-6-407(E) or (F), during the time period.

E. For an enrolled individual who has health insurance coverage, the HIV-care provider of the enrolled individual, independently or through the contract pharmacy, may request approval of a drug on the ADAP formulary that is not covered by the enrolled individual's health insurance by submitting to the Department documentation that:

1. The drug is not covered by the enrolled individual's health insurance,
2. A request for health insurance coverage of the drug as a medical exception has been denied by the enrolled individual's health insurance, and
3. An appeal of the denial of the request in subsection (E)(2) has been denied by the enrolled individual's health insurance.

E.F. The primary care HIV-care provider of an enrolled individual, independently or through the contract pharmacy, may request approval of a restricted drug that is not covered by health insurance and not on the ADAP formulary for the enrolled individual by:

1. Completing a Department provided form Providing to the Department the following information, in a Department-provided format, for each requested restricted drug that contains the following information:
 - a. The name, business address, email address, and telephone number of the primary care HIV-care provider;
 - b. The date of the request;

- c. The enrolled individual's name and date of birth;
- d. The ~~indications for the use~~ name and any other identifier of the ~~restricted~~ drug;
- e. The ~~most recent results of laboratory analyses to support the request and the dates of the laboratory analyses~~ cost of the drug, if available;
- f. The expected duration of the enrolled individual's use of the drug, including whether:
 - i. Use of the drug is expected to be a one-time occurrence, or
 - ii. The enrolled individual is expected to need multiple refills of the drug and the expected number of refills;
- g. A justification for use of the ~~restricted~~ drug that is not on the ADAP formulary by the enrolled individual;
- g. An attestation by the primary care provider that:
 - i. ~~To the best of the primary care provider's knowledge and belief, the information presented in the request is accurate and complete; and~~
 - ii. ~~The primary care provider understands that the primary care provider is required to provide instructions to the enrolled individual regarding the use of the restricted drug and monitor the enrolled individual's use of the restricted drug;~~
- h. Whether the Department should consider adding the drug to the ADAP formulary and the reasons for the recommendation; and
 - i. The dated signature of the ~~primary care HIV-care~~ provider;
 - i. An attestation by the enrolled individual or the enrolled individual's representative that the enrolled individual or the enrolled individual's representative understands that the enrolled individual is required to:
 - i. ~~Follow the instructions of the enrolled individual's primary care provider regarding the use of the restricted drug; and~~
 - ii. ~~Have periodic laboratory analyses performed to support continuing use of the restricted drug; and~~
 - j. The dated signature of the enrolled individual or the enrolled individual's representative;
- 2. Issuing a ~~written or oral valid~~ prescription order for the ~~restricted~~ drug that is not on the ADAP formulary to the ~~vendor contract~~ pharmacy; and
- 3. Submitting Unless the enrolled individual has no health insurance coverage, submitting to the Department the documentation required in subsections (E)(1) through (3);

- a. The completed drug specific form specified in subsection (E)(1), and
 - b. Copies of the results of the most recent laboratory analyses to support the request for the restricted drug.
- F. If the restricted drug requested under subsection (E) is approved by the Department for an enrolled individual, the enrolled individual's primary care provider shall:
 - 1. Provide instructions to the enrolled individual regarding the use of the restricted drug; and
 - 2. Monitor the enrolled individual's use of and clinical response to the restricted drug.
- G. When the Department receives a drug specific form requesting a restricted drug that is not on the ADAP formulary request under subsection (E) or (F) for an enrolled individual, the Department shall:
 - 1. Review the documents submitted according to subsection (E)(3) (E) or (F), as applicable;
 - 2. Determine whether the information submitted to the Department:
 - a. Is complete; and
 - b. Substantiates that the enrolled individual's use of the restricted drug is indicated; and
 - 3. Notify, through the contract pharmacy, the following of the Department's decision within five business working days after receiving the request:
 - a. The enrolled individual or the enrolled individual's representative; and
 - b. The enrolled individual's primary care HIV-care provider; and
 - c. The vendor pharmacy.
- H. If the Department denies a request for approval of a restricted drug under subsection (E) or (F) for an enrolled individual, the Department shall send to the enrolled individual or the enrolled individual's representative a written notice of denial setting forth the information required under A.R.S. § 41-1092.03.
- I. The Department shall only authorize the distribution of drugs that are included on the ADAP formulary or approved for an enrolled individual according to subsection (F).

TITLE 9. HEALTH SERVICES

CHAPTER 6.COMMUNICABLE DISEASES

ARTICLE 4. AIDS DRUG ASSISTANCE PROGRAM

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

October 2019

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 6.COMMUNICABLE DISEASES

1. An identification of the rulemaking

Arizona Revised Statutes (A.R.S.) § 36-136(I)(1) requires the Department to make rules defining and prescribing “reasonably necessary measures for detecting, reporting, preventing, and controlling communicable and preventable diseases.” The AIDS Drug Assistance Program (ADAP) helps persons living with HIV to obtain necessary prescription drugs to prevent the occurrence of, or to alleviate, disability or death from HIV-related diseases, including AIDS, and to reduce the spread of the disease. The Department has adopted rules for ADAP in 9 A.A.C. 6, Article 4. The rules in 9 A.A.C. 6, Article 4, were last revised in 2007, are very outdated, and do not reflect the manner in which ADAP is now carried out. Changes required by the Ryan White CARE Act (RWCA), through which ADAP is primarily funded, are not currently included in the rules. The rules also do not contain provisions related to individuals obtaining prescription drug coverage through health insurance plans under the federal Affordable Care Act. The Department is revising the rules in 9 A.A.C. 6, Article 4, to address these issues and other issues identified by stakeholders as part of the rulemaking process and to increase effectiveness.

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

- The Department
- HIV-care providers
- Contract pharmacy
- Other pharmacies through which an individual may receive their drugs through ADAP
- Case managers and their employers
- Persons living with HIV applying for participation or enrolled in ADAP and their families
- General public

3. Cost/Benefit Analysis

This analysis covers costs and benefits associated with the rules. This rulemaking is not associated with a fee, and no additional FTE's are required due to this rulemaking. Annual costs/revenues are designated as minimal when more than \$0 and \$1,000 or less, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or greater in additional costs or

revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification.

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
A. State and Local Government Agencies			
Department	Making the rules consistent with current practice and requirements of the RWCA Adding, removing, and consolidating definitions; updating cross-references; correcting grammar and formatting; and otherwise clarifying the rules Enforcing the rules and providing education about the new rules	None None Minimal	Significant/Minimal Significant Significant
B. Privately Owned Businesses			
HIV-care providers	Removing some requirements to notify the Department of changes with the enrolled individual Removing requirements to authorize no more than a 6-month supply of drugs or notify the “vendor” pharmacy when discontinuing a drug for an enrolled individual Adding methods by which a drug not covered under an enrolled individual’s health insurance plan may be requested through ADAP	None None None	Minimal Minimal Significant
Contract pharmacy and other pharmacies through which an enrolled individual may receive their drugs through ADAP	Clarifying requirements for receiving prescription orders from HIV-care providers and dispensing drugs to individuals enrolled in ADAP	None	Significant
Case managers and their employers	Notifying the Department when learning of a change that may affect eligibility of an individual enrolled in ADAP Removing requirements to notify the Department of changes in providers Assisting individuals to apply for ADAP	Minimal None Minimal	Minimal Minimal Minimal

	or to continue enrollment		
C. Consumers			
Persons living with HIV and their families	<p>Clarifying requirements for enrollment in ADAP, types of documents that can support application, distribution of drugs, and denial/termination of enrollment</p> <p>Adjusting the limit for annual income from 300% to 400% of the federal poverty level</p> <p>Adding the ability of an individual to be enrolled in ADAP if they have inadequate or unaffordable insurance</p> <p>Allowing other pharmacies to be used through which an individual can get their ADAP drugs</p> <p>Allowing an applicant's email to be provided rather than phone number</p> <p>Adding required information, simplifying the list of documents for establishing residency, and reducing the number of documents that are required</p> <p>Providing an exception for individuals fleeing domestic violence or other circumstances that may limit their ability to have certain documents</p> <p>Raising the time period from 30 to 60 days for which documentation of income may be submitted</p> <p>Lengthening the time during which an applicant can receive ADAP while completing documentation requirements</p> <p>Requiring annual re-enrollment, rather than every 2 years</p> <p>Simplifying documentation requirements for the six-month continuing enrollment update</p> <p>Removing requirements for notifying the Department of changes in provider</p> <p>Changing requirements for submitting documentation when an enrolled individual moves</p> <p>Changing the process for getting authorization for non-covered or non-formulary drugs</p> <p>Changing requirements for when an enrolled individual can receive more than</p>	<p>None</p> <p>None</p> <p>None</p> <p>None</p> <p>None</p> <p>Minimal</p> <p>None</p> <p>None</p> <p>None</p> <p>None</p> <p>Minimal</p> <p>None</p> <p>None</p> <p>None</p> <p>None</p>	<p>Significant</p> <p>Substantial</p> <p>Substantial</p> <p>Minimal</p> <p>Significant</p> <p>Significant</p> <p>Substantial</p> <p>Significant</p> <p>Minimal-to-Substantial</p> <p>None</p> <p>Minimal</p> <p>Minimal</p> <p>Minimal</p> <p>Minimal</p> <p>Minimal-to-Substantial</p> <p>Significant</p>

	a 30-day supply of drugs		
General public	<p>Clarifying requirements that may increase awareness about ADAP and the number of persons living with HIV receiving drugs through ADAP</p> <p>Improving the health of persons living with HIV and decreasing work-time lost by enrolled individuals and their families</p> <p>Reducing the spread of HIV through reducing infectivity of persons living with HIV</p>	<p>None</p> <p>None</p> <p>None</p>	<p>Significant</p> <p>Significant</p> <p>Significant</p>

- **The Department**

ADAP is a primarily federally-funded program, under the RWCA, through which the Department provides or assists eligible persons living with HIV, who are residents of Arizona, to obtain prescription drugs to prevent the occurrence of or to alleviate disability and death from HIV-related diseases, including AIDS. Under the RWCA, funding is also provided to agencies under Part A and Part B for other services to persons living with HIV. Under Part A funding, a grant recipient in the Phoenix area has developed or enhanced access to a comprehensive continuum of high quality, community-based care for low-income people living with HIV. Part B grants are awarded to state health departments, including the Department, and fund core medical services and support services. The specific services funded by each state are determined at the state level based on needs assessments and available funding. While ADAP works closely with other programs funded under the RWCA, the new rules are specific to the ADAP program.

Last year, the Department received 829 applications for initial enrollment in ADAP and conducted a review of approximately 2,791 applications for continuing enrollment. The Department received \$9,862,981 in federal funds for ADAP in federal fiscal year 2017 and \$10,213,613 in federal funds for ADAP in federal fiscal year 2018. For each of these years, the Department received \$750,000 from the state budget for ADAP. With these funds, the Department provided HIV-related prescription drugs for approximately 2,600 individuals during 2017 and 2,700 individuals during 2018.

Changes being made to the rules in 9 A.A.C. 6, Article 4, include adding requirements related to the Department's ability to leverage federal funds, health insurance plan drug coverage, and drug manufacturers' rebates to help ensure that individuals have access to HIV-related drugs that may reduce infectivity or disability from HIV-related diseases. The rulemaking also raises the income ceiling from 300% to 400% of the federal poverty level, consistent with federal

funding requirements; clarifies what information applicants must provide and that ADAP will accept prescription orders from medical providers licensed in other states; updates, clarifies, and eliminates redundancies in definitions; and amends rules that are not being enforced as written.

Since the current rules were adopted, several changes have occurred that have caused the operation of ADAP to become inconsistent with the current rules. The current rules do not allow an individual to enroll in ADAP if the individual has other health insurance coverage, with exceptions specified in R9-6-403. Under the Affordable Care Act (ACA), people with low and middle incomes are eligible for tax subsidies that help them buy coverage from new state health insurance exchanges. Upon the adoption of the ACA, more individuals became eligible for health insurance coverage through which they could obtain drugs to treat HIV or HIV-related infections. However, for many HIV-infected residents of Arizona, the premiums and copayments were unaffordable, and they remained uninsured. To enable as many HIV-infected residents of Arizona as possible to obtain necessary HIV-related drugs, ADAP, with the encouragement of the federal-funding agency, began using some federal ADAP funds to assist eligible applicants for ADAP to pay health insurance premiums, deductibles, or copayments that would otherwise be unaffordable, allowing the individual to obtain necessary HIV-related drugs through pharmacies, paid for through health insurance prescription benefits. Other health insurance plans did not cover all the drugs prescribed for persons living with HIV, making them inadequate for this population. Drugs not on the formulary of the health insurance plan but on the ADAP formulary were also covered through ADAP. By allowing individuals who have health insurance coverage that is inadequate or unaffordable to be enrolled in ADAP, the new rules let some drug costs to be borne through insurance, thus substantially reducing the amount directly spent by ADAP for the drugs.

To improve access to care, the Department has worked with other entities funded under RWCA to develop a consolidated enrollment form to meet ADAP needs, while also meeting the needs of other agencies funded through RWCA. While each agency/program has its own eligibility criteria and services provided, the decisions on eligibility are made based on largely the same information. The consolidation of the application allows applicants to enroll in ADAP more quickly and easily, encouraging enrollment and thus getting more individuals into care and providing a significant public health benefit. Since other agencies also have access to the information on this form, this change makes it necessary for the Department to discuss an applicant's information with other providers of HIV-related services. Therefore, the rules are being changed to reflect that an applicant must agree to allow the Department to discuss the information. Changes to the rules related to the new consolidated application form include that an applicant is able to provide other mechanisms for the Department to communicate with the

applicant and includes the requirements for information specific to any health insurance coverage the applicant may have or be eligible for, such as health insurance under a spouse's health coverage, COBRA, the Affordable Care Act, or other mechanism.

Other major changes for ADAP include raising the income ceiling for ADAP eligibility from 300% to 400% of the federal poverty level, consistent with RWCA requirements. This change allows many more individuals to become eligible for ADAP. In addition, federal requirements related to funding for ADAP now require annual renewals during the birth month of an enrolled individual, rather than a two year re-enrollment process tied to the date of initial enrollment, and for the six-month continuing enrollment process to also be tied to an applicant's birth month. While the new rules change the time periods for an enrolled individual to submit updated information or documentation to establish continuing eligibility, the information and documentation required to be submitted six months after an enrolled individual's birth month has also been simplified in the new rules. An enrolled individual is also no longer required to notify the Department of a change in the enrolled individual's HIV-care provider.

The changes making the rules consistent with current practice and requirements of the RWCA provide a significant benefit to the Department in that these rules now better reflect how the Program currently runs. The Department also expects to receive a minimal benefit from having the rules agree with how ADAP is operating because less staff time will be spent explaining why they do not agree. The new rules also add, remove, and consolidate definitions; update cross references, and correct grammar and formatting. The Department anticipates receiving a significant benefit from these changes, as well, because they allow for the rules to be clearly interpreted by the public and fit the needs of what ADAP is currently doing. The Department also anticipates receiving a significant benefit from the clarity of the rules, especially in the requirements for applying for enrollment, the distribution of drugs, continuing enrollment, and the denial or termination of enrollment, because less time will be spent by the Department's staff reviewing incomplete or inadequate applications, answering calls from enrolled individuals asking about when they will receive their prescription drugs, investigating and documenting instances of possible fraud, and other such activities.

Since the Department is already carrying out the provisions specified in the new rules, the Department will now be able to better enforce the rules and provide education about the new rules and how ADAP is working currently once the new rules go into effect. The Department anticipates that the Department will bear a minimal cost associated with enforcing and providing education on the new rules, and receive a significant benefit from having the rules reflect how the Program is currently run.

- **HIV-care providers**

HIV-care providers are the physicians, registered nurse practitioners, and physician assistants who treat individuals for HIV infection. Under the current rules, the term “primary care provider” was used, but now the term “HIV-care provider” is used to take into account that specialist may provide treatment to persons infected with HIV. Under the current rules, primary care providers were required to complete a portion of the application for initial or continuing enrollment of an individual in ADAP, inform the Department within 30 days of changes that may affect an individual’s enrollment in ADAP, notify the Department when an enrolled individual changes to another primary care provider, and write prescription orders for the quantity of a drug supplied by a manufacturer. The primary care provider was also required to provide a copy of the enrolled individual’s most recent laboratory report of a test for viral load and, if available, CD4-T-lymphocyte count.

Under the new rules, an HIV-care provider must still provide some information to the Department about the applicant. However, an HIV-care provider is no longer required to authorize no more than a 6-month supply of drugs, including the original prescription and all refills; or notify the “vendor” pharmacy when discontinuing a drug for an enrolled individual. An HIV-care provider is also no longer required to notify the Department of a change in an enrolled individual’s primary care provider. Under the new rules, HIV-care providers are allowed to issue prescription orders and provide a written prescription order to the applicant or enrolled individual or an electronic prescription order to the contract pharmacy or pharmacy in which the applicant or enrolled individual requests their drugs through ADAP as is the usual practice. The Department anticipates that an HIV-care provider may receive a minimal benefit from these changes.

An HIV-care provider of an enrolled individual, independently or through the contract pharmacy, may also request approval of a drug that is not covered by the enrolled individual’s health insurance for the enrolled individual, based on certain requirements, which are not reflected in the current rules. The Department anticipates that this change may provide a significant benefit to an HIV-care provider, who is not aware that the Department has already adopted this practice, by allowing the HIV-care provider to provide better care to the patient.

- **Contract pharmacy and other pharmacies through which an individual may receive their drugs through ADAP**

The current rules specify the Department’s use of a vendor pharmacy for the distribution of prescription drugs. This pharmacy dispensed drugs in person or by shipment to enrolled individuals. ADAP now contracts with a pharmacy to perform similar tasks, and also has an arrangement whereby enrolled individuals with health insurance coverage, that includes coverage

of prescription drugs, may obtain these drugs through a network of pharmacies. In the new rules, the term “vendor” pharmacy changed to “contract” pharmacy to better reflect the relationship with the Department, and unnecessary requirements for the “vendor” pharmacy have been removed.

The current rules specify the requirements for the Department’s distribution of drugs only through one “vendor pharmacy” and are in conflict with the Department’s current practice for distributing prescription drugs to individuals enrolled in ADAP. In the new rules, the contract pharmacy or other participating pharmacies may receive prescription orders from HIV-care providers and dispensing drugs to individuals enrolled in ADAP much as any prescription order would be handled. The Department can now provide drugs on the ADAP formulary to the applicant through the contract pharmacy, if they have no health insurance coverage, or a pharmacy in which the enrolled individual or the enrolled individual’s representative requested the drug, if they have health care insurance that is inadequate or unaffordable. The Department believes that the contract pharmacy and other pharmacies, through which an enrolled individual may receive their drugs through ADAP, may receive a significant benefit from clarification of requirements for receiving prescription orders from HIV-care providers and dispensing drugs to individuals enrolled in ADAP.

- **Case managers and their employers**

Case managers assist over 99% of the individuals who apply for ADAP with filling out forms and getting the services the individuals need. The Department interacts on a regular basis with approximately 30 organizations that employ case managers. In the new rules, the definition of a case manager is clarified. By having this broad definition, a case manager can be anyone who meets the definition and not a specific individual. In the new rules, a case manager is no longer required to fill out and sign a statement attesting that the enrolled individual’s information on their initial application is accurate and complete. Because affordability of insurance coverage is part of the determination made by the Department in assessing eligibility, a case manager is now required to notify the Department of any change in income, not just changes that increase income above 300% of poverty level or decrease to an amount that may make the individual eligible for AHCCCS. These changes are now reflected in the new rules and may impose a minimal cost and provide a minimal benefit to a case manager who was not already operating under the current practice, as described in the new rules.

A case manager does not have to notify the Department any longer, within 30 calendar days, after the case manager learns that the enrolled individual has begun receiving treatment for HIV infection from a primary care provider. The Department anticipates that this change in the

new rules would provide a significant benefit to a case manager, if these practices were not already implemented by the Department. Since the new rules clarify requirements and provide additional documentation options for individuals applying for enrollment or continuing enrollment in ADAP, which may result in a case manager being able to complete application forms with the applicants or enrolled individuals in a more efficient manner, these changes may also provide a minimal benefit to a case manager, while potentially imposing a minimal cost for changing current processes.

- **Persons living with HIV applying for participation in ADAP and their families**

Several things have changed over the past years that affect individuals who may apply for enrollment in ADAP, as described above. The current rules specify the eligibility requirements for individuals to enroll in ADAP, the information an individual must submit to the Department to enroll in ADAP and to continue enrollment in ADAP, the notification requirements for changes that may affect an individual's eligibility, and how drugs are distributed for enrolled individuals. By clarifying these requirements, the new rules may provide a significant benefit to persons living with HIV and their families.

Currently, there are approximately 3,500 individuals enrolled in ADAP, an increase from 2018. The current rules state that in order for an individual to be eligible for ADAP, they must have a household income of less than or equal to 300% of the poverty level; however, federal funding requirements now allow for an individual with an income of up to 400% of the poverty level the ability to enroll in ADAP. This change is reflected in the new rules. The new rules also add that an individual is eligible for ADAP if that individual has health insurance coverage that is inadequate or unaffordable. The current rules make an individual ineligible if the individual has any health insurance coverage, including AHCCCS. The new rules include that an applicant no longer has to apply for either an AHCCCS or a Medicare low income subsidy, if their income is too high and denial is assured, as a factor in determining eligibility for ADAP. These changes help more people living with HIV to be able to enroll in the ADAP program and receive drugs to treat and prevent illnesses related to their HIV. Having these changes in the rules may make persons living with HIV, who believed they were ineligible for ADAP based on the current rules, aware that they are now eligible, providing them with up to a substantial benefit.

The new rules include that an enrolled individual may obtain drugs through a pharmacy within the network as well as through the contract pharmacy. This change allows individuals with health insurance coverage to receive their drugs through a network of pharmacies, rather than just one pharmacy, which was not allowed in the current rules. This change may provide a

minimal benefit to persons living with HIV, as may allowing an applicant's email to be provided rather than phone number as a method for contacting the applicant/enrolled individual.

The new rules change the process for an individual applying for enrollment or continuing enrollment in ADAP by adding some required additional information and documentation and removing obsolete information that is not required under current practice. To reduce the administrative burden for applicants, the Department and the administrators of other Ryan White programs have developed a single application form that allows an individual to be assessed for eligibility for any Ryan White HIV-related services, including ADAP, and allows for electronic submission. The application removes many unnecessary steps and creates a simpler form for the applicant to fill out, but adds some information not required in the current rules. The new rules for the ADAP application simplify the list of documents for establishing residency, reduce the number of documents that are required for an applicant, and lengthen time frames for documents to be sent by the applicant for documentation of income. By simplifying the documentation requirements for applicants, the new rules lessen the burden on the applicant to provide multiples of the same documents and may allow more persons living with HIV to apply for ADAP services, providing a significant benefit to applicants while possibly imposing a minimal burden from providing additional information.

The new rules further reduce the burden for documentation for individuals fleeing domestic violence or other circumstances that may limit their ability to have certain documents, which could have led to denial of enrollment. This change may provide a substantial benefit to such an individual. The new rules also raising the time period from 30 to 60 days for which documentation of income may be submitted, providing a significant benefit. The Department also grants pre-approval enrollment status in ADAP to applicants, under the new rules, that lasts until the end of the month after the month in which an applicant applied for ADAP, rather than just for 30 calendar days. During this period, while completing the documentation requirements for enrollment, an individual may still receive their medications through ADAP. This change may provide a minimal-to-substantial benefit to an applicant needing extra time to gather required documentation. As described above, the Department has changed the time periods for continuing enrollment, which may cause an applicant to incur minimal additional costs for more frequent submission of an application for continuing enrollment. The Department has also simplified the documentation requirements for the six-month continuing enrollment update period. This may result in a minimal benefit to persons living with HIV.

In the new rules, the requirements for submitting documentation when an enrolled individual moves have been simplified. Rather than essentially submitting a new, complete, initial

application, an enrolled individual now only has to provide the new address and documentation of residency. An enrolled individual also does not need to notify the Department of a change in HIV-care provider. The Department believes that these changes may provide an enrolled individual with a minimal benefit.

Another change specified in the new rules is related to drug prescription and drug distribution requirements. The new rules add a process by which an HIV-care provider may request coverage through ADAP of a drug on the ADAP formulary that is not covered by the enrolled individual's health insurance and clarifies the process of requesting a drug not on the ADAP formulary. These changes provide up to a substantial benefit for persons living with HIV because the drugs are more easily obtainable than they are under the current rules. If a person living with HIV is able to obtain drugs through ADAP, the progression of the person living with HIV's disease may slow, and the drugs may prevent the occurrence of or to alleviate disability from HIV-related diseases, including AIDS. A slower disease progression may add years to an HIV-infected individual's life. Changing requirements for when an enrolled individual can receive more than a 30-day supply of drugs may also provide a significant benefit to an enrolled individual, making it easier for them to travel.

- **General public**

The general public may receive a significant benefit from the new rules. The improved clarity of the rules and specification of the types of documents that may be submitted to support an application for ADAP may encourage persons living with HIV, who are not currently applying for or enrolled in ADAP, to apply, increasing the number of persons living with HIV receiving drugs through ADAP. The education provided by the Department about the new rules may also increase awareness of the ADAP program and may increase enrollment by enabling more persons living with HIV to receive drugs to control their HIV-infection. Persons living with HIV who are in care and are able to obtain drugs to control HIV-infection and related diseases are healthier and more productive citizens. Because their viral load is generally less, they are also less likely to infect others. These factors may provide a significant benefit to the community at large and possibly reduce the spread of HIV through reducing infectivity of persons living with HIV. Therefore, the Department believes that by making it easier for persons living with HIV to enroll in ADAP, continue enrollment, and obtain drugs necessary to control HIV-infection and related diseases, the proposed rules may provide a significant benefit to the general public.

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

There are no such probable impacts.

5. A statement of the probable impact of the rules on small business

a. Identification of the small businesses subject to the rules

Small businesses subject to the rules may include small community service organizations assisting persons living with HIV to obtain and retain ADAP services.

b. The administrative and other costs required for compliance with the rules

The new rules simplify administrative requirements and make them more consistent with current practice. Therefore, they may provide a significant benefit to these small businesses.

c. A description of the methods that the agency may use to reduce the impact on small businesses

There are no other methods the Department may use to further reduce the impact on small businesses.

d. The probable costs and benefits to private persons and consumers who are directly affected by the rules

These are described in paragraph (3).

6. A statement of the probable effect on state revenues

There are no probable effects on state revenues.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking

There are no less intrusive or less costly alternatives for achieving the purpose of the rule.

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

Not applicable

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES - COMMUNICABLE DISEASES AND INFESTATIONS

Historical Note

Exhibit III-M made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Exhibit III-M repealed by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

Exhibit III-N. Repealed**Historical Note**

Exhibit III-N made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Exhibit III-N repealed by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

ARTICLE 4. AIDS DRUG ASSISTANCE PROGRAM (ADAP)**R9-6-401. Definitions**

In this Article, unless otherwise specified:

1. “ADAP” means the AIDS Drug Assistance Program.
2. “Adult” means an individual who is:
 - a. Eighteen or more years old;
 - b. Married; or
 - c. Emancipated, as specified in A.R.S. Title 12, Chapter 15.
3. “Advocacy” means the act of supporting, recommending, or arguing in favor of a cause or course of action for the benefit of an individual or group of individuals.
4. “AHCCCS” means the Arizona Health Care Cost Containment System.
5. “Annual family income” means the combined yearly gross earned income and unearned income of all adult individuals within a family unit.
6. “Applicant” means an individual for whom a request for initial enrollment in ADAP is submitted to the Department, as specified in R9-6-404.
7. “Applying for a low-income subsidy” means submitting forms and supporting documentation to the Social Security Administration for determining eligibility for receiving a low-income subsidy.
8. “Biological substance” means a compound made by or derived from a plant or animal source.
9. “Business day” means any day of the week other than a Saturday, Sunday, legal holiday, or day on which the Department is authorized or obligated by law or executive order to close.
10. “Calendar day” means any day of the week, including a Saturday, Sunday, or legal holiday.
11. “Case management services” means the activities performed by a case manager for an HIV-infected individual or the individuals in the HIV-infected individual’s family unit.
12. “Case manager” means an individual who:
 - a. Assesses the needs of an HIV-infected individual for health services, housing, support services, and financial assistance;
 - b. Assists the HIV-infected individual with obtaining health services, housing, support services, or financial assistance, as applicable;
 - c. Coordinates the interaction of the HIV-infected individual with service providers; and
 - d. Monitors the interaction of the HIV-infected individual with service providers to:
 - i. Determine the effects of each service provider’s activities on the needs of the HIV-infected individual, and
 - ii. Develop strategies to reduce unmet needs.

13. “CD4-T-lymphocyte count” means the number of a specific type of white blood cell in a cubic millimeter of blood.
14. “Community service organization” means a nonprofit entity that assists an individual who is infected with HIV or affected by another individual’s infection with HIV by providing the services listed below or coordinating the interaction of the individual with service providers to obtain or retain:
 - a. Rehabilitation services,
 - b. Case management services,
 - c. Support services,
 - d. Advocacy,
 - e. Financial assistance, or
 - f. Housing.
15. “Confirmatory test” means a laboratory analysis, such as a Western blot analysis, approved by the U.S. Food and Drug Administration to be used after a screening test to diagnose or monitor the progression of HIV infection.
16. “Current” means within the six months before the:
 - a. Date of application, or
 - b. Date on which an enrolled individual submits to the Department the documents required in R9-6-407 for continuing enrollment.
17. “Date of application” means the month, day, and year that an individual submits the documents specified in R9-6-404 to the Department as an application for initial enrollment in ADAP.
18. “Diagnosis” means an identification of a communicable disease by an individual authorized by law to make the identification.
19. “Drug” means a chemical or biological substance determined by the U.S. Food and Drug Administration to be useful in the treatment of individuals with HIV infection and available only through a prescription order.
20. “Earned income” means monetary payments received by an individual as a result of work performed or rental of property owned or leased by the individual, including:
 - a. Wages,
 - b. Commissions and fees,
 - c. Salaries and tips,
 - d. Profit from self-employment,
 - e. Profit from rent received from a tenant or boarder, and
 - f. Any other monetary payments received by an individual for work performed or rental of property.
21. “Employed” means working for a person for money in the form of wages or a salary.
22. “Enrolling in a Medicare drug plan” means submitting information to the Centers for Medicare and Medicaid Services during an initial enrollment period or general enrollment period and selecting a Medicare drug plan.
23. “Family unit” means:
 - a. A group of individuals residing together who are related by birth, marriage, or adoption; or
 - b. An individual who:
 - i. Does not reside with another individual; or
 - ii. Resides only with another individual or group of individuals to whom the individual is unrelated by birth, marriage, or adoption.
24. “Formulary” means a list of drugs that are available to an individual through the individual’s health insurance or ADAP.
25. “General enrollment period” means the interval of time between November 15 and December 31 of each calendar year during which an individual:

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- a. May enroll in a Medicare drug plan if the individual, before May 15, 2006:
 - i. Was enrolled in Medicare,
 - ii. Was eligible to enroll in a Medicare drug plan, and
 - iii. Did not enroll in a Medicare drug plan; or
- b. Currently enrolled in a Medicare drug plan may select a different Medicare drug plan.
26. "Gift" means something given voluntarily by an individual to another individual without payment in return.
27. "Guardian" means an individual appointed as a legal guardian by a court of competent jurisdiction.
28. "Health-related services" means the same as in A.R.S. § 36-401.
29. "Health services" means medical services, nursing services, or health-related services provided to an individual.
30. "HIV infection" means the same as in A.R.S. § 36-661.
31. "Homeless" means having a primary nighttime sleeping place that is not:
 - a. Designed to be a sleeping place for human beings, or
 - b. Ordinarily used as a primary nighttime sleeping place for human beings.
32. "Initial enrollment period" means the interval of time during which an individual may first enroll in a Medicare drug plan.
33. "Job" means a position in which an individual is employed.
34. "Low-income subsidy" means Medicare-provided assistance that may partially or fully cover the costs of drugs and is based on the income of an individual and, if applicable, the individual's spouse.
35. "Medical services" means the same as in A.R.S. § 36-401.
36. "Medicare" means a federal health insurance program established under Title XVIII of the Social Security Act.
37. "Medicare drug plan" means insurance approved by Medicare to cover some of the costs of drugs for individuals enrolled in Medicare.
38. "Non-permanent housing" means a living situation in which an individual is:
 - a. Homeless, or
 - b. Living in a shelter or other temporary living arrangement.
39. "Nonprofit" means owned and operated under the direction of an entity that is recognized as exempt under § 501 of the U.S. Internal Revenue Code.
40. "Nursing services" means the same as in A.R.S. § 36-401.
41. "Physician" means an individual licensed as a doctor of allopathic medicine under A.R.S. Title 32, Chapter 13, or as a doctor of osteopathic medicine under A.R.S. Title 32, Chapter 17.
42. "Physician assistant" means an individual licensed under A.R.S. Title 32, Chapter 25.
43. "Poverty level" means the annual family income for a family unit of a particular size, as specified in the poverty guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services.
44. "Prescription order" means the same as in A.R.S. § 32-1901.
45. "Primary care provider" means the physician, registered nurse practitioner, or physician assistant who is treating an applicant or enrolled individual for HIV infection.
46. "Provisional enrollment" means an interval of time, determined by the Department, during which an individual who meets the eligibility criteria specified in R9-6-
- 403(1) through (4) may receive drugs on the ADAP formulary through the vendor pharmacy while the individual is waiting for:
 - a. An eligibility determination for AHCCCS enrollment or a low-income subsidy; or
 - b. Enrollment in a Medicare drug plan.
47. "Public assistance" means a government program that provides a monetary payment, or that supplies goods or services that have a monetary value, to individuals, based on need, such as Supplemental Security Income, Temporary Aid to Needy Families, Food Stamps, or non-federally funded General Assistance.
48. "Registered nurse practitioner" means an individual who meets the definition of registered nurse practitioner in A.R.S. § 32-1601 and is licensed under A.R.S. Title 32, Chapter 15.
49. "Regular" means recurring at fixed intervals.
50. "Rehabilitation services" means the same as in A.A.C. R9-10-201.
51. "Representative" means the:
 - a. Guardian of an individual;
 - b. Parent of an individual who is not an adult; or
 - c. Person designated as an agent for an individual through a power of attorney, as specified in A.R.S. Title 14, Chapter 5, Article 5.
52. "Reservist" means a member of the Reserves of the U.S. Army, Air Force, Navy, Marine Corps, or Coast Guard.
53. "Resident" means an individual who has a place of habitation in Arizona and lives in Arizona as other than a tourist.
54. "Restricted drug" means a drug on the ADAP formulary that is approved by the Department on a case-by-case basis for enrolled individuals who meet medical indications for the use of the drug.
55. "Routine training" means military education and related hands-on activities designed to make an individual ready for the tasks the individual would be expected to perform as a member of the U.S. Air Force, Army, Coast Guard, Marine Corps, or Navy.
56. "Screening test" means a laboratory analysis approved by the U.S. Food and Drug Administration as an initial test to indicate the possibility that an individual is HIV infected.
57. "Self-employed" means receiving money as a direct result of the work performed by an individual rather than from wages or a salary paid to the individual.
58. "Service provider" means an individual who provides medical services, nursing services, health-related services, or support services for an HIV-infected individual.
59. "Shelter" means a facility that provides individuals with a temporary place to sleep at night with the expectation that the individual will go elsewhere during the daylight hours.
60. "Support services" means activities, not related to the treatment of HIV infection, intended to maintain or improve the physical, mental, or psychosocial capabilities of an HIV-infected individual or the individual's family unit and that may include:
 - a. Providing opportunities for social interactions for HIV-infected individuals;
 - b. Taking care of a child of an HIV-infected individual while the HIV-infected individual receives medical services;
 - c. Providing food or meals to an HIV-infected individual in the HIV-infected individual's residence; or

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- d. Providing information about available support services or materials about how to reduce the risk of spreading HIV.
- 61. "Temporary" means transient, with no expectation of permanence.
- 62. "Third-party payor" means a person other than an HIV-infected individual, such as health insurance or an employer, that is responsible for paying a portion of the costs of drugs for the HIV-infected individual.
- 63. "Tourist" means an individual who is living in Arizona but maintains a place of habitation outside of Arizona and lives outside of Arizona for more than six months during a calendar year.
- 64. "Treatment" means the administration to an individual of health services intended to relieve illness or injury.
- 65. "Unearned income" means monetary payments received by an individual that are not compensation for work performed or rental of property owned or leased by the individual, including:
 - a. Unemployment insurance;
 - b. Workers' compensation;
 - c. Disability payments;
 - d. Payments from the Social Security Administration;
 - e. Payments from public assistance;
 - f. Periodic insurance or annuity payments;
 - g. Retirement or pension payments;
 - h. Strike benefits from union funds;
 - i. Training stipends;
 - j. Child support payments;
 - k. Alimony payments;
 - l. Military family allotments;
 - m. Regular support payments from a relative or other individual not residing in the household;
 - n. Investment income;
 - o. Royalty payments;
 - p. Periodic payments from estates or trusts; and
 - q. Any other monetary payments received by an individual that are not:
 - i. As a result of work performed or rental of property owned by the individual,
 - ii. Gifts,
 - iii. Lump-sum capital gains payments,
 - iv. Lump-sum inheritance payments,
 - v. Lump-sum insurance payments, or
 - vi. Payments made to compensate for personal injury.
- 66. "Vendor pharmacy" means an entity that contracts with the Department to perform the activities specified in R9-6-409(C).
- 67. "Veteran" means an individual who has served in the United States Armed Forces.
- 68. "Viral load test" means a laboratory analysis to determine the amount of HIV circulating in the body of an individual.

Historical Note

Adopted as an emergency effective January 12, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Readopted without change as an emergency effective May 9, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-2). Amended and readopted as an emergency effective August 8, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired. Readopted without change as an emergency effective November 16, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired.

Adopted without change as a permanent rule effective May 22, 1989. Amended as an emergency effective June 26, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Emergency amendment readopted without change effective October 17, 1989 (Supp. 89-4). Amended effective September 19, 1990 (Supp. 90-3). Renumbered from R9-6-801 effective October 19, 1993 (Supp. 93-4). Former Section R9-6-401 renumbered to R9-6-402; new Section R9-6-401 made by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 3329, effective November 10, 2007 (Supp. 07-3).

R9-6-402. Limitations and Termination of Program

ADAP ceases to provide drugs when available funding is exhausted or terminated. ADAP is not an entitlement program and does not create a right to assistance absent available funding.

Historical Note

Adopted as an emergency effective January 12, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Readopted without change as an emergency effective May 9, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-2). Amended and readopted as an emergency effective August 8, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired. Readopted without change as an emergency effective November 16, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Adopted without change as a permanent rule effective May 22, 1989 (Supp. 89-2). Amended effective September 19, 1990 (Supp. 90-3). Amended as an emergency effective August 8, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Emergency amendments re-adopted without change effective November 19, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-4). Emergency expired. Emergency amendments re-adopted without change effective February 28, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-1). Emergency expired. Renumbered from R9-6-802 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-402 renumbered to R9-6-403; new Section R9-6-402 renumbered from R9-6-401 and amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2).

R9-6-403. Eligibility Requirements

An individual is eligible to enroll in ADAP if the individual:

1. Has a diagnosis of HIV infection from a physician, registered nurse practitioner, or physician assistant;
2. Is a resident of Arizona, as established by documentation that complies with R9-6-404(A)(9);
3. Has an annual family income that is less than or equal to 300% of the poverty level;
4. Satisfies one of the following:
 - a. Has no health insurance coverage;
 - b. Has health insurance coverage that:
 - i. Does not cover drugs, or
 - ii. Does not include on its formulary at least one of the drugs prescribed for the individual that is on the ADAP formulary;
 - c. Is an American Indian or Alaska Native who:
 - i. Is eligible for, but chooses not to use, the Indian Health Service to receive drugs; and
 - ii. Either has no other health insurance coverage or has health insurance coverage that:

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- (1) Does not cover drugs, or
- (2) Does not include on its formulary at least one of the drugs prescribed for the individual that is on the ADAP formulary; or
- d. Is a veteran who:
 - i. Is eligible for, but chooses not to use, Veterans Health Administration benefits to receive drugs; and
 - ii. Either has no other health insurance coverage or has health insurance coverage that:
 - (1) Does not cover drugs, or
 - (2) Does not include on its formulary at least one of the drugs prescribed for the individual that is on the ADAP formulary;
- 5. Is ineligible for enrollment in AHCCCS, as established by documentation issued by AHCCCS; and
- 6. If eligible for Medicare:
 - a. Is ineligible for a full low-income subsidy, as established by documentation issued by the Social Security Administration; and
 - b. Has enrolled in a Medicare drug plan.

Historical Note

Adopted as an emergency effective January 12, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Readopted without change as an emergency effective May 9, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-2).

Amended and readopted as an emergency effective August 8, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired.

Readopted without change as an emergency effective November 16, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired.

Amended subsection (B) and adopted as a permanent rule effective May 22, 1989 (Supp. 89-2). Amended as an emergency effective August 8, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Emergency amendments re-adopted without change effective November 19, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-4). Emergency expired. Emergency amendments re-adopted without change effective February 28, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-1).

Emergency expired. Renumbered from R9-6-803 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-403 renumbered to R9-6-404; new

Section R9-6-403 renumbered from R9-6-402 and amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 3329, effective November 10, 2007 (Supp. 07-3).

R9-6-404. Initial Application Process

- A. An applicant for initial enrollment in ADAP or the applicant's representative shall submit to the Department the following documents:
 - 1. A Department-provided form, completed by the applicant or the applicant's representative containing:
 - a. The applicant's name, date of birth, and gender;
 - b. Except as provided in subsection (A)(1)(c), the applicant's residential address and mailing address;
 - c. If the applicant is in non-permanent housing, the address of a community service organization that has agreed to receive written communications for the applicant;

- d. If applicable, the name of the applicant's representative and the mailing address of the applicant's representative, if different from the applicant's mailing address;
- e. The telephone number of the applicant or a person that has agreed to receive telephone communications for the applicant;
- f. The number of individuals in the applicant's family unit and the names and ages of the individuals;
- g. The names of individuals, other than the persons specified in subsection (A)(1)(q)(iii), with whom the applicant authorizes the Department to speak about the applicant's enrollment in ADAP;
- h. The applicant's annual family income;
- i. The applicant's race and ethnicity;
- j. Whether the applicant or an adult in the applicant's family unit:
 - i. Is employed;
 - ii. Is self-employed;
 - iii. Is receiving public assistance;
 - iv. Is receiving regular monetary payments from a source not specified in subsection (A)(1)(j)(i) through subsection (A)(1)(j)(iii) and, if so, an identification of the source of the monetary payments; or
 - v. Is using a source not specified in subsection (A)(1)(j)(i) through subsection (A)(1)(j)(iv) or savings to assist the applicant in obtaining food, water, housing, or clothing for the applicant and if so, an identification of the source;
- k. Whether the applicant is receiving benefits from AHCCCS;
- l. The date the applicant or the applicant's representative is scheduled to meet with AHCCCS to discuss eligibility for AHCCCS, if applicable;
- m. Whether the applicant is eligible for Medicare benefits and, if not, the date on which the applicant will be eligible for Medicare benefits;
- n. If the applicant is eligible for Medicare benefits, whether:
 - i. The applicant or the applicant's representative has applied for a low-income subsidy for the applicant and, if so, the date of the application for the low-income subsidy; and
 - ii. Either:
 - (1) The applicant or the applicant's representative has applied for a Medicare drug plan for the applicant and, if so, the date of the application for the Medicare drug plan; or
 - (2) The applicant is enrolled in a Medicare drug plan;
- o. Whether the applicant has health insurance other than Medicare that would pay for drugs on the ADAP formulary;
- p. Whether the applicant has served on active duty:
 - i. In the U.S. Air Force, Army, Coast Guard, Marine Corps, or Navy;
 - ii. In the Army National Guard or Air National Guard; or
 - iii. As a reservist serving on active duty other than for routine training purposes;
- q. A statement by the applicant or the applicant's representative confirming that the applicant or the applicant's representative:

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- i. Understands that the applicant or the applicant's representative is required to submit to the Department proof of ineligibility for enrollment in AHCCCS and for a low-income subsidy within 30 calendar days after the date of application, if not provided to the Department with the application;
- ii. Understands that the applicant or the applicant's representative is required to submit to the Department proof of enrollment in a Medicare drug plan, if the applicant is eligible for Medicare, within 30 calendar days after the date of application, if not provided to the Department with the application;
- iii. Grants permission to the Department to discuss the information provided to the Department under subsection (A) with:
 - (1) AHCCCS, for the purpose of determining AHCCCS eligibility;
 - (2) Medicare and the Social Security Administration, for the purpose of determining eligibility for a low-income subsidy and enrollment in a Medicare drug plan;
 - (3) The applicant's primary care provider or designee;
 - (4) The vendor pharmacy, to assist with drug distribution; and
 - (5) Any other entity as necessary to establish eligibility for enrollment in ADAP or assist with drug distribution to the applicant;
- iv. Understands that the applicant or the applicant's representative is required to submit to the Department proof of annual family income as part of the application; and
- v. Understands that the applicant or the applicant's representative is required to notify the Department of changes specified in R9-6-406(A);
- r. A statement by the applicant or the applicant's representative attesting that:
 - i. To the best of the knowledge and belief of the applicant or the applicant's representative, the information provided to the Department as specified in subsection (A), including the information in the documents accompanying the form specified in subsection (A)(1), is accurate and complete;
 - ii. The applicant meets the eligibility criteria specified in R9-6-403; and
 - iii. The applicant or applicant's representative understands that eligibility does not guarantee that the Department will be able to provide drugs and understands that an individual's enrollment in ADAP may be terminated as specified in R9-6-408; and
- s. The dated signature of the applicant or the applicant's representative;
2. The Department-provided form specified in subsection (B), completed by the applicant's primary care provider;
3. A written prescription order signed by the applicant's primary care provider or a copy of the written prescription order for each drug on the list specified in subsection (B)(5);
4. A copy of current documentation from AHCCCS stating that the applicant's eligibility for enrollment in AHCCCS has not yet been determined or that AHCCCS is denying eligibility to the applicant;
5. If the applicant is eligible for Medicare, a copy of current documentation from the Social Security Administration stating that the applicant's eligibility for a low-income subsidy has not yet been determined or that the applicant is ineligible for a full low-income subsidy;
6. If the applicant is eligible for Medicare, a copy of the applicant's Medicare prescription card or copy of a letter from the company providing the applicant's Medicare drug plan, confirming that the applicant has applied for or is enrolled in a Medicare drug plan;
7. Proof of annual family income, including the following items as applicable to the applicant's family unit:
 - a. For each job held by an adult in the family unit:
 - i. Paycheck stubs from the 30 calendar days before the date of application, or
 - ii. A statement from the employer listing gross wages for the 30 calendar days before the date of application;
 - b. From each self-employed adult in the family unit, documentation of the current net income from self-employment, such as:
 - i. An income tax return submitted for the previous tax year to the U.S. Internal Revenue Service or the Arizona Department of Revenue;
 - ii. The Internal Revenue Service Forms 1099 prepared for the previous tax year for the self-employed adult in the family unit;
 - iii. A profit and loss statement for the self-employed adult's business; or
 - iv. Bank statements from the self-employed adult's checking and savings accounts;
 - c. A letter from each entity providing public assistance to an adult in the family unit, describing payments from public assistance;
 - d. A letter from an entity providing a monetary award to an adult in the family unit to cover educational expenses other than tuition, describing the monetary award; and
 - e. Documentation showing the amount and source of any regular monetary payments received by an adult in the family unit from sources other than those specified in subsection (A)(7)(a) through subsection (A)(7)(d);
8. If the applicant or the applicant's representative has stated on the form specified in subsection (A)(1) that the applicant has no source of regular monetary payments and is unable to provide any of the documentation specified in subsection (A)(7), a Department-provided form, completed and signed within 30 calendar days before the date of application, containing:
 - a. Information completed by the applicant or the applicant's representative stating whether:
 - i. An adult in the applicant's family unit receives money from intermittent work performed by the adult in the family unit for which no paycheck stub is received and, if so, the average monthly earnings, and the adult's occupation;
 - ii. The applicant is homeless or living in a shelter;
 - iii. The applicant is receiving assistance from another individual; and
 - iv. The applicant has another source of assistance for obtaining food, water, housing, and clothing, and, if so, an identification of the source;

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- b. A statement by the applicant or the applicant's representative attesting that to the best of the knowledge and belief of the applicant or the applicant's representative, the information submitted under subsection (A)(8)(a) is accurate and complete;
 - c. The dated signature of the applicant or the applicant's representative;
 - d. A statement by the applicant's case manager or primary care provider attesting that to the best of the knowledge and belief of the applicant's case manager or primary care provider the information submitted under subsection (A)(8)(a) is accurate and complete; and
 - e. The dated signature of the applicant's case manager or primary care provider;
9. Proof that the applicant is a resident of Arizona that includes:
 - a. One of the following that shows the Arizona residential address included on the Department-provided form specified in subsection (A)(1) and the name of the applicant or an adult in the applicant's family unit:
 - i. Documentation issued by a governmental entity related to participation in public assistance, dated within 60 calendar days before the date of application;
 - ii. Current documentation from AHCCCS related to the applicant's eligibility for enrollment in AHCCCS;
 - iii. Current documentation from the Social Security Administration or the Department of Veterans Affairs related to the applicant's eligibility for benefits;
 - iv. Current documentation from the Arizona Department of Economic Security related to the applicant's eligibility for unemployment insurance benefits;
 - v. A property tax statement for the most recent tax year issued by a governmental entity;
 - vi. A homeowners' association assessment or fee statement, dated within 60 calendar days before the date of application;
 - vii. A current lease agreement; or
 - viii. A mortgage statement for the most recent tax year;
 - b. If the applicant is unable to produce documentation that satisfies subsection (A)(9)(a), two of the following that show the Arizona residential address included on the Department-provided form specified in subsection (A)(1) and the name of the applicant or an adult in the applicant's family unit:
 - i. A utility bill dated within 60 calendar days before the date of application;
 - ii. A tax statement, other than a property tax statement, issued by a governmental entity for the most recent tax year;
 - iii. An Internal Revenue Service Form W-2 for the most recent tax year;
 - iv. A check stub or statement of direct deposit issued by an employer for the most recent pay period;
 - v. A bank or credit union statement dated within 60 calendar days before the date of application;
 - vi. A non-expired Arizona driver license issued by the Arizona Department of Transportation's Motor Vehicle Division;
- vii. A non-expired Arizona vehicle registration issued by the Arizona Department of Transportation's Motor Vehicle Division;
 - viii. A non-expired Arizona identification card issued by the Arizona Department of Transportation's Motor Vehicle Division;
 - ix. A tribal enrollment card or other type of tribal identification; or
 - x. A current immigration identification card issued by U.S. Citizenship and Immigration Services; or
- c. If the applicant is unable to produce documentation that satisfies either subsection (A)(9)(a) or (b), two of the following that include the name of the applicant or an adult in the applicant's family unit:
 - i. A document listed in subsection (A)(9)(b)(i) through subsection (A)(9)(b)(x) that includes the Arizona residential address shown on the Department-provided form specified in subsection (A)(1);
 - ii. A letter issued by an entity providing non-permanent housing to the applicant, including the Arizona residential address of the non-permanent housing that is the same as the Arizona residential address for the applicant shown on the Department-provided form specified in subsection (A)(1);
 - iii. A written statement issued by a community service organization, verifying that the applicant is homeless and a resident of Arizona;
 - iv. A credit card, primary care provider's office, insurance company, or mobile telephone company billing statement dated within 60 calendar days before the date of application, including the Arizona residential address shown on the Department-provided form specified in subsection (A)(1);
 - v. A current vehicle insurance card, including the Arizona residential address shown on the Department-provided form specified in subsection (A)(1);
 - vi. An official document, such as an Arizona voter registration card, issued by a governmental entity and including the Arizona residential address shown on the Department-provided form specified in subsection (A)(1);
 - vii. A written statement issued by the applicant's case manager indicating that the case manager has conducted a home visit with the applicant at the Arizona residential address shown on the Department-provided form specified in subsection (A)(1) within 30 calendar days before the date of application; or
 - viii. A written statement issued by the applicant's primary care provider, verifying that the applicant is a resident of Arizona; and
10. If the applicant or the applicant's representative has stated on the Department-provided form specified in subsection (A)(8) that the applicant receives assistance from another individual, a letter from the individual to support the statement of the applicant or the applicant's representative.
- B. The primary care provider of an applicant for initial enrollment in ADAP shall complete for the applicant a Department-provided form containing:
1. The applicant's name;

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2. The primary care provider's name, business address, telephone number, fax number, and professional license number;
 3. A statement that the applicant has been diagnosed with HIV infection;
 4. The dates of and results for the most recent confirmatory test, CD4-T-lymphocyte count, and, if available, viral load test conducted for the applicant;
 5. A list of each drug from the current ADAP formulary prescribed for the applicant by the primary care provider;
 6. A statement by the primary care provider that the primary care provider understands that the primary care provider is required to notify the Department of changes specified in R9-6-406(B);
 7. A statement by the primary care provider attesting that, to the best of the primary care provider's knowledge and belief, the information provided to the Department as specified in subsection (B) is accurate and complete; and
 8. The dated signature of the primary care provider.
- C. For purposes of enrollment in ADAP, an applicant or the applicant's representative may report annual family income using actual family income for the most recent 12 months or estimated annual family income determined by multiplying the most recent monthly family income by 12.

Historical Note

Adopted as an emergency effective January 12, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Readopted without change as an emergency effective May 9, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-2).

Amended and readopted as an emergency effective August 8, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired.

Readopted as an emergency and subsection (A) corrected effective November 16, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Amended subsection (B) and adopted as a permanent rule effective May 22, 1989 (Supp. 89-2).

Renumbered from R9-6-804 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-404 renumbered to R9-6-405; new Section R9-6-404 renumbered from R9-6-403 and amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2).

Amended by final rulemaking at 13 A.A.R. 3329, effective November 10, 2007 (Supp. 07-3).

R9-6-405. Enrollment Process; Provisional Enrollment

- A. The Department shall:
1. Review the documents submitted by an applicant as required in R9-6-404(A);
 2. Determine whether the applicant is eligible under R9-6-403;
 3. Grant or deny enrollment based on applicant eligibility, the date of application, and the availability of funds; and
 4. Notify the applicant or the applicant's representative of the Department's decision within five business days after receiving the documents specified in R9-6-404(A).
- B. An applicant or the applicant's representative shall execute any consent forms or releases of information necessary for the Department to verify eligibility.
- C. The Department shall send an applicant or the applicant's representative a written notice of denial, setting forth the information required under A.R.S. § 41-1092.03, if:
1. The applicant or the applicant's representative fails to provide documentation establishing eligibility for enrollment in ADAP,

2. The documentation submitted to the Department under R9-6-404 is found to contain false information, or
 3. The Department does not have funds available to enroll the applicant in ADAP.
- D. The Department shall grant a 30-day provisional enrollment in ADAP to an applicant if:
1. The Department determines that the applicant meets the requirements of R9-6-403(1) through (4); and
 2. The applicant or the applicant's representative attests in writing that the applicant has applied for AHCCCS enrollment and, if eligible for Medicare, a low-income subsidy and a Medicare drug plan, but is unable to provide documentation that complies with R9-6-403(5) or (6) or both.
- E. The Department shall provide an applicant to whom the Department has granted provisional enrollment in ADAP with the drugs on the list specified in R9-6-404(B)(5) during the provisional enrollment period.
- F. Except as specified in subsection (H), to continue ADAP enrollment beyond a 30-day provisional enrollment period, an applicant or the applicant's representative shall provide to the Department, before the end of the 30-day provisional enrollment period, documentation that complies with R9-6-403(5) and, if applicable, R9-6-403(6).
- G. Except as specified in subsection (H), if an applicant with provisional enrollment or the applicant's representative fails to provide documentation as required in subsection (F) to the Department before end of a 30-day provisional enrollment period, the Department shall send the applicant or the applicant's representative a written notice of denial, setting forth the information required under A.R.S. § 41-1092.03.
- H. The Department may grant an extension of provisional enrollment to an applicant beyond a 30-day provisional enrollment period if the applicant or the applicant's representative provides documentation to the Department that the applicant has applied for AHCCCS enrollment and, if eligible for Medicare, a low-income subsidy and Medicare drug plan and:
1. AHCCCS has not yet determined whether the applicant is eligible for AHCCCS enrollment; or
 2. If the applicant is eligible for Medicare:
 - a. The Social Security Administration has not yet determined whether the applicant is eligible for a low-income subsidy, or
 - b. The applicant cannot enroll in a Medicare drug plan until the next general enrollment period.

Historical Note

Adopted as an emergency effective January 12, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Readopted without change as an emergency effective May 9, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-2).

Amended and readopted as an emergency effective August 8, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired.

Readopted as an emergency and subsection (B), Paragraph (2) corrected effective November 16, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Adopted without change as a permanent rule effective May 22, 1989 (Supp. 89-2).

Renumbered from R9-6-805 and amended effective October 19, 1993 (Supp. 93-4). Former Section R9-6-405 renumbered to R9-6-406; new Section R9-6-405 renumbered from R9-6-404 and amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2).

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Amended by final rulemaking at 13 A.A.R. 3329, effective November 10, 2007 (Supp. 07-3).

R9-6-406. Notification Requirements

- A. An enrolled individual or the enrolled individual's representative shall notify the Department in writing or by telephone and comply with the applicable requirements specified in R9-6-407 within 30 calendar days after any of the following occurs:
 - 1. The residential or mailing address or the telephone number of the enrolled individual changes from that provided to the Department under R9-6-404(A)(1) or R9-6-407;
 - 2. The enrolled individual adds or deletes an individual with whom the Department may speak about the enrolled individual's ADAP enrollment from the list specified in R9-6-404(A)(1)(g);
 - 3. The enrolled individual begins receiving treatment for HIV infection from a primary care provider different from the primary care provider who completed:
 - a. The form specified in R9-6-404(B), or
 - b. The most recent form specified in R9-6-407(D);
 - 4. The enrolled individual has:
 - a. Been determined eligible for and enrolled to receive drug coverage through AHCCCS;
 - b. Received notification of drug coverage from a third-party payor other than AHCCCS, the Indian Health Service, or the Veterans Health Administration; or
 - c. Been determined eligible for a low-income subsidy;
 - 5. The enrolled individual's annual family income has:
 - a. Increased to an amount above 300% of the poverty level, or
 - b. Decreased to an amount that may make the enrolled individual eligible for enrollment in AHCCCS; or
 - 6. The enrolled individual establishes residency outside Arizona.
- B. An enrolled individual's primary care provider shall:
 - 1. Notify the Department in writing or by telephone:
 - a. That the enrolled individual has died, within 14 calendar days after the primary care provider learns of the death; and
 - b. That the enrolled individual is receiving treatment for HIV infection from a different primary care provider, within 14 calendar days after the primary care provider learns of the change in primary care provider; and
 - 2. Include in the notification:
 - a. The name and date of birth of the enrolled individual;
 - b. If notifying under subsection (B)(1)(a), the date of death; and
 - c. If notifying under subsection (B)(1)(b), the name, business address, and telephone number of the new primary care provider.
- C. An enrolled individual's primary care provider shall notify the vendor pharmacy, as specified in R9-6-409(A):
 - 1. When prescribing a new drug for the enrolled individual, or
 - 2. Within seven calendar days after discontinuing a drug that was contained in the list completed by the enrolled individual's primary care provider under R9-6-404(B) or R9-6-407(D).
- D. An enrolled individual's case manager shall notify the Department in writing or by telephone within 30 calendar days after the case manager learns that:
 - 1. The residential or mailing address or the telephone number of the enrolled individual has changed from that provided to the Department under R9-6-404(A)(1) or R9-6-407;

- 2. The enrolled individual has begun receiving treatment for HIV infection from a primary care provider who is different from the primary care provider who completed:
 - a. The form specified in R9-6-404(B), or
 - b. The most recent form specified in R9-6-407(D);
- 3. The enrolled individual has:
 - a. Been determined eligible for and enrolled to receive drug coverage through AHCCCS;
 - b. Received notification of drug coverage from a third-party payor other than AHCCCS, the Indian Health Service, or the Veterans Health Administration; or
 - c. Been determined eligible for a low-income subsidy;
- 4. The enrolled individual's annual family income has:
 - a. Increased to an amount above 300% of the poverty level; or
 - b. Decreased to an amount that may make the enrolled individual eligible for enrollment in AHCCCS;
- 5. The enrolled individual has established residency outside Arizona; or
- 6. The enrolled individual has died.

Historical Note

Adopted as an emergency effective January 12, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Readopted without change as an emergency effective May 9, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-2).

Amended and readopted as an emergency effective August 8, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired.

Readopted without change as an emergency effective November 16, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired.

Adopted without change as a permanent rule effective May 22, 1989 (Supp. 89-2). Amended effective September 19, 1990 (Supp. 90-3). Renumbered from R9-6-806 effective October 19, 1993 (Supp. 93-4). Former Section R9-6-406 renumbered to R9-6-407; new Section R9-6-406 renumbered from R9-6-405 and amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Former R9-6-406 renumbered to R9-6-407; new R9-6-406 made by final rulemaking at 13 A.A.R. 3329, effective November 10, 2007 (Supp. 07-3).

R9-6-407. Continuing Enrollment

- A. To continue enrollment in ADAP, an enrolled individual or the enrolled individual's representative shall:
 - 1. When the enrolled individual's residential or mailing address changes, comply with subsection (B);
 - 2. When the enrolled individual's primary care provider changes, comply with subsection (C);
 - 3. When the enrolled individual's annual family income decreases to an amount that may make the individual eligible for enrollment in AHCCCS, comply with subsection (E);
 - 4. When the enrolled individual becomes eligible for Medicare, comply with subsection (F);
 - 5. Before the expiration of each six-month period after an individual's initial enrollment, comply with subsection (G); and
 - 6. Before the expiration of each 24-month period after an individual's initial enrollment, comply with subsection (H).
- B. When an enrolled individual's residential or mailing address changes, the enrolled individual or the enrolled individual's representative shall:

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1. Complete a Department-provided form containing for the enrolled individual the information specified in R9-6-404(A)(1)(a) through R9-6-404(A)(1)(h) and R9-6-404(A)(1)(j), (k), (m), (n), and (o);
 2. Attest on the form specified in subsection (B)(1) that:
 - a. To the best of the knowledge and belief of the enrolled individual or the enrolled individual's representative, the information submitted in the form and the documents submitted with the form are accurate and complete;
 - b. The enrolled individual meets the eligibility criteria specified in R9-6-403; and
 - c. The enrolled individual or the enrolled individual's representative understands that eligibility does not guarantee that the Department will be able to provide drugs and that an individual's enrollment in ADAP may be terminated as specified in R9-6-408;
 3. Grant permission on the form specified in subsection (B)(1) for the Department to discuss the enrolled individual's enrollment with:
 - a. AHCCCS, for the purpose of determining AHCCCS eligibility;
 - b. Medicare and the Social Security Administration, for the purpose of determining eligibility for a low-income subsidy and enrollment in a Medicare drug plan;
 - c. The applicant's primary care provider or designee;
 - d. The vendor pharmacy, to assist with drug distribution; and
 - e. Any other entity as necessary to establish eligibility for enrollment in ADAP or assist with drug distribution;
 4. Sign and date the form specified in subsection (B)(1); and
 5. Submit to the Department within 30 calendar days of the change:
 - a. The form specified in subsection (B)(1); and
 - b. Proof of Arizona residency, as specified in R9-6-404(A)(9), showing the new Arizona residential address included on the form specified in subsection (B)(1).
- C. When an enrolled individual's primary care provider changes, the enrolled individual or the enrolled individual's representative shall:
1. Comply with subsections (B)(1) through (4);
 2. Obtain from the new primary care provider the Department-provided form specified in subsection (D), completed by the new primary care provider; and
 3. Submit the form specified in subsection (B)(1) and the form specified in subsection (C)(2) to the Department within 30 calendar days after the change.
- D. The primary care provider of an enrolled individual shall complete for the enrolled individual a Department-provided form containing:
1. The information required under R9-6-404(B)(1), (2), and (5) through (8); and
 2. The dates of and results for the most recent CD4-T-lymphocyte count and, if available, viral load test conducted for the enrolled individual.
- E. When an enrolled individual's annual family income decreases to an amount that may make the individual eligible for enrollment in AHCCCS, the enrolled individual or the enrolled individual's representative shall:
1. Apply for enrollment in AHCCCS within 30 calendar days after the change in annual family income; and
 2. If the enrolled individual is determined to be ineligible for AHCCCS enrollment, submit to the Department within 30 calendar days after the change, documentation that complies with R9-6-403(5).
- F. When an enrolled individual becomes eligible for Medicare, the enrolled individual or the enrolled individual's representative shall, within 30 calendar days after the enrolled individual becomes eligible for Medicare:
1. Apply for a low-income subsidy and for a Medicare drug plan, and
 2. If the enrolled individual is determined to be ineligible for a low-income subsidy, submit to the Department documentation that complies with R9-6-403(6).
- G. Before the expiration of each six-month period after an individual's initial enrollment, the enrolled individual or the enrolled individual's representative shall submit to the Department:
1. Proof of annual family income, as specified in R9-6-404(A)(7) or (8); and
 2. Proof that the enrolled individual is a resident of Arizona, as specified in R9-6-404(A)(9).
- H. Before the expiration of each 24-month period after an individual's initial enrollment, the enrolled individual or the enrolled individual's representative shall:
1. Comply with subsections (B)(1) through (4);
 2. Obtain from the enrolled individual's primary care provider the Department-provided form completed as specified in subsection (D); and
 3. Submit to the Department:
 - a. The form specified in subsection (H)(1),
 - b. The form specified in subsection (H)(2),
 - c. Proof of annual family income, as specified in R9-6-404(A)(7) or (8), and
 - d. Proof that the enrolled individual is a resident of Arizona, as specified in R9-6-404(A)(9).
- I. The Department shall:
1. Review information about an enrolled individual and determine eligibility for continuing enrollment for the enrolled individual:
 - a. Every six months after the individual's initial enrollment;
 - b. When the Department receives information from the enrolled individual or the enrolled individual's representative under subsection (A); or
 - c. When the Department no longer has sufficient funds to provide continuing enrollment to all enrolled individuals;
 2. Grant continuing enrollment to an enrolled individual, subject to the availability of funds, when:
 - a. The enrolled individual or the enrolled individual's representative complies with subsection (A); and
 - b. The Department determines that:
 - i. The information in the documents submitted to the Department is accurate and complete, and
 - ii. The enrolled individual is eligible under R9-6-403; and
 3. Notify the enrolled individual or the enrolled individual's representative of the Department's decision within five business days after receipt of the documents required in subsection (A).
- J. If the Department denies continuing enrollment to an enrolled individual, the Department shall send to the enrolled individual or the enrolled individual's representative a written notice of denial setting forth the information required under A.R.S. § 41-1092.03.

Historical Note

Adopted as an emergency effective January 12, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days

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(Supp. 88-1). Emergency expired. Readopted without change as an emergency effective May 9, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-2).

Emergency not renewed. Former Section R9-6-808 renumbered as Section R9-6-807, amended, and readopted as an emergency effective August 8, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired. Readopted as an emergency and subsection (C) corrected effective November 16, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Adopted without change as a permanent rule effective May 22, 1989 (Supp. 89-2). Renumbered from R9-6-807 effective October 19, 1993 (Supp. 93-4). Former Section R9-6-407 repealed; new Section R9-6-407 renumbered from R9-6-406 and amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Former R9-6-407 renumbered to R9-6-409; new R9-6-407 renumbered from R9-6-406 and amended by final rulemaking at 13 A.A.R. 3329, effective November 10, 2007 (Supp. 07-3).

R9-6-408. Termination from ADAP Services

- A. The Department may terminate an individual's enrollment in ADAP if:
 - 1. The Department learns that information submitted to the Department by the individual or the individual's representative under R9-6-404(A) or (C), R9-6-407(A), or R9-6-409(E) is inaccurate or incomplete;
 - 2. The vendor pharmacy does not receive a request from the individual or the individual's representative for any refill of a drug for a period of 90 calendar days; or
 - 3. The individual or the individual's representative exhibits violent or threatening behavior to an employee of the Department or the vendor pharmacy, as established by documentation such as a police report or a written document from the individual.
- B. The Department may terminate approval of a restricted drug for an individual enrolled in ADAP if the Department learns that the enrolled individual:
 - 1. Is not following the instructions of the enrolled individual's primary care provider regarding the use of the restricted drug; or
 - 2. Has not had additional laboratory analyses performed, as required in R9-6-409(E)(1)(i)(ii), to support continuing use of the restricted drug.
- C. The Department shall send to an individual or the individual's representative a written notice of termination setting forth the information required under A.R.S. § 41-1092.03 if the Department terminates:
 - 1. The individual's enrollment in ADAP, or
 - 2. Approval of a restricted drug for the individual.

Historical Note

Adopted as an emergency effective January 12, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Readopted without change as an emergency effective May 9, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-2). Former Section R9-6-809 renumbered as Section R9-6-808, amended and readopted as an emergency effective August 8, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired.

Readopted without change as an emergency effective November 16, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Adopted without change as a permanent rule effective May 22, 1989 (Supp. 89-2). Renumbered from R9-6-808

effective October 19, 1993 (Supp. 93-4). Former Section R9-6-408 renumbered to R9-6-409; new Section R9-6-408 made by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 3329, effective November 10, 2007 (Supp. 07-3).

R9-6-409. Drug Prescription and Distribution Requirements

- A. A primary care provider shall:
 - 1. Issue a prescription order:
 - a. For each drug from the ADAP formulary prescribed for an applicant or enrolled individual by the primary care provider;
 - b. For dispensing up to a 30-day supply of the drug; and
 - c. To authorize no more than a six-month supply of the drug, including the original prescription order and all refills;
 - 2. Submit:
 - a. A written prescription order or copy of a written prescription order to the Department as specified in R9-6-404(A)(3); and
 - b. A written or oral prescription order to the vendor pharmacy when:
 - i. Prescribing a drug for a newly enrolled individual,
 - ii. Prescribing a new drug for an enrolled individual, or
 - iii. Authorizing an additional six-month supply of a drug for an enrolled individual; and
 - 3. Notify the vendor pharmacy when discontinuing a drug for an enrolled individual.
 - B. The Department shall forward a written prescription order submitted to the Department as specified in subsection (A)(2)(a) to the vendor pharmacy within three business days of approving an individual for initial enrollment.
 - C. The vendor pharmacy shall:
 - 1. Maintain a supply of the drugs on the ADAP formulary available for dispensing;
 - 2. Receive prescription orders issued by an enrolled individual's primary care provider;
 - 3. Before dispensing drugs, verify:
 - a. With an enrolled individual or the enrolled individual's representative the address to which the enrolled individual or the enrolled individual's representative wants the drugs delivered, and
 - b. An individual's enrollment status;
 - 4. Dispense up to a 30-day supply of a drug to an enrolled individual:
 - a. Upon receipt of a:
 - i. Prescription order as specified in subsection (C)(2), or
 - ii. Request from the enrolled individual or the enrolled individual's representative for a refill of the drug;
 - b. To the address identified, as specified in subsection (C)(3)(a); and
 - c. So the drug is dispensed to the enrolled individual no later than three business days after the vendor pharmacy:
 - i. Receives a prescription order or request for refill, as specified in subsection (C)(4)(a);
 - ii. Has verified the address to which the drug is to be delivered, as specified in subsection (C)(3)(a); and

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- iii. Has verified the individual's enrollment status, as specified in subsection (C)(3)(b); and
5. Notify the Department upon receiving a request for dispensing a drug for an individual who is neither enrolled nor provisionally enrolled in ADAP.
- D. The Department may authorize replacement of a drug when:
- 1. The drug has been dispensed by the vendor pharmacy to an enrolled individual, and
 - 2. The enrolled individual or the enrolled individual's representative claims the dispensed drug was lost, stolen, or damaged.
- E. The primary care provider of an enrolled individual may request approval of a restricted drug for the enrolled individual by:
- 1. Completing a Department-provided form for each requested restricted drug that contains the following information:
 - a. The name, business address, and telephone number of the primary care provider;
 - b. The date of the request;
 - c. The enrolled individual's name and date of birth;
 - d. The indications for the use of the restricted drug;
 - e. The most recent results of laboratory analyses to support the request and the dates of the laboratory analyses;
 - f. A justification for use of the restricted drug by the enrolled individual;
 - g. An attestation by the primary care provider that:
 - i. To the best of the primary care provider's knowledge and belief, the information presented in the request is accurate and complete; and
 - ii. The primary care provider understands that the primary care provider is required to provide instructions to the enrolled individual regarding the use of the restricted drug and monitor the enrolled individual's use of the restricted drug;
 - h. The dated signature of the primary care provider;
 - i. An attestation by the enrolled individual or the enrolled individual's representative that the enrolled individual or the enrolled individual's representative understands that the enrolled individual is required to:
 - i. Follow the instructions of the enrolled individual's primary care provider regarding the use of the restricted drug; and
 - ii. Have periodic laboratory analyses performed to support continuing use of the restricted drug; and
 - j. The dated signature of the enrolled individual or the enrolled individual's representative;
 - 2. Issuing a written or oral prescription order for the restricted drug to the vendor pharmacy; and
 - 3. Submitting to the Department:
 - a. The completed drug-specific form specified in subsection (E)(1), and
 - b. Copies of the results of the most recent laboratory analyses to support the request for the restricted drug.
- F. If the restricted drug requested under subsection (E) is approved by the Department for an enrolled individual, the enrolled individual's primary care provider shall:
- 1. Provide instructions to the enrolled individual regarding the use of the restricted drug; and
 - 2. Monitor the enrolled individual's use of and clinical response to the restricted drug.
- G. When the Department receives a drug-specific form requesting a restricted drug for an enrolled individual, the Department shall:
- 1. Review the documents submitted according to subsection (E)(3);
 - 2. Determine whether the information submitted to the Department:
 - a. Is complete; and
 - b. Substantiates that the enrolled individual's use of the restricted drug is indicated; and
 - 3. Notify the following of the Department's decision within five business days after receiving the request:
 - a. The enrolled individual or the enrolled individual's representative;
 - b. The enrolled individual's primary care provider; and
 - c. The vendor pharmacy.
- H. If the Department denies a request for approval of a restricted drug for an enrolled individual, the Department shall send to the enrolled individual or the enrolled individual's representative a written notice of denial setting forth the information required under A.R.S. § 41-1092.03.
- I. The Department shall only authorize the distribution of drugs that are included on the ADAP formulary.

Historical Note

Adopted effective October 19, 1993 (Supp. 93-4). Amended effective April 4, 1997 (Supp. 97-2). Former Section R9-6-409 renumbered to R9-6-902; new Section R9-6-409 renumbered from R9-6-408 and amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Former R9-6-409 renumbered to R9-6-410; new R9-6-409 renumbered from R9-6-407 and amended by final rulemaking at 13 A.A.R. 3329, effective November 10, 2007 (Supp. 07-3).

Exhibit A. Renumbered**Historical Note**

Exhibit A "Consent for HIV Testing" (English) form adopted effective April 4, 1997 (Supp. 97-2). Exhibit A renumbered to Article 9 by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2).

Exhibit B. Renumbered**Historical Note**

Exhibit B "Consentimiento Para la Prueba de VIH" (Consent for HIV Testing-Spanish) form adopted effective April 4, 1997 (Supp. 97-2). Exhibit B renumbered to Article 9 by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2).

R9-6-410. Confidentiality

In administering ADAP, the Department shall comply with all applicable federal and state laws relating to confidentiality of information.

Historical Note

Adopted effective October 19, 1993 (Supp. 93-4). Section renumbered to R9-6-903 by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Section R9-6-410 renumbered from R9-6-409 and amended by final rulemaking at 13 A.A.R. 3329, effective November 10, 2007 (Supp. 07-3).

R9-6-411. Repealed

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Historical Note

Amended effective February 25, 1976 (Supp. 76-1).
Repealed effective October 19, 1993 (Supp. 93-4).

R9-6-412. Repealed**Historical Note**

Correction, adding Historical Note: Amended effective February 25, 1976 (Supp. 87-1). Repealed effective October 19, 1993 (Supp. 93-4).

R9-6-413. Repealed**Historical Note**

Amended effective February 25, 1976 (Supp. 76-1).
Amended effective June 4, 1980 (Supp. 80-3). Amended effective January 28, 1987 (Supp. 87-1). Repealed effective October 19, 1993 (Supp. 93-4).

R9-6-414. Repealed**Historical Note**

Amended effective February 25, 1976 (Supp. 76-1).
Repealed effective October 19, 1993 (Supp. 93-4).

R9-6-415. Repealed**Historical Note**

Amended effective February 25, 1976 (Supp. 76-1).
Repealed effective October 19, 1993 (Supp. 93-4).

R9-6-416. Repealed**Historical Note**

Amended effective February 25, 1976 (Supp. 76-1).
Repealed effective October 19, 1993 (Supp. 93-4).

R9-6-417. Repealed**Historical Note**

Repealed effective October 19, 1993 (Supp. 93-4).

R9-6-418. Repealed**Historical Note**

Amended effective February 25, 1976 (Supp. 76-1).
Repealed effective October 19, 1993 (Supp. 93-4).

R9-6-419. Repealed**Historical Note**

Repealed effective October 19, 1993 (Supp. 93-4).

R9-6-420. Reserved**R9-6-421. Reserved****R9-6-422. Reserved****R9-6-423. Reserved****R9-6-424. Reserved****R9-6-425. Reserved****R9-6-426. Reserved****R9-6-427. Reserved****R9-6-428. Reserved****R9-6-429. Reserved****R9-6-430. Reserved****R9-6-431. Repealed****Historical Note**

Repealed effective October 19, 1993 (Supp. 93-4).

R9-6-432. Repealed**Historical Note**

Amended effective February 25, 1976 (Supp. 76-1).
Repealed effective October 19, 1993 (Supp. 93-4).

R9-6-433. Repealed**Historical Note**

Repealed effective October 19, 1993 (Supp. 93-4).

ARTICLE 5. RABIES CONTROL**R9-6-501. Definitions**

In this Article, unless otherwise specified:

1. “Animal control agency” means a board, commission, department, office, or other administrative unit of federal or state government or of a political subdivision of the state that has the responsibility for controlling rabies in animals in a particular geographic area.
2. “Approved rabies vaccine” means a rabies vaccine authorized for use in this state by the state veterinarian under A.A.C. R3-2-409.
3. “Cat” means an animal of the genus species *Felis domesticus*.
4. “Currently vaccinated” means that an animal was last immunized against rabies with an approved rabies vaccine:
 - a. At least 28 days and no longer than one year before being exposed, if the animal has only received an initial dose of approved rabies vaccine;
 - b. No longer than one year before being exposed, if the approved rabies vaccine is approved for annual use under A.A.C. R3-2-409; or
 - c. No longer than three years before being exposed, if the approved rabies vaccine is approved for triennial use under A.A.C. R3-2-409.
5. “Dog” means an animal of the genus species *Canis familiaris*.
6. “Euthanize” means to kill an animal painlessly.
7. “Exposed” means bitten by or having touched a rabid animal or an animal suspected of being rabid.
8. “Ferret” means an animal of the genus species *Mustela putorius*.
9. “Not currently vaccinated” means that an animal does not meet the definition of “currently vaccinated.”
10. “Rabid” means infected with rabies virus, a rhabdovirus of the genus *Lyssavirus*.
11. “Suspect case” means an animal whose signs or symptoms indicate that the animal may be rabid.

Historical Note

Amended effective December 22, 1976 (Supp. 76-5).

Correction, this Section shown as amended effective December 22, 1976 should read amended effective May 12, 1977 (Supp. 77-3). Corrections, subsections (A), (B) and (C) (Supp. 77-5). Amended effective April 10, 1980 (Supp. 80-2). Former Section R9-6-116 renumbered without change as R9-6-501 effective January 28, 1987 (Supp. 87-1). Section R9-6-501 repealed, new Section adopted effective January 20, 1992 (Supp. 92-1). Former Section R9-6-501 renumbered to R9-6-701, new Section R9-6-501 renumbered from R9-6-201 and amended effective October 19, 1993 (Supp. 93-4). Amended effective April 4, 1997 (Supp. 97-2). Former R9-6-501 renumbered to R9-6-502; new R9-6-501 renumbered from R9-

Statutory Authorities and Definition References for 9 A.A.C 6, Article 4

Statutory Authorities

36-132. Department of health services; functions; contracts

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.
8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.
9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.
10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.
11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.
 13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.
 14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).
 15. Recruit and train personnel for state, local and district health departments.
 16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.
 17. License and regulate health care institutions according to chapter 4 of this title.
 18. Issue or direct the issuance of licenses and permits required by law.
 19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.
 20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:
 - (a) Screening in early pregnancy for detecting high-risk conditions.
 - (b) Comprehensive prenatal health care.
 - (c) Maternity, delivery and postpartum care.
 - (d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.
 - (e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.
 21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.
- B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies

made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

C. The department, 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.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

36-136. Powers and duties of director; compensation of personnel; rules; definitions

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
7. Prepare sanitary and public health rules.
8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive

community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

- (a) Served at a noncommercial social event such as a potluck.
- (b) Prepared at a cooking school that is conducted in an owner-occupied home.
- (c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
- (d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.
- (e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.
- (f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.
- (g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.
- (h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.
- (i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this

subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

Definition References

32-1601. Definitions

In this chapter, unless the context otherwise requires:

1. "Absolute discharge from the sentence" means completion of any sentence, including imprisonment, probation, parole, community supervision or any form of court supervision.

2. "Appropriate health care professional" means a licensed health care professional whose scope of practice, education, experience, training and accreditation are appropriate for the situation or condition of the patient who is the subject of a consultation or referral.

3. "Approval" means that a regulated training or educational program to prepare persons for licensure, certification or registration has met standards established by the board.

4. "Board" means the Arizona state board of nursing.

5. "Certified nurse midwife" means a registered nurse who:

(a) Is certified by the board.

(b) Has completed a nurse midwife education program approved or recognized by the board and educational requirements prescribed by the board by rule.

(c) Holds a national certification as a certified nurse midwife from a national certifying body recognized by the board.

(d) Has an expanded scope of practice in the provision of health care services for women from adolescence to beyond menopause, including antepartum, intrapartum, postpartum, reproductive, gynecologic and primary care, for normal newborns during the first twenty-eight days of life and for men for the treatment of sexually transmitted diseases. The expanded scope of practice under this subdivision includes:

(i) Assessing patients, synthesizing and analyzing data and understanding and applying principles of health care at an advanced level.

(ii) Managing the physical and psychosocial health care of patients.

(iii) Analyzing multiple sources of data, identifying alternative possibilities as to the nature of a health care problem and selecting, implementing and evaluating appropriate treatment.

(iv) Making independent decisions in solving complex patient care problems.

(v) Diagnosing, performing diagnostic and therapeutic procedures and prescribing, administering and dispensing therapeutic measures, including legend drugs, medical devices and controlled substances, within the scope of the certified nurse midwife practice after meeting requirements established by the board.

(vi) Recognizing the limits of the nurse's knowledge and experience by consulting with or referring patients to other appropriate health care professionals if a situation or condition occurs that is beyond the knowledge and experience of the nurse or if the referral will protect the health and welfare of the patient.

(vii) Delegating to a medical assistant pursuant to section 32-1456.

(viii) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a certified nurse midwife.

6. "Certified nursing assistant" means a person who is registered on the registry of nursing assistants pursuant to this chapter to provide or assist in the delivery of nursing or nursing-related services under the supervision and direction of a licensed nursing staff member. Certified nursing assistant does not include a person who:

(a) Is a licensed health care professional.

(b) Volunteers to provide nursing assistant services without monetary compensation.

(c) Is a licensed nursing assistant.

7. "Certified registered nurse" means a registered nurse who has been certified by a national nursing credentialing agency recognized by the board.

8. "Certified registered nurse anesthetist" means a registered nurse who meets the requirements of section 32-1634.03 and who practices pursuant to the requirements of section 32-1634.04.

9. "Clinical nurse specialist" means a registered nurse who:

(a) Is certified by the board as a clinical nurse specialist.

(b) Holds a graduate degree with a major in nursing and completes educational requirements as prescribed by the board by rule.

(c) Is nationally certified as a clinical nurse specialist or, if certification is not available, provides proof of competence to the board.

(d) Has an expanded scope of practice based on advanced education in a clinical nursing specialty that includes:

(i) Assessing clients, synthesizing and analyzing data and understanding and applying nursing principles at an advanced level.

(ii) Managing directly and indirectly a client's physical and psychosocial health status.

(iii) Analyzing multiple sources of data, identifying alternative possibilities as to the nature of a health care problem and selecting appropriate nursing interventions.

(iv) Developing, planning and guiding programs of care for populations of patients.

(v) Making independent nursing decisions to solve complex client care problems.

(vi) Using research skills and acquiring and applying critical new knowledge and technologies to nursing practice.

- (vii) Prescribing and dispensing durable medical equipment.
 - (viii) Consulting with or referring a client to other health care providers based on assessment of the client's health status and needs.
 - (ix) Facilitating collaboration with other disciplines to attain the desired client outcome across the continuum of care.
 - (x) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a clinical nurse specialist.
 - (xi) Prescribing, ordering and dispensing pharmacological agents subject to the requirements and limits specified in section 32-1651.
10. "Conditional license" or "conditional approval" means a license or approval that specifies the conditions under which the regulated party is allowed to practice or to operate and that is prescribed by the board pursuant to section 32-1644 or 32-1663.
11. "Delegation" means transferring to a competent individual the authority to perform a selected nursing task in a designated situation in which the nurse making the delegation retains accountability for the delegation.
12. "Disciplinary action" means a regulatory sanction of a license, certificate or approval pursuant to this chapter in any combination of the following:
- (a) A civil penalty for each violation of this chapter, not to exceed \$1,000 for each violation.
 - (b) Restitution made to an aggrieved party.
 - (c) A decree of censure.
 - (d) A conditional license or a conditional approval that fixed a period and terms of probation.
 - (e) Limited licensure.
 - (f) Suspension of a license, a certificate or an approval.
 - (g) Voluntary surrender of a license, a certificate or an approval.
 - (h) Revocation of a license, a certificate or an approval.
13. "Health care institution" has the same meaning prescribed in section 36-401.
14. "Licensed nursing assistant" means a person who is licensed pursuant to this chapter to provide or assist in the delivery of nursing or nursing-related services under the supervision and direction of a licensed nursing staff member. Licensed nursing assistant does not include a person who:
- (a) Is a licensed health care professional.
 - (b) Volunteers to provide nursing assistant services without monetary compensation.
 - (c) Is a certified nursing assistant.
15. "Licensee" means a person who is licensed pursuant to this chapter or in a party state as defined in section 32-1668.
16. "Limited license" means a license that restricts the scope or setting of a licensee's practice.
17. "Medication order" means a written or verbal communication given by a certified registered nurse anesthetist to a health care professional to administer a drug or medication, including controlled substances.
18. "Practical nurse" means a person who holds a practical nurse license issued pursuant to this chapter or pursuant to a multistate compact privilege and who practices practical nursing as defined in this section.

19. "Practical nursing" includes the following activities that are performed under the supervision of a physician or a registered nurse:

- (a) Contributing to the assessment of the health status of individuals and groups.
- (b) Participating in the development and modification of the strategy of care.
- (c) Implementing aspects of the strategy of care within the nurse's scope of practice.
- (d) Maintaining safe and effective nursing care that is rendered directly or indirectly.
- (e) Participating in the evaluation of responses to interventions.
- (f) Delegating nursing activities within the scope of practice of a practical nurse.
- (g) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a practical nurse.

20. "Presence" means within the same health care institution or office as specified in section 32-1634.04, subsection A, and available as necessary.

21. "Registered nurse" or "professional nurse" means a person who practices registered nursing and who holds a registered nurse license issued pursuant to this chapter or pursuant to a multistate compact privilege.

22. "Registered nurse practitioner" means a registered nurse who:

- (a) Is certified by the board.
- (b) Has completed a nurse practitioner education program approved or recognized by the board and educational requirements prescribed by the board by rule.
- (c) If applying for certification after July 1, 2004, holds national certification as a nurse practitioner from a national certifying body recognized by the board.
- (d) Has an expanded scope of practice within a specialty area that includes:
 - (i) Assessing clients, synthesizing and analyzing data and understanding and applying principles of health care at an advanced level.
 - (ii) Managing the physical and psychosocial health status of patients.
 - (iii) Analyzing multiple sources of data, identifying alternative possibilities as to the nature of a health care problem and selecting, implementing and evaluating appropriate treatment.
 - (iv) Making independent decisions in solving complex patient care problems.
 - (v) Diagnosing, performing diagnostic and therapeutic procedures, and prescribing, administering and dispensing therapeutic measures, including legend drugs, medical devices and controlled substances within the scope of registered nurse practitioner practice on meeting the requirements established by the board.
 - (vi) Recognizing the limits of the nurse's knowledge and experience by consulting with or referring patients to other appropriate health care professionals if a situation or condition occurs that is beyond the knowledge and experience of the nurse or if the referral will protect the health and welfare of the patient.
 - (vii) Delegating to a medical assistant pursuant to section 32-1456.
 - (viii) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a nurse practitioner.

23. "Registered nursing" includes the following:

- (a) Diagnosing and treating human responses to actual or potential health problems.

- (b) Assisting individuals and groups to maintain or attain optimal health by implementing a strategy of care to accomplish defined goals and evaluating responses to care and treatment.
- (c) Assessing the health status of individuals and groups.
- (d) Establishing a nursing diagnosis.
- (e) Establishing goals to meet identified health care needs.
- (f) Prescribing nursing interventions to implement a strategy of care.
- (g) Delegating nursing interventions to others who are qualified to do so.
- (h) Providing for the maintenance of safe and effective nursing care that is rendered directly or indirectly.
- (i) Evaluating responses to interventions.
- (j) Teaching nursing knowledge and skills.
- (k) Managing and supervising the practice of nursing.
- (l) Consulting and coordinating with other health care professionals in the management of health care.
- (m) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a registered nurse.

24. "Registry of nursing assistants" means the nursing assistants registry maintained by the board pursuant to the omnibus budget reconciliation act of 1987 (P.L. 100-203; 101 Stat. 1330), as amended by the medicare catastrophic coverage act of 1988 (P.L. 100-360; 102 Stat. 683).

25. "Regulated party" means any person or entity that is licensed, certified, registered, recognized or approved pursuant to this chapter.

26. "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:

- (a) Committing fraud or deceit in obtaining, attempting to obtain or renewing a license or a certificate issued pursuant to this chapter.
- (b) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.
- (c) Aiding or abetting in a criminal abortion or attempting, agreeing or offering to procure or assist in a criminal abortion.
- (d) Any conduct or practice that is or might be harmful or dangerous to the health of a patient or the public.
- (e) Being mentally incompetent or physically unsafe to a degree that is or might be harmful or dangerous to the health of a patient or the public.
- (f) Having a license, certificate, permit or registration to practice a health care profession denied, suspended, conditioned, limited or revoked in another jurisdiction and not reinstated by that jurisdiction.
- (g) Wilfully or repeatedly violating a provision of this chapter or a rule adopted pursuant to this chapter.
- (h) Committing an act that deceives, defrauds or harms the public.
- (i) Failing to comply with a stipulated agreement, consent agreement or board order.
- (j) Violating this chapter or a rule that is adopted by the board pursuant to this chapter.

- (k) Failing to report to the board any evidence that a registered or practical nurse or a nursing assistant is or may be:
- (i) Incompetent to practice.
 - (ii) Guilty of unprofessional conduct.
 - (iii) Mentally or physically unable to safely practice nursing or to perform nursing-related duties. A nurse who is providing therapeutic counseling for a nurse who is in a drug rehabilitation program is required to report that nurse only if the nurse providing therapeutic counseling has personal knowledge that patient safety is being jeopardized.
- (l) Failing to self-report a conviction for a felony or undesignated offense within ten days after the conviction.
- (m) Cheating or assisting another to cheat on a licensure or certification examination.

32-1901. 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.

36-401. Definitions; adult foster care

A. In this chapter, unless the context otherwise requires:

1. "Accredited health care institution" means a health care institution, other than a hospital, that is currently accredited by a nationally recognized accreditation organization.

2. "Accredited hospital" means a hospital that is currently accredited by a nationally recognized organization on hospital accreditation.

3. "Adult behavioral health therapeutic home" means a residence for individuals who are at least eighteen years of age, have behavioral health issues and need behavioral health services that does all of the following for those individuals:

(a) Provides room and board.

(b) Assists in acquiring daily living skills.

(c) Coordinates transportation to scheduled appointments.

(d) Monitors behaviors.

(e) Assists in the self-administration of medication.

(f) Provides feedback to case managers related to behavior.

4. "Adult day health care facility" means a facility that provides adult day health services during a portion of a continuous twenty-four-hour period for compensation on a regular basis for five or more adults who are not related to the proprietor.

5. "Adult day health services" means a program that provides planned care supervision and activities, personal care, personal living skills training, meals and health monitoring in a group setting during a portion of a continuous twenty-four-hour period. Adult day health services may also include preventive, therapeutic and restorative health-related services that do not include behavioral health services.

6. "Adult foster care home" means a residential setting that provides room and board and adult foster care services for at least one and no more than four adults who are participants in the Arizona long-term care system pursuant to chapter 29, article 2 of this title or contracts for services with the United States department of veterans affairs and in which the sponsor or the manager resides with the residents and integrates the residents who are receiving adult foster care into that person's family.

7. "Adult foster care services" means supervision, assistance with eating, bathing, toileting, dressing, self-medication and other routines of daily living or services authorized by rules adopted pursuant to section 36-405 and section 36-2939, subsection C.

8. "Assisted living center" means an assisted living facility that provides resident rooms or residential units to eleven or more residents.

9. "Assisted living facility" means a residential care institution, including an adult foster care home, that provides or contracts to provide supervisory care services, personal care services or directed care services on a continuous basis.

10. "Assisted living home" means an assisted living facility that provides resident rooms to ten or fewer residents.

11. "Behavioral health services" means services that pertain to mental health and substance use disorders and that are either:

(a) Performed by or under the supervision of a professional who is licensed pursuant to title 32 and whose scope of practice allows for the provision of these services.

(b) Performed on behalf of patients by behavioral health staff as prescribed by rule.

12. "Construction" means the building, erection, fabrication or installation of a health care institution.

13. "Continuous" means available at all times without cessation, break or interruption.

14. "Controlling person" means a person who:

(a) Through ownership, has the power to vote at least ten percent of the outstanding voting securities.

(b) If the applicant or licensee is a partnership, is the general partner or a limited partner who holds at least ten percent of the voting rights of the partnership.

(c) If the applicant or licensee is a corporation, an association or a limited liability company, is the president, the chief executive officer, the incorporator or any person who owns or controls at least ten percent of the voting securities. For the purposes of this subdivision, corporation does not include nonprofit corporations.

(d) Holds a beneficial interest in ten percent or more of the liabilities of the applicant or the licensee.

15. "Department" means the department of health services.

16. "Directed care services" means programs and services, including supervisory and personal care services, that are provided to persons who are incapable of recognizing danger, summoning assistance, expressing need or making basic care decisions.

17. "Direction" means authoritative policy or procedural guidance for the accomplishment of a function or activity.

18. "Director" means the director of the department of health services.

19. "Facilities" means buildings that are used by a health care institution for providing any of the types of services as defined in this chapter.

20. "Freestanding urgent care center":

(a) Means an outpatient treatment center that, regardless of its posted or advertised name, meets any of the following requirements:

(i) Is open twenty-four hours a day, excluding at its option weekends or certain holidays, but is not licensed as a hospital.

(ii) Claims to provide unscheduled medical services not otherwise routinely available in primary care physician offices.

(iii) By its posted or advertised name, gives the impression to the public that it provides medical care for urgent, immediate or emergency conditions.

(iv) Routinely provides ongoing unscheduled medical services for more than eight consecutive hours for an individual patient.

(b) Does not include the following:

(i) A medical facility that is licensed under a hospital's license and that uses the hospital's medical provider number.

(ii) A qualifying community health center pursuant to section 36-2907.06.

(iii) Any other health care institution licensed pursuant to this chapter.

(iv) A physician's office that offers extended hours or same-day appointments to existing and new patients and that does not meet the requirements of subdivision (a), item (i), (iii) or (iv) of this paragraph.

21. "Governing authority" means the individual, agency, partners, group or corporation, appointed, elected or otherwise designated, in which the ultimate responsibility and authority for the conduct of the health care institution are vested.

22. "Health care institution" means every place, institution, building or agency, whether organized for profit or not, that provides facilities with medical services, nursing services, behavioral health services, health screening services, other health-related services, supervisory care services, personal care services or directed care services and includes home health agencies as defined in section 36-151, outdoor behavioral health care programs and hospice service agencies. Health care institution does not include a community residential setting as defined in section 36-551.

23. "Health-related services" means services, other than medical, that pertain to general supervision, protective, preventive and personal care services, supervisory care services or directed care services.

24. "Health screening services" means the acquisition, analysis and delivery of health-related data of individuals to aid in the determination of the need for medical services.

25. "Hospice" means a hospice service agency or the provision of hospice services in an inpatient facility.

26. "Hospice service" means a program of palliative and supportive care for terminally ill persons and their families or caregivers.

27. "Hospice service agency" means an agency or organization, or a subdivision of that agency or organization, that is engaged in providing hospice services at the place of residence of its clients.

28. "Inpatient beds" or "resident beds" means accommodations with supporting services, such as food, laundry and housekeeping, for patients or residents who generally stay in excess of twenty-four hours.

29. "Intermediate care facility for individuals with intellectual disabilities" has the same meaning prescribed in section 36-551.

30. "Licensed capacity" means the total number of persons for whom the health care institution is authorized by the department to provide services as required pursuant to this chapter if the person is expected to stay in the health care institution for more than twenty-four hours. For a hospital, licensed capacity means only those beds specified on the hospital license.

31. "Medical services" means the services that pertain to medical care and that are performed at the direction of a physician on behalf of patients by physicians, dentists, nurses and other professional and technical personnel.

32. "Modification" means the substantial improvement, enlargement, reduction or alteration of or other change in a health care institution.

33. "Nonproprietary institution" means any health care institution that is organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any

private shareholder or individual, or that is operated by the state or any political subdivision of the state.

34. "Nursing care institution" means a health care institution that provides inpatient beds or resident beds and nursing services to persons who need continuous nursing services but who do not require hospital care or direct daily care from a physician.

35. "Nursing services" means those services that pertain to the curative, restorative and preventive aspects of nursing care and that are performed at the direction of a physician by or under the supervision of a registered nurse licensed in this state.

36. "Organized medical staff" means a formal organization of physicians, and dentists where appropriate, with the delegated authority and responsibility to maintain proper standards of medical care and to plan for continued betterment of that care.

37. "Outdoor behavioral health care program" means an agency that provides behavioral health services in an outdoor environment as an alternative to behavioral health services that are provided in a health care institution with facilities. Outdoor behavioral health care programs do not include:

(a) Programs, facilities or activities that are operated by a government entity or that are licensed by the department as a child care program pursuant to chapter 7.1 of this title.

(b) Outdoor activities for youth that are designated to be primarily recreational and that are organized by church groups, scouting organizations or similar groups.

(c) Outdoor youth programs licensed by the department of economic security.

38. "Personal care services" means assistance with activities of daily living that can be performed by persons without professional skills or professional training and includes the coordination or provision of intermittent nursing services and the administration of medications and treatments by a nurse who is licensed pursuant to title 32, chapter 15 or as otherwise provided by law.

39. "Physician" means any person who is licensed pursuant to title 32, chapter 13 or 17.

40. "Recidivism reduction services" means services that are delivered by an adult residential care institution to its residents to encourage lawful behavior and to discourage or prevent residents who are suspected of, charged with or convicted of one or more criminal offenses, or whose mental health and substance use can be reasonably expected to place them at risk for the future threat of prosecution, diversion or incarceration, from engaging in future unlawful behavior.

41. "Recidivism reduction staff" means a person who provides recidivism reduction services.

42. "Residential care institution" means a health care institution other than a hospital or a nursing care institution that provides resident beds or residential units, supervisory care services, personal care services, behavioral health services, directed care services or health-related services for persons who do not need continuous nursing services.

43. "Residential unit" means a private apartment, unless otherwise requested by a resident, that includes a living and sleeping space, kitchen area, private bathroom and storage area.

44. "Respite care services" means services that are provided by a licensed health care institution to persons otherwise cared for in foster homes and in private homes to provide an interval of rest or relief of not more than thirty days to operators of foster homes or to family members.

45. "Substantial compliance" means that the nature or number of violations revealed by any type of inspection or investigation of a health care institution does not pose a direct risk to the life, health or safety of patients or residents.

46. "Supervision" means direct overseeing and inspection of the act of accomplishing a function or activity.

47. "Supervisory care services" means general supervision, including daily awareness of resident functioning and continuing needs, the ability to intervene in a crisis and assistance in the self-administration of prescribed medications.

48. "Temporary license" means a license that is issued by the department to operate a class or subclass of a health care institution at a specific location and that is valid until an initial licensing inspection.

49. "Unscheduled medical services" means medically necessary periodic health care services that are unanticipated or cannot reasonably be anticipated and that require medical evaluation or treatment before the next business day.

B. If there are fewer than four Arizona long-term care system participants receiving adult foster care in an adult foster care home, nonparticipating adults may receive other types of services that are authorized by law to be provided in the adult foster care home as long as the number of adults served, including the Arizona long-term care system participants, does not exceed four.

C. Nursing care services may be provided by the adult foster care licensee if the licensee is a nurse who is licensed pursuant to title 32, chapter 15 and the services are limited to those allowed pursuant to law. The licensee shall keep a record of nursing services rendered.

36-661. Definitions

In this article, unless the context otherwise requires:

1. "Acquired immune deficiency syndrome" has the same meaning as defined by the centers for disease control of the United States public health service.

2. "Capacity to consent" means a person's ability, determined without regard to the person's age, to understand and appreciate the nature and consequences of a proposed health care service, treatment or procedure and to make an informed decision concerning that service, treatment or procedure.

3. "Child" means an unemancipated person under eighteen years of age.

4. "Communicable disease" means a contagious, epidemic or infectious disease required to be reported to the local board of health or the department pursuant to chapter 1 of this title and this chapter.

5. "Communicable disease related information" means information regarding a communicable disease in the possession of a person who provides health services or who obtains the information pursuant to the release of communicable disease related information.

6. "Contact" means a spouse or sex partner of a protected person, a person who has shared hypodermic needles or syringes with a protected person or a person otherwise exposed to a protected person with a communicable disease in a manner that poses an epidemiologically significant risk of transmission of that disease.

7. "Department" means the department of health services.

8. "Director" means the director of the department of health services.

9. "First responder" means a law enforcement officer, a firefighter or an ambulance attendant as defined in section 36-2201.

10. "Good Samaritan" means a person who renders emergency care or assistance in good faith and without compensation at the scene of any accident, fire or other life-threatening emergency and who believes that a significant exposure risk occurred while the person rendered care or assistance.

11. "Health care decision maker" has the same meaning prescribed in section 12-2801.

12. "Health care provider" means a physician, nurse or other person involved in providing health services.
13. "Health facility" means a health care institution as defined in section 36-401, a blood bank, blood center, milk bank, sperm bank, organ or tissue bank or clinical laboratory or a health care services organization holding a certificate of authority pursuant to section 20-1054.
14. "Health service" means public or private care, treatment, clinical laboratory tests, counseling or educational service for adults or children and acute, chronic, custodial, residential, outpatient, home or other health care or activities related to the detection, reporting, prevention and control of communicable or preventable diseases.
15. "HIV" means the human immunodeficiency virus.
16. "HIV infection" means infection with the human immunodeficiency virus or a related virus identified as a probable causative agent of acquired immune deficiency syndrome.
17. "HIV-related illness" means an illness that may result from or be associated with HIV infection.
18. "HIV-related information" means information concerning whether a person has had an HIV-related test or has HIV infection, HIV-related illness or acquired immune deficiency syndrome and includes information that identifies or reasonably permits identification of that person or the person's contacts.
19. "HIV-related test" means a laboratory test or series of tests for the virus, components of the virus or antibodies to the virus thought to indicate the presence of HIV infection.
20. "Occupational significant exposure risk" means a significant exposure risk that occurs in the performance of a health care provider's professional duties or a first responder's official duties.
21. "Protected person" means a person who takes an HIV-related test or who has been diagnosed as having HIV infection, acquired immune deficiency syndrome, HIV-related illness or another communicable disease.
22. "Significant exposure risk" means contact with another person in a manner that, if the other person has a communicable disease, poses an epidemiologically significant risk of transmission of that disease as determined by the department.

MEDICAL BOARD (R19-1206)

Title 4, Chapter 16, Article 1, General Provisions and Article 5, Executive Director Duties

Amend: R4-16-101, R4-16-501, R4-16-502, R4-16-503, R4-16-504, R4-16-505,
R4-16-506, R4-16-507, R4-16-508, R4-16-509, R4-16-510



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: December 3, 2019

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

FROM: Council Staff

DATE: November 7, 2019

SUBJECT: **ARIZONA MEDICAL BOARD (R19-1206)**

Title 4, Chapter 16, Article 1, General Provisions and Article 5, Executive Director Duties

Amend: R4-16-101, R4-16-501, R4-16-502, R4-16-503, R4-16-504, R4-16-505, R4-16-506, R4-16-507, R4-16-508, R4-16-509, R4-16-510

Summary:

This regular rulemaking from the Arizona Medical Board (Board) seeks to amend rules in Title 4, Chapter 16, Articles 1 and 5. The Board is conducting this rulemaking pursuant to its recent Five Year Review Report (5YRR) for Article 5, which the Council approved on April 2, 2019. In that 5YRR, the Board stated it would complete a rulemaking before the end of December 2019 to add a section for definitions applicable to Article 5 and to amend the subject heading of R4-16-501, which is currently “Interim Evaluation and Investigational Interview,” to “Medical Competency Examination.” In addition, the Board is making other clarifying amendments to the rules in Article 5.

The Board received an exemption from the rulemaking moratorium to conduct this rulemaking on June 21, 2019.

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

Yes. The Board cites to both general and specific statutory authority 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 Board did not review or rely on any study in conducting this rulemaking.

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

The rules are designed to create efficiency in the operation of the Board's activities by delegating ministerial actions to the executive director. The economic impact of the rulemaking will be minimal but important because the clarifying definitions will make the rules more clear, concise, understandable, and effective.

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

The Board indicates that the rulemaking creates efficiency in the operation of the Board and that no less costly alternative was considered.

6. What are the economic impacts on stakeholders?

The Board is the only agency directly affected by the rulemaking and will incur the costs of implementing the amended rules. No political subdivisions, businesses, or consumers are directly affected by the rulemaking.

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

No. The Board did not make any changes to these rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

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

The 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?

No. These rules do not require a permit.

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

This regular rulemaking from the Board, pursuant to its recently approved 5YRR, seeks to add clarifying definitions relevant to Article 5 in Article 1, amend the subject heading of R4-16-501, and make other clarifying amendments to the rules in Article 5. Council staff finds that these amendments would result in rules that are more clear, concise, understandable, and effective. Council staff further notes that the Board is following through on its 5YRR proposed course of action consistent with the timeframe specified therein. The Board accepts the usual 60-day delayed effective date for these rules. Council staff recommends approval of this rulemaking.



Arizona Medical Board

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Executive Director

Patricia E. McSorley

October 22, 2019

Ms. Nicole Sornsin, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 305
Phoenix, AZ 85007

**Re: A.A.C. Title 4. Professions and Occupations
 Chapter 16. Arizona Medical Board**

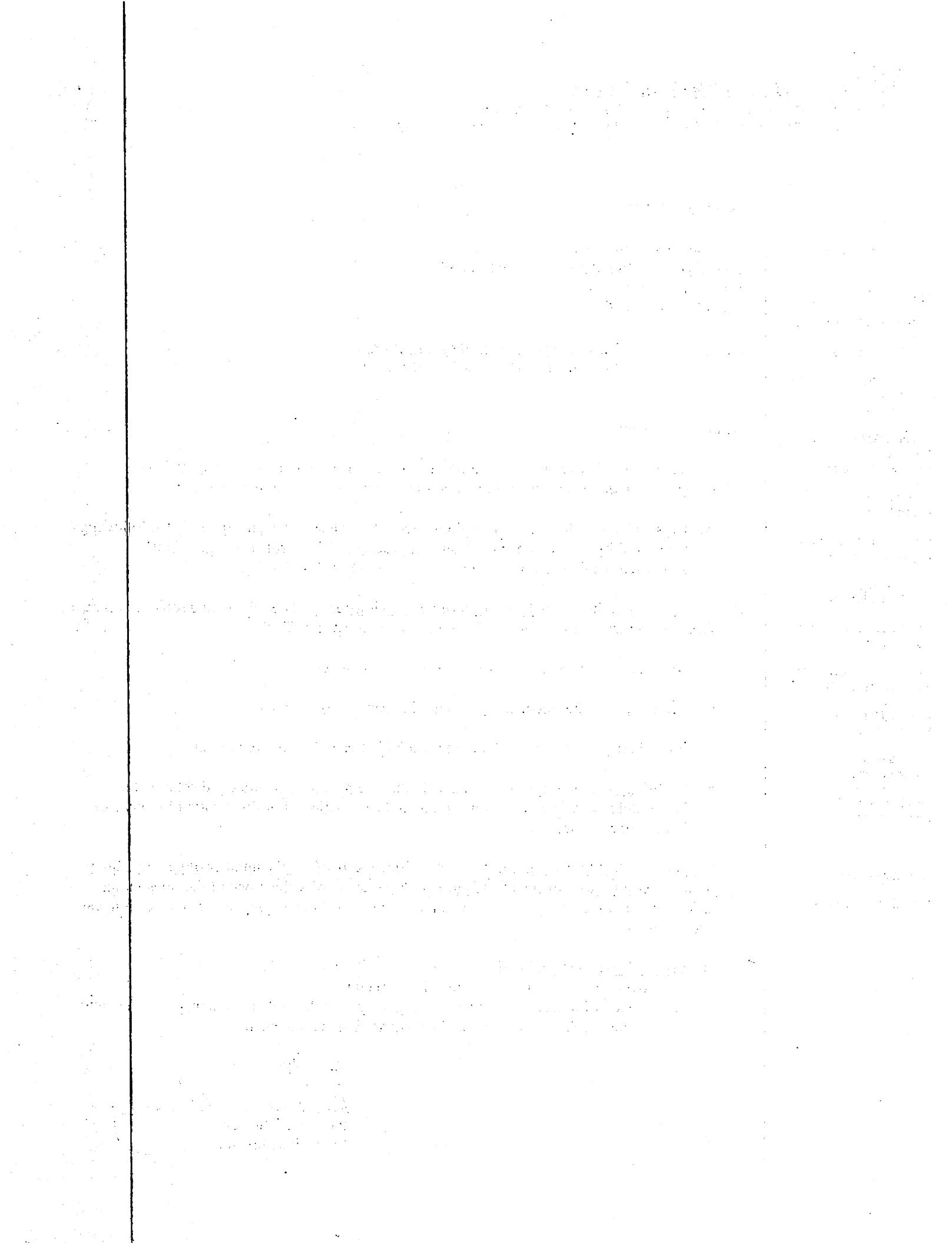
Dear Ms. Sornsin:

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

- A. Close of record date: The rulemaking record was closed on October 21, 2019, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).
- B. Relation of the rulemaking to a five-year-review report: The rulemaking relates, in part, to a five-year-review report approved by the Council on April 2, 2019.
- C. New fee: The rulemaking does not establish a new fee.
- D. Fee increase: The rulemaking does not increase an existing fee.
- E. Immediate effective date: An immediate effective date is not requested.
- F. Certification regarding studies: I certify that the preamble accurately discloses the Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.
- G. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.
- H. List of documents enclosed:
 1. Cover letter signed by the Executive Director;
 2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
 3. Economic, Small Business, and Consumer Impact Statement

Sincerely,

Patricia McSorley
Executive Director



NOTICE OF FINAL RULEMAKING
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 16. ARIZONA MEDICAL BOARD

PREAMBLE

<u>1. Articles, Parts, and Sections Affected</u>	<u>Rulemaking Action</u>
R4-16-101	Amend
R4-16-501	Amend
R4-16-502	Amend
R4-16-503	Amend
R4-16-504	Amend
R4-16-505	Amend
R4-16-506	Amend
R4-16-507	Amend
R4-16-508	Amend
R4-16-509	Amend
R4-16-510	Amend
<u>2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):</u>	
Authorizing statute: A.R.S. § 32-1404(D)	
Implementing statute: A.R.S. §§ 32-1405(C) and (E) and 32-1451(C) and (F)	
<u>3. The effective date for the rules:</u>	
As specified under A.R.S. § 41-1032(A), the rule will be effective 60 days after the rule package is filed with the Office of the Secretary of State.	
<u>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):</u>	
Not applicable	
<u>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):</u>	
Not applicable	

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

Notice of Rulemaking Docket Opening: 25 A.A.R. 1898, July 26, 2019

Notice of Proposed Rulemaking: 25 A.A.R. 2155, August 30, 2019

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

Name: Patricia McSorley

Address: 1740 W Adams Street

Phoenix, AZ 85007

Telephone: (480) 551-2700

Fax: (480) 551-2707

E-mail: patricia.mcsorley@azmd.gov

Web site: www.azmd.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:

In a 5YRR to be approved by the Council in early 2019, the Board indicated it intended to amend rules in Article 5 and add clarifying definitions to R4-16-101. This rulemaking addresses the needed amendments.

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

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

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

Not applicable

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

The economic impact of the rulemaking will be minimal but important because the clarifying definitions will make the rules more clear and understandable.

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

No changes were made between the proposed and final rules.

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

The Board received no comments regarding the rulemaking. No one attended the oral proceeding on October 21, 2019.

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

None

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

None of the rules in this rulemaking 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:

Federal law is not applicable to the subject of any rule in the rulemaking.

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

No analysis was submitted.

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

None

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

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

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 16. ARIZONA MEDICAL BOARD
ARTICLE 1. GENERAL PROVISIONS

Section

R4-16-101. Definitions

ARTICLE 5. EXECUTIVE DIRECTOR DUTIES

Section

- R4-16-501. Interim Evaluation Medical Competency Examination; and Investigational Interview
- R4-16-502. Direct Referral to Formal Interview
- R4-16-503. Request for Inactive Status and or License Cancellation
- R4-16-504. Interim Consent Agreement
- R4-16-505. Mediated Case
- R4-16-506. Referral to Formal Hearing
- R4-16-507. Dismissal of Complaint
- R4-16-508. Denial of License
- R4-16-509. Non-disciplinary Consent Agreement
- R4-16-510. Appealing Executive Director Actions

ARTICLE 1. GENERAL PROVISIONS

R4-16-101. Definitions

Unless the context otherwise requires, definitions prescribed under A.R.S. § 32-1401 and the following apply to this Chapter:

1. “ACLS” means advanced cardiac life support performed according to certification standards of the American Heart Association.
2. “Agent” means an item or element that causes an effect.
3. “Approved medical assistant training program” means a program accredited by one of the following:
 - a. The Commission on Accreditation of Allied Health Education Programs; or
 - b. The Accrediting Bureau of Health Education Schools.
4. “BLS” means basic life support performed according to certification standards of the American Heart Association.
5. “Capnography” means monitoring the concentration of exhaled carbon dioxide of a sedated patient to determine the adequacy of the patient’s ventilatory function.
6. “Case” means a file opened by a member of the Board’s investigative staff in which to maintain documents and evidence relating to an allegation of unprofessional conduct made against an applicant or licensee.
- 6-7. “Deep sedation” means a drug-induced depression of consciousness during which a patient:
 - a. Cannot be easily aroused, but
 - b. Responds purposefully following repeated or painful stimulation, and
 - c. May partially lose the ability to maintain ventilatory function.
- 7-8. “Discharge” means a written or electronic documented termination of office-based surgery to a patient.
- 8-9. “Drug” means the same as in A.R.S. § 32-1901.
- 9-10. “Emergency” means an immediate threat to the life or health of a patient.
- 10-11. “Emergency drug” means a drug that is administered to a patient in an emergency.
- 11-12. “General Anesthesia” means a drug-induced loss of consciousness during which a patient:
 - a. Is ~~unarousable~~ Cannot be roused even with painful stimulus; and
 - b. May partially or completely lose the ability to maintain ventilatory, neuromuscular, or cardiovascular function or airway.
- 12-13. “Health care professional” means a registered nurse defined in A.R.S. § 32-1601, registered nurse practitioner defined in A.R.S. § 32-1601, physician assistant defined in A.R.S. § 32-2501,

and any individual authorized to perform surgery according to A.R.S. Title 32 who participates in office-based surgery using sedation at a physician's office.

13.14. "Informed consent" means advising a patient of the:

- a. Purpose for and alternatives to the office-based surgery using sedation,
- b. Associated risks of office-based surgery using sedation, and
- c. Possible benefits and complications from the office-based surgery using sedation.

14.15. "Inpatient" has the same meaning as in A.A.C. R9-10-201.

16. "Investigative staff" means Board staff employed to gather documents and evidence regarding an allegation of unprofessional conduct made against an applicant or licensee.

17. "Investigation supervisor" means the manager of the Board's investigations department or the manager's designee.

18. "Lead board member" means the Board chair or the Board chair's designee.

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

16.20. "Minimal Sedation" means a drug-induced state during which:

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

17.21. "Moderate Sedation" means a drug-induced depression of consciousness during which:

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

18.22. "Monitor" means to assess the condition of a patient.

19.23. "*Office-based surgery*" means a medical procedure conducted in a physician's office or other outpatient setting that is not part of a licensed hospital or licensed ambulatory surgical center. (A.R.S. § 32-1401(20)).

20.24. "PALS" means pediatric life support performed according to certification standards of the American Academy of Pediatrics or the American Heart Association.

21.25. "Patient" means an individual receiving office-based surgery using sedation.

22.26. "Physician" has the same meaning as doctor of medicine as defined in A.R.S. § 32-1401.

23.27. "Rescue" means to correct adverse physiologic consequences of deeper than intended a level of sedation that is deeper than intended and return the patient to the intended level of sedation.

24.28. "Sedation" means minimum sedation, moderate sedation, or deep sedation.

- 25.29. “Staff member” means an individual who:
- a. Is not a health care professional, and
 - b. Assists with office-based surgery using sedation under the supervision of the physician performing the office-based surgery using sedation.
30. “Supervising medical consultant” means the Chief Medical Consultant employed by the Board or the Chief Medical Consultant’s designee.
- 26.31. “Transfer” means ~~a physical relocation of~~ to physically move a patient from a physician’s office to a licensed health care institution.

ARTICLE 5. EXECUTIVE DIRECTOR DUTIES

R4-16-501. Interim Evaluation Medical Competency Examination; and Investigational Interview

- A. The executive director may require a physician, who is under investigation by the Board, to submit to a mental, physical, oral, or written medical competency examination after the following:
 1. Reviewing the allegations and investigator’s summary of findings; and
 2. Consulting with and receiving the agreement of the Board’s supervising medical consultant ~~or~~ designee that an examination is necessary.
- B. The executive director may request a physician to attend an investigational interview to answer questions regarding a complaint against the physician. Before issuing a request for an investigational interview, the executive director shall review the allegations and facts to determine whether an interview is necessary to provide information the Board needs to adjudicate the case. The executive director shall consult with and receive the agreement of either the investigation supervisor or supervising medical consultant that an investigational interview is necessary before requesting one.
- C. The executive director shall report to the Board at each regularly scheduled Board meeting; a summary of the number and type of evaluations ordered and completed since the preceding Board meeting.

R4-16-502. Direct Referral to Formal Interview

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

R4-16-503. Request for Inactive Status ~~and~~ or License Cancellation

- A. If a physician requests inactive status or license cancellation, ~~and~~ meets the requirements of A.R.S. §§-32-1431 ~~and~~ or 32-1433, and is not participating in the program defined under A.R.S. § 32-1452, the executive director shall grant the request.
- B. The executive director shall provide to the Board at each regularly scheduled Board meeting a list of the ~~individuals~~ physicians granted inactive or cancelled license status since the preceding Board meeting.

R4-16-504. Interim Consent Agreement

The executive director may enter into an interim consent agreement with a physician if there is evidence that a restriction is needed to mitigate imminent danger to ~~the~~ public health and safety and the investigative staff, ~~the~~ supervising medical consultant, and ~~the~~ lead Board member concur after review of the case that a consent agreement is appropriate.

R4-16-505. Mediated Case

- A. The executive director shall close a case resolved through mediation.
- B. The executive director shall provide to the Board at each regularly scheduled Board meeting a list of the physicians whose cases ~~are~~ were resolved through mediation since the preceding Board meeting.

R4-16-506. Referral to Formal Hearing

- A. The executive director may directly refer a case to a formal hearing if the investigative staff, ~~the~~ supervising medical consultant, and ~~the~~ lead Board member concur after review of the physician's case that a formal hearing is appropriate.
- B. The executive director shall provide to the Board at each regularly scheduled Board meeting a list of the physicians whose cases were referred to formal hearing since the preceding Board meeting and whether the referral is for revocation; or suspension or ~~is-a~~ the result of an out-of-state disciplinary action; or is due to complexity of the case.

R4-16-507. Dismissal of Complaint

- A. The executive director, with ~~the~~ concurrence of the investigative staff, shall dismiss a complaint if the review shows the complaint is without merit and dismissal is appropriate.
- B. The executive director shall provide to the Board at each regularly scheduled Board meeting a ~~list of the physicians about whom complaints were dismissed since the preceding Board meeting report that contains the information specified in A.R.S. § 32-1405(C)(21).~~

R4-16-508. Denial of License

- A. The executive director shall deny a license to an applicant who does not meet statutory requirements for licensure if the executive director, ~~in consultation with~~ the investigative staff and the supervising

medical consultant concur after reviewing the application; that the applicant does not meet the statutory requirements.

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

R4-16-509. Non-disciplinary Consent Agreement

The executive director may enter into a consent agreement under A.R.S. § 32-1451(F) with a physician to limit the physician's practice or rehabilitate the physician if there is evidence that a licensee is mentally or physically unable to ~~safely engage~~ safely in the practice of medicine and the investigative staff, ~~the supervising~~ medical consultant, and the lead Board member concur after review of the case that a consent agreement is appropriate.

R4-16-510. Appealing Executive Director Actions

- A. Any person aggrieved by an action taken by the executive director under the authority delegated in this Article may appeal that action to the Board. The aggrieved person shall file a written request to with the Board no later than:
1. Thirty days after notification of the action, if personally served; or
 2. Thirty-five days after the date on the notification, if mailed.
- B. The aggrieved person shall provide, in the written request, evidence showing:
1. An irregularity in the investigative process or the executive director's review deprived the party of a fair decision; ~~or~~
 2. Misconduct by Board staff, a Board consultant, or the executive director that deprived the party of a fair decision; or
 3. Material evidence newly discovered that could have a bearing on the decision and that, with reasonable diligence, could not have been discovered and produced earlier.
- C. The fact that the aggrieved party does not agree with the ~~final decision~~ the executive director's action is not grounds for a review by the Board.
- D. If an aggrieved person fails to submit a written request within the time specified in subsection (A), the Board is relieved of the requirement to review actions taken by the executive director. The executive director may, however, evaluate newly provided information that is material or substantial in content to determine whether the Board should review the case.
- E. If a written request is submitted that meets the requirements of subsection (B):
1. The Board shall consider the written request at its next regularly scheduled meeting.

2. If the written request provides new material or substantial evidence that requires additional investigation, the investigation shall be conducted as expeditiously as possible and the case shall be forwarded to the Board at the first possible regularly scheduled meeting.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT¹

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 16. ARIZONA MEDICAL BOARD

1. Identification of the rulemaking:

In a 5YRR approved by the Council on April 2, 2019, the Board indicated it intended to amend rules in Article 5 and add clarifying definitions to R4-16-101. This rulemaking addresses the needed amendments.

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

Until the rulemaking is completed, the rules will not be as clear and understandable as the Board wishes because certain terms used in the rules are not defined.

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:

Rules that are not clear and understandable cause confusion and add economic and regulatory burdens for those who must use them.

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

When the rulemaking is completed, the rules will be clear and understandable.

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

The economic impact of the rulemaking will be minimal but important because the clarifying definitions will make the rules more clear and understandable.

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

Name: Patricia McSorley

Address: 1740 W Adams Street

Phoenix, AZ 85007

Telephone: (480) 551-2700

Fax: (480) 551-2707

E-mail: patricia.mcsorley@azmd.gov

Web site: www.azmd.gov

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

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

The rules in Article 5 are designed to create efficiency in the operation of Board activities by delegating ministerial actions to the executive director. The Board will be directly affected by, bear the costs of, and directly benefit from the rulemaking.

The rules will indirectly affect a licensee against whom a complaint is filed, who is otherwise under investigation by the Board, or who requests inactive status or license cancellation. The rules will also indirectly affect an applicant who does not meet statutory requirements for licensure.

The Board currently licenses 25,265 physicians. During FY 2019, it received applications from 2024 individuals.

During FY2019, the executive director did not deny a license to any applicant because the applicant failed to meet statutory requirements. Each applicant who failed to meet statutory requirements accepted the opportunity to withdraw the application rather than be denied licensure.

During FY2019, 2182 complaints were received against licensees. The executive director dismissed 569 of these because it was determined they were without merit. Of the remaining complaints, the executive director referred 61 directly to a formal interview because quality of care was an issue and referred 6 cases directly to a formal hearing. The executive director entered 13 interim practice limitations and 29 interim practice restrictions with licensees. There were two non-disciplinary consent agreements and 29 disciplinary consent agreements.

A person aggrieved by an action taken by the executive director under the authority delegated by the Board may appeal the action to the Board. During FY 2019, 44 appeals were made to the Board under this provision. The Board reversed or modified the action of the executive director two times.

The Board incurred the cost of making these rules and will incur the cost of implementing them. The Board believes the amended rules will have a positive economic benefit because

they clarify terms used throughout the rules. This will help to ensure due process to all who are affected by an executive director action.

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 this rulemaking. Its costs and benefits are described in item 4. The Board will not need a new full-time employee to implement and enforce the amended rules.

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

No political subdivision is directly affected by the rulemaking.

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

There are no businesses directly affected by the rulemaking. Licensees and applicants are businesses indirectly affected by the rulemaking. The rulemaking addresses ministerial authority delegated by the Board to the executive director. If this authority was not delegated, the actions would still be taken regarding applicants and licensees.

6. Impact on private and public employment:

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

7. Impact on small businesses²:

As explained in item 5, there are no businesses directly affected by the rulemaking.

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.

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 creates efficiency in the operation of the Board. No less intrusive or less costly alternative method was considered.

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

Arizona Administrative CODE

4 A.A.C. 16 Supp. 19-1

www.azsos.gov

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of January 1, 2019 through March 31, 2019

Title 4



TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 16. ARIZONA MEDICAL BOARD

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:

Board:	Arizona Medical Board
Name:	Patricia McSorley, Executive Director
Address:	1740 W. Adams Street, Ste 4000 Phoenix, AZ 85007
Telephone:	(480) 551-2700
Fax:	(480) 551-2704
E-mail:	patricia.mcsorley@azmd.gov

The release of this Chapter in Supp. 19-1 replaces Supp. 18-1, 1-17 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

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. 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, 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

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

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



**Arizona
Secretary
of State**

Digitally signed
by Arizona
Secretary of State
Date: 2019.08.20
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Arizona Administrative Code

4 A.A.C. 16

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 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 16. ARIZONA MEDICAL BOARD

(Authority: A.R.S. § 32-1401 et seq.)

Editor's Note: Supp. 16-1 has rules amended as final exempt rules. The proposed exempt rules were published on the Board's website for 30 days and the end which no additional public comments were received (Supp. 16-1).

Editor's Note: Supp. 15-4 has rules that were submitted as final exempt rules. Pursuant to Laws 2015, Chapter 251, Section 3, the Board was required to provide public notice and an opportunity for the public to comment on its proposed exempt rules. Three public meetings were conducted. Even though the proposed exempt rules were not published in the Register, the Office of the Secretary of State makes a distinction between exempt rulemakings and final exempt rulemakings. Exempt rulemakings are those that are submitted to the Office of the Secretary of State without receiving public comment (Supp. 15-4).

Editor's Note: The name of the Allopathic Board of Medical Examiners was changed to the Arizona Medical Board by Laws 2002, Ch. 254, § 9, effective August 22, 2002 (Supp. 03-2).

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Sections R4-16-101 through R4-16-106, adopted effective June 1, 1984.

Former Article 1, consisting of Sections R4-16-01 through R4-16-16, repealed effective June 1, 1984 (Supp. 84-3).

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ARTICLE 2. LICENSURE

Article 2 heading, recodified to Article 3 heading, at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

Article 2, consisting of Sections R4-16-201 through R4-16-205, adopted effective September 22, 1995 (Supp. 95-3).

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ARTICLE 3. DISPENSING OF DRUGS

Article 3 heading, recodified from Article 2 heading, at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

Article 3, consisting of Sections R4-16-301 through R4-16-303, adopted effective February 2, 2000 (Supp. 00-1).

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ARTICLE 5. EXECUTIVE DIRECTOR DUTIES

Article 5, consisting of Sections R4-16-501 through R4-16-505, renumbered by exempt rulemaking at 11 A.A.R. 1056, effective February 18, 2005 (Supp. 05-1).

Article 5, consisting of Sections R4-16-501 through R4-16-505, made by exempt rulemaking at 9 A.A.R. 2274, effective August 12, 2003 (Supp. 03-2).

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CHAPTER 16. ARIZONA MEDICAL BOARD

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ARTICLE 7. OFFICE-BASED SURGERY USING SEDATION

Article 7, consisting of Sections R4-16-701 through R4-16-707, made by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

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CHAPTER 16. ARIZONA MEDICAL BOARD

ARTICLE 1. GENERAL PROVISIONS**R4-16-101. Definitions**

Unless the context otherwise requires, definitions prescribed under A.R.S. § 32-1401 and the following apply to this Chapter:

1. “ACLS” means advanced cardiac life support performed according to certification standards of the American Heart Association.
2. “Agent” means an item or element that causes an effect.
3. “Approved medical assistant training program” means a program accredited by one of the following:
 - a. The Commission on Accreditation of Allied Health Education Programs; or
 - b. The Accrediting Bureau of Health Education Schools.
4. “BLS” means basic life support performed according to certification standards of the American Heart Association.
5. “Capnography” means monitoring the concentration of exhaled carbon dioxide of a sedated patient to determine the adequacy of the patient’s ventilatory function.
6. “Deep sedation” means a drug-induced depression of consciousness during which a patient:
 - a. Cannot be easily aroused, but
 - b. Responds purposefully following repeated or painful stimulation, and
 - c. May partially lose the ability to maintain ventilatory function.
7. “Discharge” means a written or electronic documented termination of office-based surgery to a patient.
8. “Drug” means the same as in A.R.S. § 32-1901.
9. “Emergency” means an immediate threat to the life or health of a patient.
10. “Emergency drug” means a drug that is administered to a patient in an emergency.
11. “General Anesthesia” means a drug-induced loss of consciousness during which a patient:
 - a. Is unarousable even with painful stimulus; and
 - b. May partially or completely lose the ability to maintain ventilatory, neuromuscular, or cardiovascular function or airway.
12. “Health care professional” means a registered nurse defined in A.R.S. § 32-1601, registered nurse practitioner defined in A.R.S. § 32-1601, physician assistant defined in A.R.S. § 32-2501, and any individual authorized to perform surgery according to A.R.S. Title 32 who participates in office-based surgery using sedation at a physician’s office.
13. “Informed consent” means advising a patient of the:
 - a. Purpose for and alternatives to the office-based surgery using sedation,
 - b. Associated risks of office-based surgery using sedation, and
 - c. Possible benefits and complications from the office-based surgery using sedation.
14. “Inpatient” has the same meaning as in A.A.C. R9-10-201.
15. “Malignant hyperthermia” means a life-threatening condition in an individual who has a genetic sensitivity to inhalant anesthetics and depolarizing neuromuscular blocking drugs that occurs during or after the administra-

tion of an inhalant anesthetic or depolarizing neuromuscular blocking drug.

16. “Minimal Sedation” means a drug-induced state during which:
 - a. A patient responds to verbal commands,
 - b. Cognitive function and coordination may be impaired, and
 - c. A patient’s ventilatory and cardiovascular functions are unaffected.
17. “Moderate Sedation” means a drug-induced depression of consciousness during which:
 - a. A patient responds to verbal commands or light tactile stimulation, and
 - b. No interventions are required to maintain ventilatory or cardiovascular function.
18. “Monitor” means to assess the condition of a patient.
19. “*Office-based surgery*” means a medical procedure conducted in a physician’s office or other outpatient setting that is not part of a licensed hospital or licensed ambulatory surgical center. (A.R.S. § 32-1401(20)).
20. “PALS” means pediatric life support performed according to certification standards of the American Academy of Pediatrics or the American Heart Association.
21. “Patient” means an individual receiving office-based surgery using sedation.
22. “Physician” has the same meaning as doctor of medicine as defined in A.R.S. § 32-1401.
23. “Rescue” means to correct adverse physiologic consequences of deeper than intended level of sedation and return the patient to the intended level of sedation.
24. “Sedation” means minimum sedation, moderate sedation, or deep sedation.
25. “Staff member” means an individual who:
 - a. Is not a health care professional, and
 - b. Assists with office-based surgery using sedation under the supervision of the physician performing the office-based surgery using sedation.
26. “Transfer” means a physical relocation of a patient from a physician’s office to a licensed health care institution.

Historical Note

Former Rule 12. Former Section R4-16-01 repealed, new Section R4-16-101 adopted effective June 1, 1984 (Supp. 84-3). Section repealed, new Section renumbered from R4-16-103 effective September 22, 1995 (Supp. 95-3). Amended by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4270, effective November 18, 2002 (Supp. 02-3). Former Section R4-16-101 recodified to R4-16-102 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). New Section made by final rulemaking at 12 A.A.R. 823, effective February 23, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1). Amended by final rulemaking at 25 A.A.R. 145, effective March 9, 2019 (Supp. 19-1).

R4-16-102. Continuing Medical Education

- A. A physician holding an active license to practice medicine in this state shall complete 40 credit hours of the continuing medical education required by A.R.S. § 32-1434 during the two calendar years preceding biennial registration.
 1. A physician who is authorized to prescribe schedule II controlled substances and holds a valid U.S. Drug Enforcement Administration registration number shall

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- complete at least three hours of opioid-related, substance-use-disorder-related, or addiction-related continuing medical education during each renewal cycle;
2. One hour of credit is allowed for each clock hour of participation in continuing medical education activities, unless otherwise designated in subsection (B); and
 3. The physician may not carry excess hours of continuing medical education over to another two-year cycle.
- B.** A physician may claim continuing medical education for the following:
1. Participating in an internship, residency, or fellowship at a teaching institution approved by the American Medical Association, the Association of American Medical Colleges, or the American Osteopathic Association. A physician may claim one credit hour of continuing medical education for each one day of training in a full-time approved program, or for a less than full-time training on a pro rata basis. In this subsection teaching institutions define "full-time."
 2. Participating in an education program for an advanced degree in a medical or medically-related field in a teaching institution approved by the American Medical Association, the Association of American Medical Colleges, or the American Osteopathic Association. A physician may claim one credit hour of continuing medical education for each one day of full-time study or less than a full-time study on a pro rata basis. In this subsection teaching institutions define "full-time".
 3. Participating in full-time research in a teaching institution approved by the American Medical Association, the Association of American Medical Colleges, or the American Osteopathic Association. A physician may claim one credit hour of continuing medical education for each one day of full-time research, or less than full-time research on a pro rata basis. In this subsection teaching institutions define "full-time".
 4. Participating in an education program certified as Category 1 by an organization accredited by the Accreditation Council for Continuing Medical Education, 515 North State Street, Suite 2150, Chicago, Illinois 60610.
 5. Participating in a medical education program designed to provide understanding of current developments, skills, procedures, or treatments related to the practice of medicine, that is provided by an organization or institution accredited by the Accreditation Council for Continuing Medical Education.
 6. Serving as an instructor of medical students, house staff, other physicians, or allied health professionals from a hospital or other health care institution with a formal training program, if the instructional activities provide the instructor with understanding of current developments, skills, procedures, or treatments related to the practice of allopathic medicine.
 7. Publishing or presenting a paper, report, or book that deals with current developments, skills, procedures, or treatments related to the practice of allopathic medicine. The physician may claim one credit hour for each hour preparing, writing, and presenting materials:
 - a. Actually published or presented; and
 - b. After the date of publication or presentation.
 8. A credit hour may be earned for any of the following activities that provide an understanding of current developments, skills, procedures, or treatments related to the practice of allopathic medicine:
 - a. Completing a medical education program based on self-instruction that uses videotapes, audiotapes,
- films, filmstrips, slides, radio broadcasts, or computers;
- b. Reading scientific journals and books;
 - c. Preparing for specialty board certification or recertification examinations;
 - d. Participating on a staff or quality of care committee, or utilization review committee in a hospital, health care institution, or government agency.
- C.** If a physician holding an active license to practice medicine in this state fails to meet the continuing medical education requirements under subsection (A) because of illness, military service, medical or religious missionary activity, or residence in a foreign country, upon written application, the Board shall grant an extension of time to complete the continuing medical education.
- D.** The Board shall mail to each physician a license renewal form that includes a section regarding continuing medical education compliance. The physician shall sign and return the form certified under penalty of perjury that the continuing medical education requirements under subsection (A) are satisfied for the two-calendar-year period preceding biennial renewal. Failure to receive the license renewal form under subsection (A) shall not relieve the physician of the requirements of subsection (A). The Board may randomly audit a physician to verify compliance with the continuing medical education requirements under subsection (A).

Historical Note

Former Rule 16. Former Section R4-16-02 repealed, new Section R4-16-102 adopted effective June 1, 1984 (Supp. 84-3). Section repealed, new Section renumbered from R4-16-106 effective September 22, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 1881, effective May 3, 2000 (Supp. 00-2). Former Section R4-16-102 recodified to R4-16-103; New Section R4-16-102 recodified from R4-16-101 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final rulemaking at 24 A.A.R. 182, effective March 10, 2018 (Supp. 18-1). Amended by final rulemaking at 25 A.A.R. 145, effective March 9, 2019 (Supp. 19-1).

R4-16-103. Rehearing or Review of Board Decision

- A.** In a contested case or appealable agency action, a party aggrieved by an order of the Board may file a written motion for rehearing or review with the Board under A.R.S. Title 41, Chapter 6, Article 10, specifying the grounds for rehearing or review.
1. A motion for rehearing or review shall be filed with the Board and served no later than 30 days after the decision of the Board.
 2. For purposes of this Section, "service" has the same meaning as in A.R.S. § 41-1092.09.
 3. For purposes of this Section, a document is deemed filed when the Board receives the document.
 4. For purposes of this Section, "party" has the same meaning as in A.R.S. § 41-1001.
- B.** Except as provided in subsection (H), a party is required to file a motion for rehearing or review of a Board decision to exhaust the party's administrative remedies.
- C.** A party may amend a motion for rehearing or review at any time before the Board rules on the motion.
- D.** The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
1. Irregularity in the proceedings or an order or abuse of discretion, that deprives the moving party of a fair hearing;
 2. Misconduct of the Board, its staff, administrative law judge, or the prevailing party;

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- 3. Accident or surprise that could have not been prevented by ordinary prudence;
 - 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
 - 5. Excessive penalty;
 - 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings;
 - 7. The decision is the result of a passion or prejudice; or
 - 8. The findings of fact or decision is not justified by the evidence or is contrary to law.
- E.** The Board may grant a rehearing or review to all or any of the parties and on all or part of the issues for any of the reasons in subsection (D). The Board may take additional testimony, amend findings of fact and conclusions of law, or make new findings and conclusions, and affirm, modify, or reverse the original decision. The Board shall specify the particular grounds for any order modifying a decision or granting a rehearing. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order.
- F.** Not later than 15 days after a decision is issued, the Board on its own initiative may order a rehearing or review for any reason that it might have granted a rehearing or review on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the Board may grant a timely-served motion for a rehearing or review for a reason not stated in the motion. In either case, the Board shall specify in the order the grounds for the rehearing or review.
- G.** If a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. The Board may extend this period for a maximum of 20 days either for good cause or upon written stipulation by the parties. The Board may permit reply affidavits.
- H.** If, in a particular decision, the Board makes a specific finding that the immediate effectiveness of the decision is necessary for the preservation of the public health, safety, or welfare, the decision may be issued as a final decision without an opportunity for rehearing or review.
- I.** A party that has exhausted the party's administrative remedies may appeal a final order of the Board under A.R.S. Title 12, Chapter 7, Article 6.
- J.** A person that files a complaint with the Board against a licensee:
1. Is not a party to:
 - a. A Board administrative action, decision, or proceeding; or
 - b. A court proceeding for judicial review of a Board decision under A.R.S. §§ 12-901 through 12-914; and
 2. Is not entitled to seek rehearing or review of a Board action or decision under this Section.

Historical Note

Former Rule 17; Amended effective August 19, 1977 (Supp. 77-4). Former Section R4-16-03 repealed, new Section R4-16-103 adopted effective June 1, 1984 (Supp. 84-3). Section R4-16-103 renumbered to R4-16-101 effective September 22, 1995 (Supp. 95-3). New Section adopted effective May 20, 1997 (Supp. 97-2). Amended by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4270, effective November 18, 2002 (Supp. 02-3). Former Section R4-16-103 recodified to R4-16-204; new Section R4-16-103 recodified from R4-16-102 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended

by final rulemaking at 25 A.A.R. 145, effective March 9, 2019 (Supp. 19-1).

R4-16-104. Recodified**Historical Note**

Former Rule 18. Former Section R4-16-04 repealed, new Section R4-16-104 adopted effective June 1, 1984 (Supp. 84-3). Section repealed effective September 22, 1995 (Supp. 95-3). New Section adopted effective January 20, 1998 (Supp. 98-1). Section recodified to R4-16-206 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-105. Recodified**Historical Note**

Former Rule 19. Former Section R4-16-05 repealed, new Section R4-16-105 adopted effective June 1, 1984 (Supp. 84-3). Section repealed effective September 22, 1995 (Supp. 95-3). New Section adopted effective January 20, 1998 (Supp. 98-1). Section recodified to R4-16-207 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-106. Recodified**Historical Note**

Former Rule 21. Former Section R4-16-06 repealed, new Section R4-16-106 adopted effective June 1, 1984 (Supp. 84-3). Section R4-16-106 renumbered to R4-16-102 effective September 22, 1995 (Supp. 95-3). New Section adopted by final rulemaking at 6 A.A.R. 1881, effective May 3, 2000 (Supp. 00-2). Section recodified to R4-16-201 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-107. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 1881, effective May 3, 2000 (Supp. 00-2). Section recodified to R4-16-202 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-108. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 1881, effective May 3, 2000 (Supp. 00-2). Section recodified to R4-16-203 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

Table 1. Recodified**Historical Note**

Table 1 adopted effective January 20, 1998 (Supp. 98-1). Table 1 recodified to the end of Article 2 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-109. Recodified**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4270, effective November 18, 2002 (Supp. 02-3). Section recodified to R4-16-205 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

ARTICLE 2. LICENSURE**R4-16-201. Application for Licensure by Examination or Endorsement**

- A. For purposes of this Article, unless otherwise specified:
1. "ABMS" means American Board of Medical Specialties.

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2. "ECFMG" means Educational Commission for Foreign Medical Graduates.
 3. "FCVS" means Federation Credentials Verification Service.
 4. "FLEX" means Federation Licensing Examination.
 5. "LMCC" means Licentiate of the Medical Council of Canada.
 6. "NBME" means National Board of Medical Examiners.
 7. "Primary source" means the original source or an approved agent of the original source of a specific credential that can verify the accuracy of a qualification reported by an applicant.
 8. "SPEX" means Special Purposes Examination.
 9. "USMLE" means United States Medical Licensing Examination.
- B.** An applicant for licensure to practice medicine by Step 3 of the USMLE or endorsement shall submit the following information on an application form available on request from the Board and on the Board's web site:
1. Applicant's full name, Social Security number, business and home addresses, primary e-mail address, business and home telephone numbers, and date and place of birth;
 2. Name of the school of medicine from which the applicant graduated and date of graduation;
 3. A complete list of the applicant's internship, residency, and fellowship training;
 4. List of all licensing examinations taken;
 5. Names of the states, U.S. territories, or provinces in which the applicant has applied for or been granted a license or registration to practice medicine, including license number, date issued, and current status of the license;
 6. A statement of whether the applicant:
 - a. Has had an application for medical licensure denied or rejected by another state or province licensing board, and if so, an explanation;
 - b. Has ever had any disciplinary or rehabilitative action taken against the applicant by another licensing board, including other health professions, and if so, an explanation;
 - c. Has had any disciplinary actions, restrictions, or limitations taken against the applicant while participating in any type of training program or by any health care provider, and if so, an explanation;
 - d. Has been found in violation of a statute, rule, or regulation of any domestic or foreign governmental agency, and if so, an explanation;
 - e. Is currently under investigation by any medical board or peer review body, and if so, an explanation;
 - f. Has been subject to discipline resulting in a medical license being revoked, suspended, limited, cancelled during investigation, restricted, or voluntarily surrendered, or resulting in probation or entry into a consent agreement or stipulation and if so, an explanation;
 - g. Has had hospital privileges revoked, denied, suspended, or restricted, and if so, an explanation;
 - h. Has been named as a defendant in a malpractice matter currently pending or that resulted in a settlement or judgment against the applicant, and if so, an explanation;
 - i. Has been subjected to any regulatory disciplinary action, including censure, practice restriction, suspension, sanction, or removal from practice, imposed by any agency of the federal or state government, and if so, an explanation;
 - j. Has had the authority to prescribe, dispense, or administer medications limited, restricted, modified, denied, surrendered, or revoked by a federal or state agency as a result of disciplinary or other adverse action, and if so, an explanation;
 - k. Has been found guilty or entered into a plea of no contest to a felony, a misdemeanor involving moral turpitude in any state, and if so, an explanation;
7. Whether the applicant is currently certified by any of the American Board of Medical Specialties;
 8. The applicant's intended specialty;
 9. Consistent with the Board's authority at A.R.S. § 32-1422(B), other information the Board may deem necessary to evaluate the applicant fully;
 10. Whether the applicant completed a training unit prescribed by the Board regarding the requirements of A.R.S. Title 32, Chapter 13 and this Chapter;
 11. In addition to the answers provided under subsections (B)(1) through (B)(10), the applicant shall answer the following confidential question:
 - a. Whether the applicant has received treatment within the last five years for use of alcohol or a controlled substance, prescription-only drug, or dangerous drug or narcotic or a physical, mental, emotional, or nervous disorder or condition that currently affects the applicant's ability to exercise the judgment and skills of a medical professional;
 - b. If the answer to subsection (B)(11)(a) is yes:
 - i. A detailed description of the use, disorder, or condition; and
 - ii. An explanation of whether the use, disorder, or condition is reduced or ameliorated because the applicant receives ongoing treatment and if so, the name and contact information for all current treatment providers and for all monitoring or support programs in which the applicant is currently participating; and
 - c. A copy of any public or confidential agreement or order relating to the use, disorder, or condition, issued by a licensing agency or health care institution within the last five years, if applicable; and
 12. A notarized statement, signed by the applicant, verifying the truthfulness of the information provided, and that the applicant has not engaged in any acts prohibited by Arizona law or Board rules, and authorizing release of any required records or documents to complete application review.
- C.** In addition to the application form required under subsection (B), an applicant for licensure to practice medicine by Step 3 of the USMLE or endorsement shall submit the following:
1. A notarized copy of the applicant's birth certificate or passport;
 2. Evidence of legal name change if the applicant's legal name is different from that shown on the document submitted under subsection (C)(1);
 3. Documentation listed under A.R.S. § 41-1080(A) showing that the applicant's presence in the U.S. is authorized under federal law;
 4. Complete list of all hospital affiliations and medical employment for the five years before the date of application;
 5. Verification of any medical malpractice matter currently pending or resulting in a settlement or judgment against the applicant, including a copy of the complaint and either the agreed terms of settlement or the judgment and a narrative statement specifying the nature of the occur-

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- rence resulting in the medical malpractice action. An applicant who is unable to obtain a document required under this subsection may apply under subsection (E) a waiver of the requirement;
6. A full set of fingerprints and the processing charge specified in R4-16-205;
7. A paper or digital headshot photograph of the applicant taken no more than 60 days before the date of application; and
8. The fee authorized under A.R.S. § 32-1436 and specified in R4-16-205.
- D.** In addition to the requirements of subsections (B) and (C), an applicant for licensure to practice medicine by Step 3 of the USMLE or endorsement shall have the following submitted to the Board, electronically or in hard copy, by the primary source, ECFMG, Veridoc, or FCVS:
1. Official transcript or other authentication of graduation from a school of medicine;
2. Verification of completion of postgraduate training;
3. Verification of ECFMG certification if the applicant graduated from an unapproved school of medicine;
4. Examination and Board history report scores for USMLE, FLEX, NBME, and SPEX;
5. Verification of LMCC exam score or state written exam score;
6. Verification of licensure from every state in which the applicant has ever held a medical license;
7. Verification of all hospital affiliations during the five years before the date of application. Under A.R.S. § 32-1422(A)(11)(b), this verification is required to be on the hospital's official letterhead or the electronic equivalent; and
8. Verification of all medical employment during the five years before the date of application. Under A.R.S. § 32-1422(A)(11)(b), this verification may be submitted by the employer.
- E.** As provided under A.R.S. § 32-1422(F), the Board may waive a documentation requirement specified under subsections (C)(5) and (D).
1. To obtain a waiver under this subsection, an applicant shall submit a written request that includes the following information:
- a. Applicant's name;
- b. Date of request;
- c. Document required under subsection (C)(5) or (D) for which waiver is requested;
- d. Detailed description of efforts made by the applicant to provide the document as required under subsection (C)(5) or (D);
- e. Reason the applicant's inability to provide the document as required under subsection (C)(5) or (D) is due to no fault of the applicant; and
- f. If applicable, documents that support the request for waiver.
2. The Board shall consider the request for waiver at its next regularly scheduled meeting.
3. In determining whether to grant the request for waiver, the Board shall consider whether the applicant:
- a. Made appropriate and sufficient effort to satisfy the requirement under subsection (C)(5) or (D); and
- b. Demonstrated that compliance with the requirement under subsection (C)(5) or (D) is not possible because:
- i. The entity responsible for issuing the required document no longer exists;
- ii. The original of the required document was destroyed by accident or natural disaster;
- iii. The entity responsible for issuing the required document is unable to provide verification because of armed conflict or political strife; or
- iv. Another valid reason beyond the applicant's control prevents compliance with the requirement under subsection (C)(5) or (D).
4. In determining whether to grant the request for waiver, the Board shall:
- a. Consider whether it is possible for the Board to obtain the required document from other source; and
- b. Request the applicant to obtain and provide additional information the Board believes will facilitate the Board's decision.
5. If the Board determines the applicant is unable to comply with a requirement under subsection (C)(5) or (D) in spite of the applicant's best effort and for a reason beyond the applicant's control, the Board may grant the request for waiver and include the decision in the Board's official record for the applicant.
6. The Board shall provide the applicant with written notice of its decision regarding the request for waiver. The Board's decision is not subject to review or appeal.
- F.** As provided under A.R.S. § 32-1426(B), the Board may require an applicant for licensure by endorsement who passed an examination specified in A.R.S. § 32-1426(A) more than ten years before the date of application to provide evidence the applicant is able to engage safely in the practice of medicine. The Board may consider one or more of the following to determine whether the applicant is able to engage safely in the practice of medicine:
1. If an applicant is board certified by one of the specialties recognized by the ABMS, this criteria is considered met.
2. If an applicant obtains a passing score on a SPEX examination, this criteria is considered met.
3. The Board may also consider any combination of the following:
- a. The applicant's records,
- b. The applicant's practice history,
- c. A physical or psychological assessment of the applicant.

Historical Note

Adopted effective September 22, 1995 (Supp. 95-3). Amended by final rulemaking at 8 A.A.R. 2319, effective May 9, 2002 (Supp. 02-2). Former Section R4-16-201 recodified to R4-16-301; New Section R4-16-201 recodified from R4-16-106 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by exempt rulemaking at 20 A.A.R. 1995, effective July 11, 2014 (Supp. 14-3). Amended by final exempt rulemaking at 21 A.A.R. 2678, effective October 15, 2015 (Supp. 15-4). Amended by final exempt rulemaking at 22 A.A.R. 778, effective January 14, 2016 (Supp. 16-1).

R4-16-201.1. Application for Renewal of License

- A.** Under A.R.S. § 32-1430(A), an individual licensed under A.R.S. Title 32, Chapter 13, shall renew the license every other year on or before the licensee's birthday.
- B.** To renew a license, a licensee shall submit the following information on an application form available on request from the Board and on the Board's web site:
1. The licensee's full name, license number, business and home addresses, primary e-mail address, and business and home telephone numbers;

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2. Identification of changes to medical specialties and fields of practice;
3. A statement of whether, since the time of last license issuance, the licensee:
- Has had an application for medical licensure denied or rejected by another state or province licensing board and if so, an explanation;
 - Has had any disciplinary or rehabilitative action taken against the licensee by another licensing board, including other health professions and if so, an explanation;
 - Has had any disciplinary action, restriction, or limitation taken against the licensee by any program or health care provider and if so, an explanation;
 - Has been subject to discipline resulting in a medical license being revoked, suspended, limited, cancelled during an investigation, restricted, or voluntarily surrendered, or resulting in probation or entry into a consent agreement or stipulation and if so, an explanation;
 - Has had hospital privileges revoked, denied, suspended, or restricted and if so, an explanation (do not report if the licensee's hospital privileges were suspended due to failure to complete hospital records and reinstated after no more than 90 days);
 - Has been subjected to disciplinary action including censure, practice restriction, suspension, sanction, or removal from practice by an agency of the state or federal government and if so, an explanation;
 - Has had the authority to prescribe, dispense, or administer medications limited, restricted, modified, denied, surrendered, or revoked by a federal or state agency as a result of disciplinary or other adverse action and if so, an explanation;
 - Has been found guilty or entered into a plea of no contest to a felony, a misdemeanor involving moral turpitude, or an alcohol or drug-related offense in any state and if so, an explanation; and
 - Has failed the SPEX;
4. A statement of whether the licensee understands and complies with the medical records and recordkeeping requirements in A.R.S. §§ 32-3211 and 12-2297;
5. A statement of whether the licensee has completed at least 40 hours of CME as required under A.R.S. § 32-1434 and R4-16-102, including the hour of CME required under R4-16-102(A)(1);
6. A statement of whether the licensee requests that the license be inactivated or cancelled; and
7. A statement of whether the licensee completed a training unit prescribed by the Board regarding the requirements of A.R.S. Title 32, Chapter 13 and this Chapter.
- C. Additionally, the licensee shall answer the following confidential question:
- Whether the applicant has received treatment since the last renewal for use of alcohol or a controlled substance, prescription-only drug, or dangerous drug or narcotic or a physical, mental, emotional, or nervous disorder or condition that currently affects the applicant's ability to exercise the judgment and skills of a medical professional;
 - If the answer to subsection (C)(1) is yes:
 - A detailed description of the use, disorder, or condition; and
 - An explanation of whether the use, disorder, or condition is reduced or ameliorated because the applicant receives ongoing treatment and if so, the name and contact information for all current treatment providers and for all monitoring or support programs in which the applicant is currently participating; and
3. A copy of any public or confidential agreement or order relating to the use, disorder, or condition, issued by a licensing agency or health care institution since the last renewal, if applicable.
- D. To renew a license, a licensee shall submit the following with the required application form:
- If the document submitted under R4-16-201(C)(3) was a limited form of work authorization issued by the federal government, evidence that the licensee's presence in the U.S. continues to be authorized under federal law;
 - The renewal fee specified under R4-16-205 and, if applicable, the penalty fee for late renewal; and
 - An attestation that all information submitted is correct.

Historical Note

New Section made by final exempt rulemaking at 21 A.R.A. 2678, effective October 15, 2015 (Supp. 15-4). Amended by final rulemaking at 24 A.R.A. 182, effective March 10, 2018 (Supp. 18-1).

R4-16-202. Application and Reapplication for Pro Bono Registration

- A. An applicant for a pro bono registration to practice medicine for a maximum of 60 days in a calendar year in Arizona shall submit the following information on an application form available on request from the Board and on the Board's web site:
- Applicant's full name, Social Security number, business and home addresses, primary e-mail address, and business and home telephone numbers;
 - List of all states, U.S. territories, and provinces in which the applicant is or has been licensed to practice medicine;
 - A statement verifying that the applicant:
 - Agrees to render all medical services without accepting a fee or salary; or
 - Agrees to perform only initial or follow-up examinations at no cost to the patient or the patient's family through a charitable organization,
- B. In addition to the application form required under subsection (A), an applicant for a pro bono registration to practice medicine shall submit documentation listed under A.R.S. § 41-1080(A) showing that the applicant's presence in the U.S. is authorized under federal law.
- C. An applicant may make application for a pro bono registration annually. A previously registered applicant may apply for a pro bono registration by submitting the following information on an application form available on request from the Board and on the Board's web site:
- Applicant's full name, home address and telephone number, and primary e-mail address;
 - Number of previous pro bono registration;
 - Name of each state, U.S. territory, and province in which the applicant holds an active medical license;
 - A statement whether since issuance of the last pro bono registration:
 - Any disciplinary action has been taken against the applicant, and
 - Any unresolved complaints are currently pending against the applicant with any state board; and
 - If the document submitted under R4-16-202(B) was a limited form of work authorization issued by the federal government, evidence that the applicant's presence in the U.S. continues to be authorized under federal law.

Historical Note

Adopted effective September 22, 1995 (Supp. 95-3). Amended by final rulemaking at 8 A.R.A. 2319, effective

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May 9, 2002 (Supp. 02-2). Former Section R4-16-202 recodified to R4-16-302; New Section R4-16-202 recodified from R4-16-107 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final exempt rulemaking at 21 A.A.R. 2678, effective October 15, 2015 (Supp. 15-4).

R4-16-203. Application for Locum Tenens Registration

- A. An applicant for a locum tenens registration to practice medicine for a maximum of 180 consecutive days in Arizona shall submit an application form available on request from the Board and on the Board's web site that provides the information required under R4-16-201(B).
- B. In addition to the application form required under subsection (A), an applicant for a locum tenens registration to practice medicine shall have the following submitted directly to the Board, electronically or in hard copy, by the primary source, ECFMG, Veridoc, or FCVS:
 - 1. Official transcript or other authentication of graduation from a school of medicine;
 - 2. Verification of completion of postgraduate training;
 - 3. A statement completed by the sponsoring Arizona-licensed physician giving the reason for the request for issuance of the registration;
 - 4. Verification of ECFMG certification if the applicant graduated from an unapproved school of medicine; and
 - 5. Verification of licensure from every state in which the applicant has ever held a medical license.
- C. In addition to the application form required under subsection (A), an applicant for a locum tenens registration to practice medicine shall submit the following:
 - 1. Documentation listed under A.R.S. § 41-1080(A) showing that the applicant's presence in the U.S. is authorized under federal law;
 - 2. A full set of fingerprints and the charge specified in R4-16-205;
 - 3. A copy of a government-issued photo identification; and
 - 4. The fee specified under R4-16-205.

Historical Note

Adopted effective September 22, 1995 (Supp. 95-3). Amended by final rulemaking at 8 A.A.R. 2319, effective May 9, 2002 (Supp. 02-2). Former Section R4-16-203 recodified to R4-16-303; New Section R4-16-203 recodified from R4-16-108 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final exempt rulemaking at 21 A.A.R. 2678, effective October 15, 2015 (Supp. 15-4).

R4-16-204. Repealed**Historical Note**

Adopted effective September 22, 1995 (Supp. 95-3). Amended by final rulemaking at 8 A.A.R. 2319, effective May 9, 2002 (Supp. 02-2). Former Section R4-16-204 recodified to R4-16-304; New Section R4-16-204 recodified from R4-16-103 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Repealed by final exempt rulemaking at 21 A.A.R. 2678, effective October 15, 2015 (Supp. 15-4).

R4-16-205. Fees and Charges

- A. As specifically authorized under A.R.S. § 32-1436(A), the Board establishes and shall collect the following fees, which are nonrefundable unless A.R.S. § 41-1077 applies:
 - 1. Application for a license through endorsement, USMLE Step 3, or Endorsement with SPX Examination, \$500;

- 2. Issuance of an initial license, \$500, prorated from date of issuance to date of license renewal;
 - 3. Renewal of license for two years, \$500;
 - 4. Application to reactivate an inactive license, \$500;
 - 5. Locum tenens registration, \$350;
 - 6. Annual registration of an approved internship, residency, clinical fellowship program, or short-term residency program, \$50;
 - 7. Annual teaching license at an approved school of medicine or at an approved hospital internship, residency, or clinical fellowship program, \$250;
 - 8. Five-day teaching permit at an approved school of medicine or at an approved hospital internship, residency, or clinical fellowship program, \$100;
 - 9. Initial registration to dispense drugs and devices, \$200;
 - 10. Annual renewal to dispense drugs and devices, \$150;
 - 11. Penalty fee for late renewal of an active license, \$350; and
 - 12. Application for temporary license, \$250.
- B. As specifically authorized under A.R.S. § 32-1436(B), the Board establishes the following charges for the services listed:
 - 1. Processing fingerprints to conduct a criminal background check, \$50;
 - 2. Providing a duplicate license, \$50;
 - 3. Verifying a license, \$10 per request;
 - 4. Providing a copy of records, documents, letters, minutes, applications, and files, \$1 for the first three pages and 25¢ for each additional page;
 - 5. Providing a copy of annual allopathic medical directory, \$30; and
 - 6. Providing an electronic medium containing public information about licensed physicians, \$100.

Historical Note

Adopted effective September 22, 1995 (Supp. 95-3). Amended by final rulemaking at 8 A.A.R. 2319, effective May 9, 2002 (Supp. 02-2). Former Section R4-16-205 recodified to R4-16-305; New Section R4-16-205 recodified from R4-16-109 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final rulemaking 19 A.A.R. 1300, effective July 6, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 2569, effective September 2, 2014 (Supp. 14-3). Amended by final exempt rulemaking at 21 A.A.R. 2678, effective October 15, 2015 (Supp. 15-4). Amended by final exempt rulemaking at 22 A.A.R. 778, effective January 14, 2016 (Supp. 16-1). Amended by final exempt rulemaking at 23 A.A.R. 2056, effective August 9, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 182, effective March 10, 2018 (Supp. 18-1).

R4-16-205.1. Mandatory Reporting Requirement

- A. As required under A.R.S. § 32-3208, an applicant, licensee, permit holder, or registrant who is charged with a misdemeanor involving conduct that may affect patient safety or a felony shall provide written notice of the charge to the Board within 10 working days after the charge is filed.
- B. An applicant, licensee, permit holder, or registrant may obtain a list of reportable misdemeanors on request from the Board and on the Board's web site.
- C. Failure to comply with A.R.S. § 32-3208 and this Section is unprofessional conduct.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2678, effective October 15, 2015 (Supp. 15-4).

R4-16-206. Time Frames for Licenses, Permits, and Regis-

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trations

- A.** For each type of license, permit, or registration issued by the Board, the overall time frame under A.R.S. § 41-1072(2) is shown on Table 1.
- B.** For each type of license, permit, or registration issued by the Board, the administrative completeness review time frame under A.R.S. § 41-1072(1) is shown on Table 1 and begins on the date the Board receives an application and all required documentation and information.
1. If the required application is not administratively complete, the Board shall send a written deficiency notice to the applicant.
 - a. In the deficiency notice, the Board shall state each deficiency and the information required to complete the application or supporting documentation required to complete the application. In the deficiency notice, the Board shall include a written notice that the application is withdrawn if the applicant does not submit the additional required information or documentation within the time provided for response.
 - b. Within the time provided in Table 1 for response to a deficiency notice, the applicant shall submit to the Board the documentation or information specified in the notice. The time frame for the Board to finish the administrative completeness review is suspended from the date of the notice until the date the Board receives the documentation or information from the applicant.
 2. Within 30 days after receipt of a deficiency notice, an applicant who disagrees with the deficiency notice may submit to the Board a written request for a hearing regarding the deficiency notice.
 3. The Board shall schedule and conduct the applicant's deficiency hearing according to provisions prescribed under A.R.S. § 32-1427(E).
 4. In addition to hearing provisions prescribed under subsection (B)(3), the Board shall send the following to the applicant in writing:
 - a. A notice of the scheduled hearing at least 21 days before the hearing date; and
 - b. The Board's decision within 30 days after the hearing and notice of any applicable right of appeal.
- C.** For each type of license, permit, or registration issued by the Board, the substantive review time frame under A.R.S. § 41-1072(3) is shown on Table 1.
1. The Board may request make a comprehensive written request for additional information from an applicant according to provisions prescribed under A.R.S. § 41-1075 during the substantive review time frame. In any request for additional information, the Board shall include a written notice that the application is withdrawn if the applicant does not submit the additional information within the time provided for response.
- if the applicant does not submit the additional information within the time provided for response.
2. In response to a single comprehensive written request from the Board under A.R.S. § 41-1075(A), the applicant shall submit the information identified to the Board within the time to respond specified in Table 1. The time frame for the Board to finish the substantive review is suspended from the date the Board sends the comprehensive written request for additional information until the date the Board receives the additional information from the applicant.
 3. If the Board determines the applicant does not meet all substantive criteria for a license, permit, or registration as required under A.R.S. Title 32, Chapter 13 or this Chapter, the Board shall send written notice of denial to the applicant. The Board shall include notice of any applicable right of appeal in the denial notice.
 4. If the applicant meets all substantive criteria for a license, permit, or registration required under A.R.S. Title 32, Chapter 13 and this Chapter, the Board shall issue the applicable license, permit, or registration to the applicant.
- D.** An applicant may receive a 30-day extension of the time provided under subsection (B)(1) or (C)(2) by providing written notice to the Board's Executive Director before the time expires.
- E.** If a licensee does not apply for license renewal according to the biennial renewal requirement, the licensee's license expires according to provisions prescribed under A.R.S. § 32-1430(A) unless the licensee is under investigation according to provisions under A.R.S. § 32-3202. If a licensee makes timely application according to the biennial renewal requirement but fails to respond timely to a deficiency notice under subsection (B)(1) or a request for additional information under subsection (C)(2) and fails to request from the Executive Director an extension of time to respond, the licensee's license expires according to provisions prescribed under A.R.S. § 32-1430(A).

Historical Note

New Section recodified from R4-16-104 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final rulemaking at 11 A.A.R. 2944, effective September 10, 2005 (Supp. 05-3). Amended by final exempt rulemaking at 21 A.A.R. 2678, effective October 15, 2015 (Supp. 15-4).

R4-16-207. Repealed**Historical Note**

New Section recodified from R4-16-105 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final rulemaking at 11 A.A.R. 2944, effective September 10, 2005 (Supp. 05-3). Repealed by final exempt rulemaking at 21 A.A.R. 2678, effective October 15, 2015 (Supp. 15-4).

Table 1. Time Frames

Type of License	Time Frames (in calendar days)				
	Overall Time Frame	Administrative Review Time Frame	Time to Respond to Deficiency Notice	Substantive Review Time Frame	Time to Respond to Request for Additional Information
Initial License by Examination or Endorsement	240	120	365	120	90
Biennial License Renewal	90	45	60	45	60
Locum Tenens or Pro Bono Registration	120	60	90	60	30

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Teaching License	40	20	30	20	30
Educational Teaching Permit	20	10	30	10	10
Training Permit	40	20	30	20	30
Short-term Training Permit	40	20	30	20	30
One-year Training Permit	40	20	30	20	30
Annual Registration to Dispense Drugs and Devices	150	45	30	105	30

Historical Note

Table 1 recodified from Article 1 to end of Article 2 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final rulemaking at 11 A.A.R. 2944, effective September 10, 2005 (Supp. 05-3). Amended by final exempt rulemaking at 21 A.A.R. 2678, effective October 15, 2015 (Supp. 15-4).

ARTICLE 3. DISPENSING OF DRUGS**R4-16-301. Registration and Renewal**

- A. A physician who wishes to dispense a controlled substance as defined in A.R.S. § 32-1901(12), a prescription-only drug as defined in A.R.S. § 32-1901(65), or a prescription-only device as defined in A.R.S. § 32-1901(64) shall be currently licensed to practice medicine in Arizona and shall provide to the Board the following:
 - 1. A completed registration form that includes the following information:
 - a. The physician's name, license number, and field of practice;
 - b. A list of the types of drugs and devices the physician will dispense; and
 - c. The location or locations where the physician will dispense a controlled substance, a prescription-only drug, or a prescription-only device.
 - 2. A copy of the physician's current Drug Enforcement Administration Certificate of Registration for each dispensing location from which the physician will dispense a controlled substance.
 - 3. The fees required in A.R.S. § 32-1436.
- B. A physician shall renew a registration to dispense a controlled substance, a prescription-only drug, or a prescription-only device by complying with the requirements in subsection (A) on or before June 30 of each year. If a physician has made timely and complete application for the renewal of a registration, the physician may continue to dispense until the Board approves or denies the renewal application.
- C. If the completed annual renewal form, all required documentation, and the fee are not received in the Board's office on or before June 30, the physician shall not dispense any controlled substances, prescription-only drugs, or prescription-only devices until re-registered. The physician shall re-register by filing for initial registration under subsection (A) and shall not dispense a controlled substance, a prescription-only drug, or a prescription-only device until receipt of the re-registration.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 751, effective February 2, 2000 (Supp. 00-1). Former Section R4-16-301 recodified to R4-16-401; New Section R4-16-301 recodified from R4-16-201 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-302. Packaging and Inventory; Exception

- A. A physician shall dispense all controlled substances and prescription-only drugs in prepackaged containers or in light-resistant containers with consumer safety caps, that comply with standards specified in the official compendium as defined

in A.R.S. § 32-1901(49) and state and federal law, unless a patient or a patient's representative requests a non-safety cap.

- B. All controlled substances and prescription-only drugs dispensed shall be labeled with the following information:
 - 1. The physician's name, address, and telephone number;
 - 2. The date the controlled substance and prescription-only drug is dispensed;
 - 3. The patient's name;
 - 4. The controlled substance and prescription-only drug name, strength, and dosage, form, name of manufacturer, the quantity dispensed, directions for use, and any cautionary statement necessary for the safe and effective use of the controlled substance and prescription-only drug; and
 - 5. A beyond-use-date not to exceed one year from the date of dispensing or the manufacturer's expiration date if less than one year.
- C. A physician shall secure all controlled substances in a locked cabinet or room and shall control access to the cabinet or room by a written procedure that includes, at a minimum, designation of the persons who have access to the cabinet or room and procedures for recording requests for access to the cabinet or room. This written procedure shall be made available on demand to the Board or its authorized representatives for inspection or copying. Prescription-only drugs shall be stored so as not to be accessible to patients.
- D. Controlled substances and prescription-only drugs not requiring refrigeration shall be maintained in an area where the temperature does not exceed 85° F.
- E. A physician shall maintain an ongoing dispensing log for all controlled substances and the prescription-only drug nalbuphine hydrochloride (Nubain) dispensed by the physician. The dispensing log shall include the following:
 - 1. A separate inventory sheet for each controlled substance and prescription-only drug;
 - 2. The date the drug is dispensed;
 - 3. The patient's name;
 - 4. The dosage, controlled substance and prescription-only drug name, strength, dosage, form, and name of the manufacturer;
 - 5. The number of dosage units dispensed;
 - 6. A running total of each controlled substance and prescription-only drug dispensed; and
 - 7. The signature of the physician written next to each entry.
- F. A physician may use a computer to maintain the dispensing log required in subsection (E) if the log is quickly accessible through either on-screen viewing or printing of a copy.
- G. This Section does not apply to a prepackaged manufacturer sample of a controlled substance and prescription-only drug, unless otherwise provided by federal law.

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Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 751, effective February 2, 2000 (Supp. 00-1). Former Section R4-16-302 recodified to R4-16-402; New Section R4-16-302 recodified from R4-16-202 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-303. Prescribing and Dispensing Requirements

- A. A physician shall record on the patient's medical record the name, strength, dosage, and form, of the controlled substance, prescription-only drug, or prescription-only device dispensed, the quantity or volume dispensed, the date the controlled substance, prescription-only drug, or prescription-only device is dispensed, the medical reasons for dispensing the controlled substance, prescription-only drug, or prescription-only device, and the number of refills authorized.
- B. Before dispensing a controlled substance, prescription-only drug, or prescription-only device to a patient, a physician shall review the prepared controlled substance, prescription-only drug, or prescription-only device to ensure that:
 - 1. The container label and contents comply with the prescription, and
 - 2. The patient is informed of the name of the controlled substance, prescription-only drug, or prescription-only device, directions for use, precautions, and storage requirements.
- C. A physician shall purchase all dispensed controlled substances, prescription-only drugs, or prescription-only devices from a manufacturer or distributor approved by the United States Food and Drug Administration, or a pharmacy holding a current permit from the Arizona Board of Pharmacy.
- D. The person who prepares a controlled substance, prescription-only drug, or prescription-only device for dispensing shall countersign and date the original prescription form for the controlled substance, prescription-only drug, or prescription-only device.
- E. For purposes of this Article, "dispensing" means the delivery of a controlled substance, a prescription-only drug, or a prescription-only device to a patient for use outside the physician's office.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 751, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 6 A.A.R. 4585, effective November 14, 2000 (Supp. 00-4). Former Section R4-16-303 recodified to R4-16-403; New Section R4-16-303 recodified from R4-16-203 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-304. Recordkeeping and Reporting Shortages

- A. A physician who dispenses a controlled substance or prescription-only drug shall ensure that an original prescription dispensed from the physician's office is dated, consecutively numbered in the order in which it is originally dispensed, and filed separately from patient medical records. A physician shall ensure that an original prescription be maintained in three separate files, as follows:
 - 1. Schedule II controlled substances;
 - 2. Schedule III, IV, and V controlled substances; and
 - 3. Prescription-only drugs.
- B. A physician shall ensure that purchase orders and invoices are maintained for all controlled substances and prescription-only drugs dispensed for profit and not for profit for three years from the date of the purchase order or invoice. Purchase orders and invoices shall be maintained in three separate files as follows:
 - 1. Schedule II controlled substances only;

- 2. Schedule III, IV, and V controlled substances and nalbuphine; and
- 3. All other prescription-only drugs.
- C. A physician who discovers a theft or loss of a controlled substance or a dangerous drug, as defined in A.R.S. § 13-3401, from the physician's office shall:
 - 1. Immediately notify the local law enforcement agency,
 - 2. Provide that agency with a written report, and
 - 3. Send a copy to the Drug Enforcement Administration and the Board within seven days of the discovery.
- D. For purposes of this Section, controlled substances are identified, defined, or listed in A.R.S. Title 36, Chapter 27.

Historical Note

New Section recodified from R4-16-204 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-305. Inspections; Denial and Revocation

- A. A physician shall cooperate with and allow access to the physician's office and records for periodic inspection of dispensing practices by the Board or its authorized representative. Failure to cooperate or allow access shall be grounds for revocation of a physician's registration to dispense a controlled substance, prescription-only drug, or prescription-only device or denial of renewal of the physician's dispensing registration.
- B. Failure to comply with A.R.S. § 32-1491 or this Article constitutes grounds for denial or revocation of dispensing registration.
- C. The Board shall revoke a physician's registration to dispense a controlled substance, prescription-only drug, or prescription-only device upon occurrence of the following:
 - 1. Suspending, revoking, surrendering, or canceling the physician's license;
 - 2. Placing the physician's license on inactive status;
 - 3. Failing to timely renew the physician's license; or
 - 4. Restricting the physician's ability to prescribe or administer medication, including loss or expiration of the physician's Drug Enforcement Administration Certificate of Registration.
- D. If the Board denies a physician's dispensing registration, the physician may appeal the decision by filing a request, in writing, with the Board, no later than 30 days after receipt of the notice denying the registration.

Historical Note

New Section recodified from R4-16-205 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

ARTICLE 4. MEDICAL ASSISTANTS**R4-16-401. Medical Assistant Training Requirements**

- A. After the effective date of this Section, a supervising physician or physician assistant shall ensure that before a medical assistant is employed, the medical assistant completes either:
 - 1. An approved training program identified in R4-16-101; or
 - 2. An unapproved training program and successfully passes the medical assistant examination administered by a certifying organization accredited by either the National Commission for Certifying Agencies or the American National Standards Institute.
- B. This Section does not apply to any person who:
 - 1. Before February 2, 2000:
 - a. Completed an unapproved medical assistant training program and was employed as a medical assistant after program completion; or
 - b. Was directly supervised by the same physician, physician group, or physician assistant for a minimum of 2000 hours; or

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2. Completes a United States Armed Forces medical services training program.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Former Section R4-16-401 recodified to R4-16-501; New Section R4-16-401 recodified from R4-16-301 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Former Section R4-16-401 repealed; New Section R4-16-401 renumbered from R4-16-402 and amended by final rulemaking at 12 A.A.R. 823, effective February 23, 2006 (Supp. 06-1). Amended by final rulemaking at 25 A.A.R. 145, effective March 9, 2019 (Supp. 19-1).

R4-16-402. Authorized Procedures for Medical Assistants

- A. A medical assistant may perform, under the direct supervision of a physician or a physician assistant, the medical procedures listed in Appendix B, Core Curriculum for Medical Assistants, 2015 edition of Standards and Guidelines for the Accreditation of Educational Programs in Medical Assisting, published by the Commission on Accreditation of Allied Health Education Programs. This material is incorporated by reference, does not include later amendments or editions, and may be obtained from the publisher at 25400 U.S. Highway 19 N, Suite 158, Clearwater, FL 33763, www.caahp.org, or the Board.
- B. In addition to the medical procedures in subsection (A), a medical assistant may administer the following under the direct supervision of a physician or physician assistant:
1. Whirlpool treatments,
 2. Diathermy treatments,
 3. Electronic galvanization stimulation treatments,
 4. Ultrasound therapy,
 5. Massage therapy,
 6. Traction treatments,
 7. Transcutaneous Nerve Stimulation unit treatments,
 8. Hot and cold pack treatments, and
 9. Small volume nebulizer treatments.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4270, effective November 18, 2002 (Supp. 02-3). Former Section R4-16-402 recodified to R4-16-502; New Section R4-16-402 recodified from R4-16-302 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Former Section R4-16-402 renumbered to R4-16-401; New Section R4-16-402 renumbered from R4-16-403 and amended by final rulemaking at 12 A.A.R. 823, effective February 23, 2006 (Supp. 06-1). Amended by final rulemaking at 25 A.A.R. 145, effective March 9, 2019 (Supp. 19-1).

R4-16-403. Renumbered**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4270, effective November 18, 2002 (Supp. 02-3). Former Section R4-16-403 recodified to R4-16-503; New Section R4-16-403 recodified from R4-16-303 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Former Section R4-16-403 renumbered to R4-16-402 by final rulemaking at 12 A.A.R. 823, effective February 23, 2006 (Supp. 06-1).

R4-16-404. Recodified**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Section recodified to R4-16-504 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-405. Recodified**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Section recodified to R4-16-505 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-406. Recodified**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Section recodified to R4-16-506 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-407. Recodified**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Section recodified to R4-16-507 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-408. Recodified**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Section recodified to R4-16-508 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-409. Recodified**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4270, effective November 18, 2002 (Supp. 02-3). Section recodified to R4-16-509 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-410. Recodified**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4270, effective November 18, 2002 (Supp. 02-3). Section recodified to R4-16-510 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

ARTICLE 5. EXECUTIVE DIRECTOR DUTIES**R4-16-501. Interim Evaluation and Investigational Interview**

- A. The executive director may require a physician, who is under investigation by the Board, to submit to a mental, physical, oral, or written medical competency examination after the following:
1. Reviewing the allegations and investigator's summary of findings; and
 2. Consulting with and receiving the agreement of the Board's supervising medical consultant or designee that an examination is necessary.
- B. The executive director may request a physician to attend an investigational interview to answer questions regarding a complaint against the physician. Before issuing a request for an investigational interview, the executive director shall review the allegations and facts to determine whether an interview is

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- necessary to provide information the Board needs to adjudicate the case. The executive director shall consult with and receive the agreement of either the investigation supervisor or supervising medical consultant that an investigational interview is necessary before requesting one.
- C. The executive director shall report to the Board at each regularly scheduled Board meeting, a summary of the number and type of evaluations ordered and completed since the preceding Board meeting.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 2274, effective August 12, 2003 (Supp. 03-2). Former Section R4-16-501 recodified to R4-16-601; New Section R4-16-501 recodified from R4-16-401 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-502. Direct Referral to Formal Interview

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

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 2274, effective August 12, 2003 (Supp. 03-2). Former Section R4-16-502 recodified to R4-16-602; New Section R4-16-502 recodified from R4-16-402 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

Editor's Note: At the time of publication, A.R.S. § 32-1401(26) (referenced in R4-16-503) was A.R.S. § 32-1401(24). Laws 2003, Ch. 59, § 1, effective 90 days after the close of the First Regular Session of the Forty-sixth Legislature, will change the subparagraph citation to A.R.S. § 32-1401(26) (Supp. 03-2). This Section was subsequently recodified to a different Section in this Chapter. Refer to the historical notes for more information (05-1).

R4-16-503. Request for Inactive Status and License Cancellation

- A. If a physician requests inactive status or license cancellation and meets the requirements of A.R.S. §§ 32-1431 and 32-1433, and is not participating in the program defined under A.R.S. § 32-1452, the executive director shall grant the request.
- B. The executive director shall provide to the Board at each regularly scheduled Board meeting a list of the individuals granted inactive or cancelled license status since the preceding Board meeting.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 2274, effective August 12, 2003 (Supp. 03-2). Former Section R4-16-503 recodified to R4-16-603; New Section R4-16-503 recodified from R4-16-403 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-504. Interim Consent Agreement

The executive director may enter into an interim consent agreement with a physician if there is evidence that a restriction is needed to mitigate imminent danger to the public health and safety and the investigative staff, the medical consultant, and the lead Board member concur after review of the case that a consent agreement is appropriate.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 2274, effective August 12, 2003 (Supp. 03-2). Former Section R4-16-504 recodified to R4-16-605; New Section

R4-16-504 recodified from R4-16-404 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-505. Mediated Case

- A. The executive director shall close a case resolved through mediation.
- B. The executive director shall provide to the Board at each regularly scheduled Board meeting a list of the physicians whose cases are resolved through mediation since the preceding Board meeting.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 2274, effective August 12, 2003 (Supp. 03-2). Former Section R4-16-505 recodified to R4-16-606; New Section R4-16-505 recodified from R4-16-405 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-506. Referral to Formal Hearing

- A. The executive director may directly refer a case to a formal hearing if the investigative staff, the medical consultant, and the lead Board member concur after review of the physician's case that a formal hearing is appropriate.
- B. The executive director shall provide to the Board at each regularly scheduled Board meeting a list of the physicians whose cases were referred to formal hearing since the preceding Board meeting and whether the referral is for revocation, suspension or is a result of an out-of-state disciplinary action, or is due to complexity of the case.

Historical Note

New Section R4-16-506 recodified from R4-16-406 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-507. Dismissal of Complaint

- A. The executive director, with the concurrence of the investigative staff, shall dismiss a complaint if the review shows the complaint is without merit and dismissal is appropriate.
- B. The executive director shall provide to the Board at each regularly scheduled Board meeting a list of the physicians about whom complaints were dismissed since the preceding Board meeting.

Historical Note

New Section R4-16-507 recodified from R4-16-407 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-508. Denial of License

- A. The executive director shall deny a license to an applicant who does not meet statutory requirements for licensure if the executive director, in consultation with the investigative staff and the medical consultant concur after reviewing the application, that the applicant does not meet the statutory requirements.
- B. The executive director shall provide to the Board at each regularly scheduled Board meeting a list of the physicians whose applications were denied since the preceding Board meeting.

Historical Note

New Section R4-16-508 recodified from R4-16-408 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-509. Non-disciplinary Consent Agreement

The executive director may enter into a consent agreement under A.R.S. § 32-1451(F) with a physician to limit the physician's practice or rehabilitate the physician if there is evidence that a licensee is mentally or physically unable to safely engage in the practice of medicine and the investigative staff, the medical consultant, and the lead Board member concur after review of the case that a consent agreement is appropriate.

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Historical Note

New Section R4-16-509 recodified from R4-16-409 at 11
A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-510. Appealing Executive Director Actions

- A. Any person aggrieved by an action taken by the executive director may appeal that action to the Board. The aggrieved person shall file a written request to the Board:
 - 1. Thirty days after notification of the action, if personally served; or
 - 2. Thirty-five days after the date on the notification, if mailed.
- B. The aggrieved person shall provide, in the written request, evidence showing:
 - 1. An irregularity in the investigative process or the executive director's review deprived the party of a fair decision; or
 - 2. Misconduct by Board staff, a Board consultant, or the executive director that deprived the party of a fair decision; or
 - 3. Material evidence newly discovered that could have a bearing on the decision and that, with reasonable diligence, could not have been discovered and produced earlier.
- C. The fact that the aggrieved party does not agree with the final decision is not grounds for a review by the Board.
- D. If an aggrieved person fails to submit a written request within the time specified in subsection (A), the Board is relieved of the requirement to review actions taken by the executive director. The executive director may, however, evaluate newly provided information that is material or substantial in content to determine whether the Board should review the case.
- E. If a written request is submitted that meets the requirements of subsection (B):
 - 1. The Board shall consider the written request at its next regularly scheduled meeting.
 - 2. If the written request provides new material or substantial evidence that requires additional investigation, the investigation shall be conducted as expeditiously as possible and the case shall be forwarded to the Board at the first possible regularly scheduled meeting.

Historical Note

New Section R4-16-510 recodified from R4-16-410 at 11
A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

ARTICLE 6. DISCIPLINARY ACTIONS**R4-16-601. Expired****Historical Note**

New Section R4-16-601 recodified from R4-16-501 at 11
A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).
Section expired under A.R.S. § 41-1056(E) at 16 A.A.R.
2062, effective September 14, 2010 (Supp. 10-3).

R4-16-602. Expired**Historical Note**

New Section R4-16-602 recodified from R4-16-502 at 11
A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).
Section expired under A.R.S. § 41-1056(E) at 16 A.A.R.
2062, effective September 14, 2010 (Supp. 10-3).

Editor's Note: To conform with the renumbering in A.R.S., the Arizona Medical Board requested (under A.R.S. § 41-1011 et seq.) a subsection reference update in R4-16-603 [R05-85]. Please refer to the historical notes for more details (Supp. 05-1).

R4-16-603. Expired**Historical Note**

New Section R4-16-603 recodified from R4-16-503 at 11
A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).
A.R.S. § 32-1401(26) subsection corrected to A.R.S. § 32-1401(27) under a formal written request from the Board, March 22, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 2062, effective September 14, 2010 (Supp. 10-3).

R4-16-604. Aggravating Factors Considered in Disciplinary Actions

When determining the degree of discipline, the Board may consider certain factors including, but not limited to, the following:

1. Prior disciplinary offenses;
2. Dishonest or selfish motive;
3. Pattern of misconduct; multiple offenses;
4. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the Board;
5. Submission of false evidence, false statements, or other deceptive practices during the investigative or disciplinary process;
6. Refusal to acknowledge wrongful nature of conduct; and
7. Vulnerability of the victim.

Historical Note

New Section R4-16-604 recodified from R4-16-504 at 11
A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

R4-16-605. Mitigating Factors Considered in Disciplinary Actions

When determining the degree of discipline, the Board may consider certain factors including, but not limited to, the following:

1. Absence of prior disciplinary record;
2. Absence of dishonest or selfish motive;
3. Timely good faith effort to rectify consequences of misconduct;
4. Interim rehabilitation;
5. Remoteness of prior offenses; and
6. How much control the physician has of processes in the specific practice setting.

Historical Note

New Section R4-16-605 recodified from R4-16-504 at 11
A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

ARTICLE 7. OFFICE-BASED SURGERY USING SEDATION**R4-16-701. Health Care Institution License**

A physician who uses general anesthesia in the physician's office or other outpatient setting that is not part of a licensed hospital or licensed ambulatory surgical center when performing office-based surgery using sedation shall obtain a health care institution license as required by the Arizona Department of Health Services under A.R.S. Title 36, Chapter 4 and 9 A.A.C. 10.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 380,
effective January 8, 2008 (Supp. 08-1).

R4-16-702. Administrative Provisions

- A. A physician who performs office-based surgery using sedation in the physician's office or other outpatient setting that is not part of a licensed hospital or licensed ambulatory surgical center shall:
 1. Establish, document, and implement written policies and procedures that cover:

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

Historical Note

New Section made by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

R4-16-703. Procedure and Patient Selection

- A. A physician shall ensure that each office-based surgery using sedation performed:
 - 1. Can be safely performed with the equipment, staff members, and health care professionals at the physician's office;
 - 2. Is of duration and degree of complexity that allows a patient to be discharged from the physician's office within 24 hours;
 - 3. Is within the education, training, experience skills, and licensure of the physician; and
 - 4. Is within the education, training, experience, skills, and licensure of the staff members and health care professionals at the physician's office.
- B. A physician shall not perform office-based surgery using sedation if the patient:

- 1. Has a medical condition or other condition that indicates the procedure should not be performed in the physician's office, or
- 2. Will require inpatient services at a hospital.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

R4-16-704. Sedation Monitoring Standards

A physician who performs office-based surgery using sedation shall ensure from the time sedation is administered until post-sedation monitoring begins:

- 1. A quantitative method of assessing a patient's oxygenation, such as pulse oximetry, is used when minimal sedation is administered to the patient, and
- 2. When moderate or deep sedation is administered to a patient:
 - a. A quantitative method of assessing the patient's oxygenation, such as pulse oximetry, is used;
 - b. The patient's ventilatory function is monitored by any of the following:
 - i. Direct observation,
 - ii. Auscultation, or
 - iii. Capnography;
 - c. The patient's circulatory function is monitored during the surgery by:
 - i. Having a continuously displayed electrocardiogram,
 - ii. Documenting arterial blood pressure and heart rate at least every five minutes, and
 - iii. Evaluating the patient's cardiovascular function by pulse plethysmography,
 - d. The patient's temperature is monitored if the physician expects the patient's temperature to fluctuate; and
 - e. That a licensed and qualified healthcare professional, other than the physician performing the office-based surgery, whose sole responsibility is attending to the patient, is present throughout the office-based surgery.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

R4-16-705. Perioperative Period; Patient Discharge

A physician performing office-based surgery using sedation shall ensure all of the following:

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

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- a. The time and date of the patient's discharge, and
- b. A description of the patient's medical condition at the time of discharge; and
6. A patient receives discharge instructions and documents in the patient's medical record that the patient received the discharge instructions.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

R4-16-706. Emergency Drugs; Equipment and Space Used for Office-Based Surgery Using Sedation

- A. In addition to the requirements in R4-16-702(A)(3) and R4-16-703(A)(1), a physician who performs office-based surgery using sedation shall ensure that the physician's office has at a minimum:
 1. The following:
 - a. A reliable oxygen source with a SaO₂ monitor;
 - b. Suction;
 - c. Resuscitation equipment, including a defibrillator;
 - d. Emergency drugs; and
 - e. A cardiac monitor;
 2. The equipment for patient monitoring according to the standards in R4-16-704;
 3. Space large enough to:
 - a. Allow for access to the patient during office-based surgery using sedation, recovery, and any emergency;
 - b. Accommodate all equipment necessary to perform the office-based surgery using sedation; and
 - c. Accommodate all equipment necessary for sedation monitoring;
 4. A source of auxiliary electrical power available in the event of a power failure; and

5. Equipment, emergency drugs, and resuscitative capabilities required under this Section for patients less than 18 years of age, if office-based surgery using sedation is performed on these patients; and
6. Procedures to minimize the spread of infection.

- B. A physician who performs office-based surgery using sedation shall:

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

Historical Note

New Section made by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

R4-16-707. Emergency and Transfer Provisions

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

Historical Note

New Section made by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

32-1401. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a valid and existing license to practice medicine.
2. "Adequate records" means legible medical records, produced by hand or electronically, containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment.
3. "Advisory letter" means a nondisciplinary letter to notify a licensee that either:
 - (a) While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.
 - (b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.
 - (c) While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.
4. "Approved hospital internship, residency or clinical fellowship program" means a program at a hospital that at the time the training occurred was legally incorporated and that had a program that was approved for internship, fellowship or residency training by the accreditation council for graduate medical education, the association of American medical colleges, the royal college of physicians and surgeons of Canada or any similar body in the United States or Canada approved by the board whose function is that of approving hospitals for internship, fellowship or residency training.
5. "Approved school of medicine" means any school or college offering a course of study that, on successful completion, results in the degree of doctor of medicine and whose course of study has been approved or accredited by an educational or professional association, recognized by the board, including the association of American medical colleges, the association of Canadian medical colleges or the American medical association.
6. "Board" means the Arizona medical board.
7. "Completed application" means that the applicant has supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board.

8. "Direct supervision" means that a physician, physician assistant licensed pursuant to chapter 25 of this title or nurse practitioner certified pursuant to chapter 15 of this title is within the same room or office suite as the medical assistant in order to be available for consultation regarding those tasks the medical assistant performs pursuant to section 32-1456.

9. "Dispense" means the delivery by a doctor of medicine of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.

10. "Doctor of medicine" means a natural person holding a license, registration or permit to practice medicine pursuant to this chapter.

11. "Full-time faculty member" means a physician who is employed full time as a faculty member while holding the academic position of assistant professor or a higher position at an approved school of medicine.

12. "Health care institution" means any facility as defined in section 36-401, any person authorized to transact disability insurance, as defined in title 20, chapter 6, article 4 or 5, any person who is issued a certificate of authority pursuant to title 20, chapter 4, article 9 or any other partnership, association or corporation that provides health care to consumers.

13. "Immediate family" means the spouse, natural or adopted children, father, mother, brothers and sisters of the doctor and the natural or adopted children, father, mother, brothers and sisters of the doctor's spouse.

14. "Letter of reprimand" means a disciplinary letter that is issued by the board and that informs the physician that the physician's conduct violates state or federal law and may require the board to monitor the physician.

15. "Limit" means taking a nondisciplinary action that alters the physician's practice or professional activities if the board determines that there is evidence that the physician is or may be mentally or physically unable to safely engage in the practice of medicine.

16. "Medical assistant" means an unlicensed person who meets the requirements of section 32-1456, has completed an education program approved by the board, assists in a medical practice under the supervision of a doctor of medicine, physician assistant or nurse practitioner and performs delegated procedures commensurate with the assistant's education and training but does not diagnose, interpret, design or modify established treatment programs or perform any functions that would violate any statute applicable to the practice of medicine.

17. "Medical peer review" means:

(a) The participation by a doctor of medicine in the review and evaluation of the medical management of a patient and the use of resources for patient care.

(b) Activities relating to a health care institution's decision to grant or continue privileges to practice at that institution.

18. "Medically incompetent" means a person who the board determines is incompetent based on a variety of factors, including:

(a) A lack of sufficient medical knowledge or skills, or both, to a degree likely to endanger the health of patients.

(b) When considered with other indications of medical incompetence, failing to obtain a scaled score of at least seventy-five percent on the written special purpose licensing examination.

19. "Medicine" means allopathic medicine as practiced by the recipient of a degree of doctor of medicine.

20. "Office based surgery" means a medical procedure conducted in a physician's office or other outpatient setting that is not part of a licensed hospital or licensed ambulatory surgical center.

21. "Physician" means a doctor of medicine who is licensed pursuant to this chapter.

22. "Practice of medicine" means the diagnosis, the treatment or the correction of or the attempt or the claim to be able to diagnose, treat or correct any and all human diseases, injuries, ailments, infirmities or deformities, physical or mental, real or imaginary, by any means, methods, devices or instrumentalities, except as the same may be among the acts or persons not affected by this chapter. The practice of medicine includes the practice of medicine alone or the practice of surgery alone, or both.

23. "Restrict" means taking a disciplinary action that alters the physician's practice or professional activities if the board determines that there is evidence that the physician is or may be medically incompetent or guilty of unprofessional conduct.

24. "Special purpose licensing examination" means an examination that is developed by the national board of medical examiners on behalf of the federation of state medical boards for use by state licensing boards to test the basic medical competence of physicians who are applying for licensure and who have been in practice for a considerable period of time in another jurisdiction and to determine the competence of a physician who is under investigation by a state licensing board.

25. "Teaching hospital's accredited graduate medical education program" means that the hospital is incorporated and has an internship, fellowship or residency training program that is accredited by the accreditation council for graduate medical education, the American medical association, the association of American medical colleges, the royal college of physicians and surgeons of Canada or a similar body in the United States or Canada that is approved by the board and whose function is that of approving hospitals for internship, fellowship or residency training.

26. "Teaching license" means a valid license to practice medicine as a full-time faculty member of an approved school of medicine or a teaching hospital's accredited graduate medical education program.

27. "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:

(a) Violating any federal or state laws, rules or regulations applicable to the practice of medicine.

(b) Intentionally disclosing a professional secret or intentionally disclosing a privileged communication except as either act may otherwise be required by law.

(c) False, fraudulent, deceptive or misleading advertising by a doctor of medicine or the doctor's staff, employer or representative.

(d) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by any court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(e) Failing or refusing to maintain adequate records on a patient.

(f) A pattern of using or being under the influence of alcohol or drugs or a similar substance while practicing medicine or to the extent that judgment may be impaired and the practice of medicine detrimentally affected.

(g) Using controlled substances except if prescribed by another physician for use during a prescribed course of treatment.

(h) Prescribing or dispensing controlled substances to members of the physician's immediate family.

(i) Prescribing, dispensing or administering schedule II controlled substances as defined in section 36-2513 including amphetamines and similar schedule II sympathomimetic drugs in the treatment of exogenous obesity for a period in excess of thirty days in any one year, or the nontherapeutic use of injectable amphetamines.

(j) Prescribing, dispensing or administering any controlled substance or prescription-only drug for other than accepted therapeutic purposes.

(k) Signing a blank, undated or predicated prescription form.

(l) Conduct that the board determines is gross malpractice, repeated malpractice or any malpractice resulting in the death of a patient.

(m) Representing that a manifestly incurable disease or infirmity can be permanently cured, or that any disease, ailment or infirmity can be cured by a secret method, procedure, treatment, medicine or device, if this is not true.

(n) Refusing to divulge to the board on demand the means, method, procedure, modality of treatment or medicine used in the treatment of a disease, injury, ailment or infirmity.

(o) Action that is taken against a doctor of medicine by another licensing or regulatory jurisdiction due to that doctor's mental or physical inability to engage safely in the practice of medicine or the doctor's medical incompetence or for unprofessional conduct as defined by that jurisdiction and that corresponds directly or indirectly to an act of unprofessional conduct prescribed by this paragraph. The action taken may include refusing, denying, revoking or suspending a license by that jurisdiction or a surrendering of a license to that jurisdiction, otherwise limiting, restricting or monitoring a licensee by that jurisdiction or placing a licensee on probation by that jurisdiction.

(p) Sanctions imposed by an agency of the federal government, including restricting, suspending, limiting or removing a person from the practice of medicine or restricting that person's ability to obtain financial remuneration.

(q) Any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public.

(r) Violating a formal order, probation, consent agreement or stipulation issued or entered into by the board or its executive director under this chapter.

(s) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision of this chapter.

(t) Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of medicine or if applying for privileges or renewing an application for privileges at a health care institution.

(u) Charging a fee for services not rendered or dividing a professional fee for patient referrals among health care providers or health care institutions or between these providers and institutions or a contractual arrangement that has the same effect. This subdivision does not apply to payments from a medical researcher to a physician in connection with identifying and monitoring patients for a clinical trial regulated by the United States food and drug administration.

(v) Obtaining a fee by fraud, deceit or misrepresentation.

(w) Charging or collecting a clearly excessive fee. In determining whether a fee is clearly excessive, the board shall consider the fee or range of fees customarily charged in this state for similar services in light of modifying factors such as the time required, the complexity of the service and the skill requisite to perform the service properly. This subdivision does not apply if

there is a clear written contract for a fixed fee between the physician and the patient that has been entered into before the provision of the service.

(x) Conduct that is in violation of section 36-2302.

(y) The use of experimental forms of diagnosis and treatment without adequate informed patient consent, and without conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee as approved by the United States food and drug administration or its successor agency.

(z) Engaging in sexual conduct with a current patient or with a former patient within six months after the last medical consultation unless the patient was the licensee's spouse at the time of the contact or, immediately preceding the physician-patient relationship, was in a dating or engagement relationship with the licensee. For the purposes of this subdivision, "sexual conduct" includes:

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

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

(iii) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.

(aa) Procuring or attempting to procure a license to practice medicine or a license renewal by fraud, by misrepresentation or by knowingly taking advantage of the mistake of another person or an agency.

(bb) Representing or claiming to be a medical specialist if this is not true.

(cc) Maintaining a professional connection with or lending one's name to enhance or continue the activities of an illegal practitioner of medicine.

(dd) Failing to furnish information in a timely manner to the board or the board's investigators or representatives if legally requested by the board.

(ee) Failing to allow properly authorized board personnel on demand to examine and have access to documents, reports and records maintained by the physician that relate to the physician's medical practice or medically related activities.

(ff) Knowingly failing to disclose to a patient on a form that is prescribed by the board and that is dated and signed by the patient or guardian acknowledging that the patient or guardian has read and understands that the doctor has a direct financial interest in a separate diagnostic or treatment agency or in nonroutine goods or services that the patient is being prescribed if the prescribed treatment, goods or services are available on a competitive basis. This subdivision does not

apply to a referral by one doctor of medicine to another doctor of medicine within a group of doctors of medicine practicing together.

(gg) Using chelation therapy in the treatment of arteriosclerosis or as any other form of therapy, with the exception of treatment of heavy metal poisoning, without:

(i) Adequate informed patient consent.

(ii) Conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee.

(iii) Approval by the United States food and drug administration or its successor agency.

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

(ii) Lack of or inappropriate direction, collaboration or direct supervision of a medical assistant or a licensed, certified or registered health care provider employed by, supervised by or assigned to the physician.

(jj) Knowingly making a false or misleading statement to the board or on a form required by the board or in a written correspondence, including attachments, with the board.

(kk) Failing to dispense drugs and devices in compliance with article 6 of this chapter.

(ll) Conduct that the board determines is gross negligence, repeated negligence or negligence resulting in harm to or the death of a patient.

(mm) The representation by a doctor of medicine or the doctor's staff, employer or representative that the doctor is boarded or board certified if this is not true or the standing is not current or without supplying the full name of the specific agency, organization or entity granting this standing.

(nn) Refusing to submit to a body fluid examination or any other examination known to detect the presence of alcohol or other drugs as required by the board pursuant to section 32-1452 or pursuant to a board investigation into a doctor of medicine's alleged substance abuse.

(oo) Failing to report in writing to the Arizona medical board or the Arizona regulatory board of physician assistants any evidence that a doctor of medicine or a physician assistant is or may be medically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely practice medicine or to perform as a physician assistant.

(pp) The failure of a physician who is the chief executive officer, the medical director or the medical chief of staff of a health care institution to report in writing to the board that the hospital privileges of a doctor of medicine have been denied, revoked, suspended, supervised or limited because of actions by the doctor that appear to show that the doctor is or may be medically

incompetent, is or may be guilty of unprofessional conduct or is or may be unable to engage safely in the practice of medicine.

(qq) Claiming to be a current member of the board or its staff or a board medical consultant if this is not true.

(rr) Failing to make patient medical records in the physician's possession promptly available to a physician assistant, a nurse practitioner, a person licensed pursuant to this chapter or a podiatrist, chiropractor, naturopathic physician, osteopathic physician or homeopathic physician licensed under chapter 7, 8, 14, 17 or 29 of this title on receipt of proper authorization to do so from the patient, a minor patient's parent, the patient's legal guardian or the patient's authorized representative or failing to comply with title 12, chapter 13, article 7.1.

(ss) Prescribing, dispensing or furnishing a prescription medication or a prescription-only device as defined in section 32-1901 to a person unless the licensee first conducts a physical or mental health status examination of that person or has previously established a doctor-patient relationship. The physical or mental health status examination may be conducted during a real-time telemedicine encounter with audio and video capability, unless the examination is for the purpose of obtaining a written certification from the physician for the purposes of title 36, chapter 28.1. This subdivision does not apply to:

(i) 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.

(ii) Emergency medical situations as defined in section 41-1831.

(iii) Prescriptions written to prepare a patient for a medical examination.

(iv) Prescriptions written or prescription medications 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, public health emergency, infectious disease outbreak or act of bioterrorism. For the purposes of this item, "bioterrorism" has the same meaning prescribed in section 36-781.

(v) Prescriptions written or antimicrobials dispensed to a contact as defined in section 36-661 who is believed to have had significant exposure risk as defined in section 36-661 with another person who has been diagnosed with a communicable disease as defined in section 36-661 by the prescribing or dispensing physician.

(vi) Prescriptions written or prescription medications 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.

- (vii) Prescriptions for epinephrine auto-injectors written or dispensed for a school district or charter school to be stocked for emergency use pursuant to section 15-157 or for an authorized entity to be stocked pursuant to section 36-2226.01.
 - (viii) Prescriptions written by a licensee through a telemedicine program that is covered by the policies and procedures adopted by the administrator of a hospital or outpatient treatment center.
 - (ix) Prescriptions for naloxone hydrochloride or any other opioid antagonist approved by the United States food and drug administration that are written or dispensed for use pursuant to section 36-2228 or 36-2266.
- (tt) Performing office based surgery using sedation in violation of board rules.
- (uu) Practicing medicine under a false or assumed name in this state.

32-1402. Board; appointment; qualifications; term; removal; compensation; immunity; report

- A. The Arizona medical board is established. The board consists of twelve members, four of whom shall represent the public and eight of whom shall be actively practicing medicine. One of the four public members shall be a licensed practical nurse or a professional nurse, as defined in chapter 15 of this title, with at least five years' experience. The eight physicians must be from at least three different counties of the state. Not more than five of the board members may be from any one county. Members of the board are appointed by the governor. All appointments shall be made promptly. The governor shall make all appointments pursuant to section 38-211.
- B. Each doctor of medicine who is appointed to the board shall have been a resident of this state and actively engaged in the practice of medicine as a licensed physician in this state for at least the five years before appointment.
- C. The term of office of a member of the board is five years, commencing on July 1 and terminating on July 1 of the fifth year. Each member is eligible for reappointment for not more than one additional term. However, the term of office for a member of the board appointed to fill a vacancy occasioned other than by expiration of a full term is for the unexpired portion of that term. Each member may be appointed only once to fill a vacancy caused other than by expiration of a term. The governor may reappoint that member to not more than two additional full terms. Each member of the board shall continue to hold office until the appointment and qualification of that member's successor, subject to the following exceptions:

1. A member of the board, after notice and a hearing before the governor, may be removed on a finding by the governor of continued neglect of duty, incompetence, or unprofessional or dishonorable conduct, in which event that member's term shall end when the governor makes this finding.
2. The term of any member automatically ends:
 - (a) On death.

(b) On written resignation submitted to the board chairman or to the governor.

(c) On absence from the state for a period of more than six months.

(d) For failure to attend three consecutive meetings of the board.

(e) Five years after retirement from the active practice of medicine.

D. The board shall annually elect, from among its membership, a chairman, a vice-chairman and a secretary, who shall hold their respective offices at the pleasure of the board.

E. Board members are eligible to receive compensation in the amount of up to two hundred fifty dollars per day for each day of actual service in the business of the board, including time spent in preparation for and attendance at board meetings, and all expenses necessarily and properly incurred in attending meetings of the board.

F. Members of the board are personally immune from suit with respect to all acts done and actions taken in good faith and in furtherance of the purposes of this chapter.

G. The board shall submit a written report to the governor, the Arizona regulatory board of physician assistants and the members of the health and human services committee of the senate and the health committee of the house of representatives, or their successor committees, no later than August 31 of each year on the board's licensing and disciplinary activities for the previous fiscal year. The report must include both of the following:

1. Information regarding staff turnover that indicates whether the person was temporary, part-time or full-time and in which department or division the person worked.

2. The number of investigators who have been hired and how many of them have completed the investigator training program required by section 32-1405.

H. Public members appointed to the board may submit a separate written report to the governor by August 31 of each year setting forth their comments relative to the board's licensing and disciplinary activities for the previous fiscal year.

32-1403. Powers and duties of the board; compensation; immunity; committee on executive director selection and retention

A. The primary duty of the board is to protect the public from unlawful, incompetent, unqualified, impaired or unprofessional practitioners of allopathic medicine through licensure, regulation and rehabilitation of the profession in this state. The powers and duties of the board include:

1. Ordering and evaluating physical, psychological, psychiatric and competency testing of licensed physicians and candidates for licensure as may be determined necessary by the board.

2. Initiating investigations and determining on its own motion if a doctor of medicine has engaged in unprofessional conduct or provided incompetent medical care or is mentally or physically unable to engage in the practice of medicine.
 3. Developing and recommending standards governing the profession.
 4. Reviewing the credentials and the abilities of applicants whose professional records or physical or mental capabilities may not meet the requirements for licensure or registration as prescribed in article 2 of this chapter in order for the board to make a final determination as to whether the applicant meets the requirements for licensure pursuant to this chapter.
 5. Disciplining and rehabilitating physicians.
 6. Engaging in a full exchange of information with the licensing and disciplinary boards and medical associations of other states and jurisdictions of the United States and foreign countries and the Arizona medical association and its components.
 7. Directing the preparation and circulation of educational material the board determines is helpful and proper for licensees.
 8. Adopting rules regarding the regulation and the qualifications of doctors of medicine.
 9. Establishing fees and penalties as provided pursuant to section 32-1436.
 10. Delegating to the executive director the board's authority pursuant to section 32-1405 or 32-1451. The board shall adopt substantive policy statements pursuant to section 41-1091 for each specific licensing and regulatory authority the board delegates to the executive director.
- B. The board may appoint one of its members to the jurisdiction arbitration panel pursuant to section 32-2907, subsection B.
- C. There shall be no monetary liability on the part of and no cause of action shall arise against the executive director or such other permanent or temporary personnel or professional medical investigators for any act done or proceeding undertaken or performed in good faith and in furtherance of the purposes of this chapter.
- D. In conducting its investigations pursuant to subsection A, paragraph 2 of this section, the board may receive and review staff reports relating to complaints and malpractice claims.
- E. The board shall establish a program that is reasonable and necessary to educate doctors of medicine regarding the uses and advantages of autologous blood transfusions.
- F. The board may make statistical information on doctors of medicine and applicants for licensure under this article available to academic and research organizations.

G. The committee on executive director selection and retention is established consisting of the Arizona medical board and the chairperson and vice-chairperson of the Arizona regulatory board of physician assistants. The committee is a public body and is subject to the requirements of title 38, chapter 3, article 3.1. The committee is responsible for the appointment of the executive director pursuant to section 32-1405. All members of the committee are voting members of the committee. The committee shall elect a chairperson and a vice-chairperson when the committee meets but no more frequently than once a year. The chairperson shall call meetings of the committee as necessary, and the vice-chairperson may call meetings of the committee that are necessary if the chairperson is not available. The presence of eight members of the committee at a meeting constitutes a quorum. The committee meetings may be held using communications equipment that allows all members who are participating in the meeting to hear each other. If any discussions occur in an executive session of the committee, notwithstanding the requirement that discussions made at an executive session be kept confidential as specified in section 38-431.03, the chairperson and vice-chairperson of the Arizona regulatory board of physician assistants may discuss this information with the Arizona regulatory board of physician assistants in executive session. This disclosure of executive session information to the Arizona regulatory board of physician assistants does not constitute a waiver of confidentiality or any privilege, including the attorney-client privilege.

H. The officers of the Arizona medical board and the Arizona regulatory board of physician assistants shall meet twice a year to discuss matters of mutual concern and interest.

I. The board may accept and expend grants, gifts, devises and other contributions from any public or private source, including the federal government. Monies received under this subsection do not revert to the state general fund at the end of a fiscal year.

32-1403.01. Licensees; profiles; required information; updates; civil penalty

A. The board shall make available to the public a profile of each licensee. The board shall make this information available through an internet website and, if requested, in writing. The profile available to the public may not contain any information received from the federal bureau of investigation relating to a federal criminal records check. The profile shall contain the following information:

1. A description of any conviction of a felony. For purposes of this paragraph, a licensee is deemed to be convicted if the licensee pled guilty, pled no contest or was found guilty by a court of competent jurisdiction.
2. A description of any conviction of a misdemeanor involving moral turpitude that results in disciplinary action. For purposes of this paragraph, a licensee is deemed to be convicted if the licensee pled guilty, pled no contest or was found guilty by a court of competent jurisdiction.
3. All final board disciplinary actions.
4. Any medical malpractice court judgments and any medical malpractice awards or settlements in which a payment is made to a complaining party that results in disciplinary action.

5. The name and location of the licensee's medical school and the date of graduation.
 6. The name and location of the institution from which the licensee received graduate medical education and the date that education was completed.
 7. The licensee's primary practice location.
- B. Each licensee shall submit the information required pursuant to subsection A of this section each year as directed by the board. An applicant for licensure shall submit this information at the time of application. The applicant and licensee shall submit the information on a form prescribed by the board. A licensee shall submit immediately any changes in information required pursuant to subsection A, paragraphs 1, 2 and 4 of this section. The board shall update immediately its internet website to reflect changes in information relating to subsection A, paragraphs 1 through 4 of this section. The board shall update the internet website information at least annually.
- C. The board shall provide each licensee with the licensee's profile on request and shall make valid and verifiable corrections to the profile on notification at any time by the licensee. A change made by a licensee to an address or telephone number is subject to the requirements of section 32-1435.
- D. It is an act of unprofessional conduct for a licensee to provide erroneous information pursuant to this section. In addition to other disciplinary action, the board may impose a civil penalty of not more than one thousand dollars for each erroneous statement.
- E. If the board issues a nondisciplinary order or action against a licensee, the record of the nondisciplinary order or action is available to the public but may not appear on the board's website, except that a practice limitation or restriction, and documentation relating to that action, may appear on the board's website. On request, the board shall send within five business days, either electronically or by mail, information relating to any nondisciplinary order or action against a licensee to a person requesting the information.

32-1404. Meetings; quorum; committees; rules; posting

- A. The board shall hold regular quarterly meetings on a date and at the time and place designated by the chairman. The board shall hold special meetings, including meetings using communications equipment that allows all members participating in the meeting to hear each other, as the chairman determines are necessary to carry out the functions of the board. The board shall hold special meetings on any day that the chairman determines are necessary to carry out the functions of the board. The vice-chairman may call meetings and special meetings if the chairman is not available.
- B. The presence of seven board members at a meeting constitutes a quorum. A majority vote of the quorum is necessary for the board to take any action.
- C. The chairman may establish committees from the membership of the board and define committee duties necessary to carry out the functions of the board.

D. The board may adopt rules pursuant to title 41, chapter 6 that are necessary and proper to carry out the purposes of this chapter.

E. Meetings held pursuant to subsection A of this section shall be audio and video recorded. Beginning September 2, 2014, the board shall post the video recording on the board's website within five business days after the meeting.

32-1405. Executive director; compensation; duties; appeal to the board

A. Subject to title 41, chapter 4, article 4, the committee on executive director selection and retention established by section 32-1403 shall appoint an executive director of the board who shall serve at the pleasure of the committee. The executive director shall not be a board member, except that the board may authorize the executive director to represent the board and to vote on behalf of the board at meetings of the federation of state medical boards of the United States.

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

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

1. Subject to title 41, chapter 4, article 4 and, as applicable, articles 5 and 6, employ, evaluate, dismiss, discipline and direct professional, clerical, technical, investigative and administrative personnel necessary to carry on the work of the board. An investigator shall complete a nationally recognized investigator training program within one year of date of hire. Until an investigator completes a training program, the investigator shall work under the supervision of an investigator who has completed a training program.

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

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

4. Subject to title 41, chapter 4, article 4, employ medical consultants and agents necessary to conduct investigations, gather information and perform those duties the executive director determines are necessary and appropriate to enforce this chapter.

5. Issue licenses, registrations and permits to applicants who meet the requirements of this chapter.

6. Manage the board's offices.

7. Prepare minutes, records, reports, registries, directories, books and newsletters and record all board transactions and orders.

8. Collect all monies due and payable to the board.

9. Pay all bills for authorized expenditures of the board and its staff.
10. Prepare an annual budget.
11. Submit a copy of the budget each year to the governor, the speaker of the house of representatives and the president of the senate.
12. Initiate an investigation if evidence appears to demonstrate that a physician may be engaged in unprofessional conduct or may be medically incompetent or mentally or physically unable to safely practice medicine.
13. Issue subpoenas if necessary to compel the attendance and testimony of witnesses and the production of books, records, documents and other evidence.
14. Provide assistance to the attorney general in preparing and sign and execute disciplinary orders, rehabilitative orders and notices of hearings as directed by the board.
15. Enter into contracts for goods and services pursuant to title 41, chapter 23 that are necessary to carry out board policies and directives.
16. Execute board directives.
17. Manage and supervise the operation of the Arizona regulatory board of physician assistants.
18. Issue licenses to physician assistant applicants who meet the requirements of chapter 25 of this title.
19. Represent the board with the federal government, other states or jurisdictions of the United States, this state, political subdivisions of this state, the news media and the public.
20. On behalf of the Arizona medical board, enter into stipulated agreements with persons under the jurisdiction of either the Arizona medical board or the Arizona regulatory board of physician assistants for the treatment, rehabilitation and monitoring of chemical substance abuse or misuse.
21. Review all complaints filed pursuant to section 32-1451. The executive director shall submit all medical complaints alleging harm as a result of patient care to a medical consultant for review. The executive director shall submit to the medical consultant only those medical complaints that involve a standard of care issue and that require medical training and expertise to determine whether a violation has occurred. If delegated by the board, the executive director may also dismiss a complaint if the complaint is without merit. The executive director shall not dismiss a complaint if a court has entered a medical malpractice judgment against a physician. The executive director shall submit a report of the cases dismissed with the complaint number, the name of the physician and the investigation timeline to the board for review at its regular board meetings.
22. If delegated by the board, directly refer cases to a formal hearing.

23. If delegated by the board, close cases resolved through mediation.
24. If delegated by the board, issue advisory letters.
25. If delegated by the board, enter into a consent agreement if there is evidence of danger to the public health and safety.
26. If delegated by the board, grant uncontested requests for inactive status and cancellation of a license pursuant to sections 32-1431 and 32-1433.
27. If delegated by the board, refer cases to the board for a formal interview.
28. Perform all other administrative, licensing or regulatory duties required by the board.
29. Disseminate any information received from the office of ombudsman-citizens aide to the board at its regular board meetings.

D. Medical consultants and agents appointed pursuant to subsection C, paragraph 4 of this section are eligible to receive compensation determined by the executive director in an amount not to exceed two hundred dollars for each day of service.

E. A person who is aggrieved by an action taken by the executive director pursuant to subsection C, paragraphs 21 through 27 of this section or section 32-1422, subsection E may request the board to review that action by filing with the board a written request within thirty days after that person is notified of the executive director's action by personal delivery or, if the notification is mailed to that person's last known residence or place of business, within thirty-five days after the date on the notification. At the next regular board meeting, the board shall review the executive director's action. On review, the board shall approve, modify or reject the executive director's action.

32-1406. Arizona medical board fund

A. The Arizona medical board fund is established. Pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all monies collected under the provisions of this chapter in the state general fund and deposit the remaining ninety per cent in the Arizona medical board fund.

B. Monies deposited in the fund are subject to section 35-143.01.

32-1407. Jurisdiction arbitration panel

A. When the board receives a complaint concerning a physician who is also licensed pursuant to chapter 29 of this title, the board shall immediately notify the board of homeopathic and integrated medicine examiners. If the boards disagree and if both boards continue to claim jurisdiction over the dual licensee, an arbitration panel shall decide jurisdiction pursuant to section 32-2907, subsections B, C, D and E.

B. If the licensing boards decide without resorting to arbitration which board or boards shall conduct the investigation, the board or boards conducting the investigation shall transmit all investigation materials, findings and conclusions to the other board with which the physician is licensed. The board or boards shall review this information to determine if disciplinary action shall be taken against the physician.

32-1421. Exemptions from licensing requirements

A. This article does not apply to any person while engaged in:

1. The provision of medical assistance in case of an emergency.
2. The administration of family remedies including the sale of vitamins, health foods or health food supplements or any other natural remedies, except drugs or medicines for which an authorized prescription is required by law.
3. The practice of religion, treatment by prayer or the laying on of hands as a religious rite or ordinance.
4. The practice of any of the healing arts of and by Indian tribes in this state.
5. The lawful practice of any of the healing arts to the extent authorized by a license issued by this state.
6. Activities or functions that do not require the exercise of a doctor of medicine's judgment for their performance, are not in violation of the laws of this state and are usually or customarily delegated by a doctor of medicine under the doctor's direction or supervision or are performed in accordance with the approval of a committee of physicians in a licensed health care institution.
7. The official duties of a medical officer in the armed forces of the United States, the United States department of veterans affairs or the United States public health service or their successor agencies, if the duties are restricted to federal lands.
8. Any act, task or function competently performed by a physician assistant in the proper performance of the physician assistant's duties.
9. The emergency harvesting of donor organs by a doctor of medicine or team of doctors of medicine licensed to practice medicine in another state or country for use in another state or country.

B. This article does not apply to:

1. A doctor of medicine residing in another jurisdiction who is authorized to practice medicine in that jurisdiction, if the doctor engages in actual single or infrequent consultation with a doctor of medicine licensed in this state and if the consultation regards a specific patient or patients.

2. A doctor of medicine who is licensed to practice in another jurisdiction if the doctor engages in the practice of medicine that is limited to patients with whom the doctor has an already established doctor-patient relationship and who reside outside this jurisdiction when both the doctor and the patient are physically in this state for not more than sixty consecutive days. For the purposes of this paragraph, "patient" means a person who is not a resident of this state and who is an athlete or a professional entertainer.

32-1422. Basic requirements for granting a license to practice medicine; credentials verification

A. An applicant for a license to practice medicine in this state pursuant to this article shall meet each of the following basic requirements:

1. Graduate from an approved school of medicine or receive a medical education that the board deems to be of equivalent quality.
2. Successfully complete an approved twelve-month hospital internship, residency or clinical fellowship program.
3. Have the physical and mental capability to safely engage in the practice of medicine.
4. Have a professional record that indicates that the applicant has not committed any act or engaged in any conduct that would constitute grounds for disciplinary action against a licensee under this chapter.
5. Not have had a license to practice medicine revoked by a medical regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.
6. Not be currently under investigation, suspension or restriction by a medical regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter. If the applicant is under investigation by a medical regulatory board in another jurisdiction, the board shall suspend the application process and may not issue or deny a license to the applicant until the investigation is resolved.
7. Not have surrendered a license to practice medicine in lieu of disciplinary action by a medical regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
8. Pay all fees required by the board.
9. Complete the application as required by the board.
10. Complete a training unit as prescribed by the board relating to the requirements of this chapter and board rules. The applicant shall submit proof with the application form of having completed the training unit.

11. Have submitted directly to the board, electronically or by hard copy, verification of the following:

(a) Licensure from every state in which the applicant has ever held a medical license.

(b) All medical employment for the five years preceding application. If the applicant is employed by a hospital or medical group or organization, the board shall accept the confirmation required under this subdivision from the applicant's employer. For the purposes of this subdivision, medical employment includes all medical professional activities.

12. Have submitted a full set of fingerprints to the board for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

B. The board may require the submission of credentials or other evidence, written and oral, and make any investigation it deems necessary to adequately inform itself with respect to an applicant's ability to meet the requirements prescribed by this section, including a requirement that the applicant for licensure undergo a physical examination, a mental evaluation and an oral competence examination and interview, or any combination thereof, as the board deems proper.

C. In determining if the requirements of subsection A, paragraph 4 of this section have been met, if the board finds that the applicant committed an act or engaged in conduct that would constitute grounds for disciplinary action, the board shall determine to its satisfaction that the conduct has been corrected, monitored and resolved. If the matter has not been resolved, the board shall determine to its satisfaction that mitigating circumstances exist that prevent its resolution.

D. In determining if the requirements of subsection A, paragraph 6 of this section have been met, if another jurisdiction has taken disciplinary action against an applicant, the board shall determine to its satisfaction that the cause for the action was corrected and the matter resolved. If the matter has not been resolved by that jurisdiction, the board shall determine to its satisfaction that mitigating circumstances exist that prevent its resolution.

E. The board may delegate authority to the executive director to deny licenses if applicants do not meet the requirements of this section.

F. Any credential information required to be submitted to the board pursuant to this article must be submitted, electronically or by hard copy, from the primary source where the document or information originated, except that the board may accept primary-source verified credentials from a credentials verification service approved by the board. The board is not required to verify any documentation or information received by the board from a credentials verification service that has been approved by the board. If an applicant is unable to provide a document or information from the primary source due to no fault of the applicant, the executive director shall forward the issue to the full board for review and determination. The board shall adopt rules establishing the criteria that must be met in order to waive a documentation requirement of this article.

32-1422.01. Expedited licensure; medical licensure compact; fingerprinting

Beginning September 1, 2017, applicants for expedited licensure pursuant to section 32-3241 shall submit a full set of fingerprints to the board for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation. Communication between the board and the interstate medical licensure compact commission regarding verification of physician eligibility for licensure under the medical licensure compact may not include any information received from the federal bureau of investigation relating to a state and federal criminal records check performed for the purposes of section 32-3241, section 5, subsection B, paragraph 2.

32-1423. Additional requirements for students graduating from an unapproved allopathic school of medicine

In addition to the basic requirements for licensure prescribed in section 32-1422, any applicant who has graduated from an unapproved school of medicine shall meet each of the following requirements:

1. Be able to read, write, speak, understand and be understood in the English language.
2. Hold a standard certificate issued by the educational council for foreign medical graduates, complete a fifth pathway program as provided in section 32-1424, subsection A, or complete thirty-six months as a full-time assistant professor or in a higher position in an approved school of medicine.
3. Successfully complete an approved twenty-four month hospital internship, residency or clinical fellowship program, in addition to the twelve months required in section 32-1422, subsection A, paragraph 2, for a total of thirty-six months of training unless the applicant successfully completed a fifth pathway program as provided by section 32-1424 or has served as a full-time assistant professor or in a higher position in an approved school of medicine for a total of thirty-six months.

32-1424. Fifth pathway program; licensure

A. In addition to the requirements for licensure prescribed in sections 32-1422 and 32-1423, an applicant for licensure under this article who attended a foreign school of medicine and successfully completed all the formal requirements to receive the degree of doctor of medicine except internship or social service, and is accordingly not eligible for certification by the educational council for foreign medical graduates, may be considered for licensure under this chapter if the applicant meets the following conditions:

1. Satisfactorily completes an approved fifth pathway program of one academic year of supervised clinical training under the direction of an approved school of medicine in the United States.

2. Successfully completes an approved twenty-four month internship, residency or clinical fellowship program upon completion of the fifth pathway program.
- B. A document granted by a foreign school of medicine signifying completion of all the formal requirements for graduation from such foreign medical school except internship or social service training, or both, along with certification by the approved school of medicine in the United States of successful completion of the fifth pathway program is deemed the equivalent of a degree of doctor of medicine for purposes of licensure and practice as a physician in this state.

32-1425. Initial licensure

- A. An applicant who meets the applicable requirements provided in section 32-1422, 32-1423 or 32-1424, has passed steps one and two of the United States medical licensing examination or one of the examination combinations prescribed in section 32-1426, subsection A, paragraph 6, subdivision (c), items (i) and (ii), has paid the fees required by this chapter and has filed a completed application found by the board to be true and correct is eligible for licensure as a doctor of medicine upon successful passage of step three of the United States medical licensing examination with a scaled score of at least seventy-five if the applicant has passed all three steps within a seven year period.
- B. An applicant for licensure applying pursuant to section 32-1422, 32-1423 or 32-1424 may take the examination only after successfully completing six months of a board approved hospital internship, residency or clinical fellowship or fifth pathway program or serving as a full-time assistant professor or in a higher position in a board approved school of medicine in this state.
- C. The board shall not grant a license until the applicant meets the requirements for licensure pursuant to this chapter.

32-1426. Licensure by endorsement

- A. An applicant who is licensed in another jurisdiction or whose license under this chapter has been revoked or surrendered or has expired and who meets the applicable requirements prescribed in section 32-1422, 32-1423 or 32-1424, has paid the fees required by this chapter and has filed a completed application found by the board to be true and correct is eligible to be licensed to engage in the practice of medicine in this state through endorsement under any one of the following conditions:

1. The applicant is certified by the national board of medical examiners or its successor entity as having successfully passed all three parts of the United States medical licensing examination or its successor examination.
2. The applicant has successfully passed a written examination that the board determines is equivalent to the United States medical licensing examination and that is administered by any

state, territory or district of the United States, a province of Canada or the medical council of Canada.

3. The applicant successfully completed the three-part written federation of state medical boards licensing examination administered by any jurisdiction before January 1, 1985 and obtained a weighted grade average of at least seventy-five on the complete examination. Successful completion of the examination shall be achieved in one sitting.
4. The applicant successfully completed the two component federation licensing examination administered after December 1, 1984 and obtained a scaled score of at least seventy-five on each component within a five-year period.
5. The applicant's score on the United States medical licensing examination was equal to the score required by this state for licensure pursuant to section 32-1425.
6. The applicant successfully completed one of the following combinations of examinations:
 - (a) Parts one and two of the national board of medical examiners examination, administered either by the national board of medical examiners or the educational commission for foreign medical graduates, with a successful score determined by the national board of medical examiners and passed either step three of the United States medical licensing examination or component two of the federation licensing examination with a scaled score of at least seventy-five.
 - (b) The federation licensing examination component one examination and the United States medical licensing step three examination with scaled scores of at least seventy-five.
 - (c) Each of the following:
 - (i) Part one of the national board of medical examiners licensing examination with a passing grade as determined by the national board of medical examiners or step one of the United States medical licensing examination with a scaled score of at least seventy-five.
 - (ii) Part two of the national board of medical examiners licensing examination with a passing grade as determined by the national board of medical examiners or step two of the United States medical licensing examination with a scaled score of at least seventy-five.
 - (iii) Part three of the national board of medical examiners licensing examination with a passing grade as determined by the national board of medical examiners or step three of the United States medical licensing examination with a scaled score of at least seventy-five or component two of the federation licensing examination with a scaled score of at least seventy-five.

applicant's ability to safely engage in the practice of medicine. The board may also conduct a records review and physical and psychological assessments, if appropriate, and may review practice history to determine the applicant's ability to safely engage in the practice of medicine.

32-1427. Application; hearing on deficiencies in application; interview; probationary license

A. Each applicant for licensure shall submit a completed application as prescribed by the board together with the fee prescribed in this article. The board may require the submission of any evidence, credentials and other proof necessary for it to verify and determine if the applicant meets the requirements for licensure.

B. Each application submitted pursuant to this section shall contain the oath of the applicant that:

1. All of the information contained in the application and accompanying evidence or other credentials submitted are true.

2. The credentials submitted with the application were procured without fraud or misrepresentation or any mistake of which the applicant is aware and that the applicant is the lawful holder of the credentials.

3. The applicant authorizes the release of any information from any source requested by the board necessary for initial and continued licensure in this state.

C. All applications, completed or otherwise, together with all attendant evidence, credentials and other proof submitted with the applications are the property of the board.

D. The board, promptly and in writing, shall inform an applicant of any deficiency in the application that prevents the application from being processed.

E. On request the board shall grant an applicant who disagrees with the statement of deficiency a hearing before the board at its next regular meeting if there is time at that meeting to hear the matter. The board shall not delay this hearing beyond one regularly scheduled meeting. At any hearing granted pursuant to this subsection, the burden of proof is on the applicant to demonstrate that the alleged deficiencies do not exist.

F. Applications are considered withdrawn:

1. On the applicant's written request.

2. Except for good cause shown, if the applicant does not appear for an interview with the board.

3. If the applicant does not submit within one year of notification the necessary evidence, credentials or other proof identified by the board as being deficient pursuant to subsection D of this section.

G. The board may deny a license to an applicant who does not meet the requirements of this article.

H. If an applicant does not meet the requirements of section 32-1422, subsection A, paragraph 3 the board may issue a license subject to any of the following probationary conditions:

1. Require the licensee's practice to be supervised by another physician.
2. Restrict the licensee's practice.
3. Require the licensee to continue medical or psychiatric treatment.
4. Require the licensee to participate in a specified rehabilitation program.
5. Require the licensee to abstain from alcohol and other drugs.

I. If the board offers a probationary license to an applicant pursuant to subsection H of this section, it shall notify the applicant in writing of the following:

1. The applicant's specific deficiencies.
2. The probationary period.
3. The applicant's right to reject the terms of probation.
4. If the applicant rejects the terms of probation, the applicant's right to a hearing on the board's denial of the application.

32-1428. Pro bono registration

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

1. Holds an active and unrestricted license to practice medicine in a state, territory or possession of the United States or an inactive license pursuant to section 32-1431.
2. Has never had the license revoked or suspended.
3. Is not the subject of an unresolved complaint.
4. Applies for registration on a yearly basis as prescribed by the board.
5. Agrees to render all medical services without accepting a fee or salary or performs only initial or follow-up examinations at no cost to the patient and the patient's family through a charitable organization.

B. The sixty days of practice prescribed pursuant to subsection A of this section may be performed consecutively or cumulatively during each calendar year.

C. For the purpose of meeting the requirements of subsection A of this section, an applicant shall provide the board the name of each state in which the person is licensed or has held a license and the board shall verify with the applicable regulatory board of each state that the applicant is licensed or has held a license, has never had a license revoked or suspended and is not the subject of an unresolved complaint. The board may accept the verification of the information required by subsection A, paragraphs 1, 2 and 3 of this section from each of the other state's regulatory board either electronically or by hard copy.

32-1429. Locum tenens registration

A. The board may issue a registration to allow a doctor of medicine who is not a licensee to provide locum tenens medical services to substitute for or temporarily assist a doctor of medicine who holds an active license pursuant to this chapter or a doctor of osteopathy who holds an active license pursuant to chapter 17 of this title under the following conditions:

1. The applicant holds an active license to practice medicine issued by a state, district, territory or possession of the United States.

2. The applicant provides on forms and in a manner prescribed by the board proof that the applicant meets the applicable requirements of section 32-1422, 32-1423 or 32-1424.

3. The license of the applicant from the jurisdiction in which the applicant regularly practices medicine is current and unrestricted and has not been revoked or suspended for any reason and there are no unresolved complaints or formal charges filed against the applicant with any licensing board.

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

5. The applicant pays the fee prescribed under section 32-1436.

B. Locum tenens registration granted pursuant to this section is valid for a period of one hundred eighty consecutive days. A doctor of medicine is eligible to apply for and be granted locum tenens registration once every three years.

32-1430. License renewal; expiration

A. Except as provided in section 32-4301, each person holding an active license to practice medicine in this state shall renew the license every other year on or before the licensee's birthday and shall pay the fee required by this article, accompanied by a completed renewal form. The board shall provide the renewal form online and, on request, shall mail the form to the licensee. A licensee who does not renew an active license as required by this subsection on or before thirty

days after the licensee's birthday must also pay a penalty fee as required by this article for late renewal. A licensee's license automatically expires if the licensee does not renew an active license within four months after the licensee's birthday. A person who practices medicine in this state after that person's active license has expired is in violation of this chapter.

B. A person renewing an active license to practice medicine in this state shall provide to the board as part of the renewal process a report of disciplinary actions, restrictions or any other action placed on or against that person's license or practice by another state licensing or disciplinary board or an agency of the federal government. This action may include denying a license or failing the special purpose licensing examination. The report shall include the name and address of the sanctioning agency or health care institution, the nature of the action taken and a general statement of the charges leading to the action taken.

C. The licensee shall submit proof with the renewal form of having completed a training unit as prescribed by the board relating to the requirements of this chapter and board rules.

D. A person whose license has expired may reapply for a license to practice medicine as provided in this chapter.

32-1431. Inactive license; application; practice prohibitions

A. A person holding a current active license to practice medicine in this state may request an inactive license from the board if both of the following are true:

1. The licensee is not presently under investigation by the board.
2. The board has not commenced any disciplinary proceeding against the licensee.

B. The board may grant an inactive license and waive the renewal fees and requirements for continuing medical education specified by section 32-1434 if the licensee provides evidence to the board's satisfaction that the licensee has totally retired from the practice of medicine in this state and any state, territory and district of the United States or any foreign country and has paid all of the fees required by this chapter before the request. The board may grant pro bono registration pursuant to section 32-1428 to a physician who holds an inactive license under this section.

C. During any period in which a medical doctor holds an inactive license, that person shall not engage in the practice of medicine or continue to hold or maintain a drug enforcement administration controlled substances registration certificate, except as permitted by a pro bono registration pursuant to section 32-1428. Any person who engages in the practice of medicine while on inactive license status is considered to be a person who practices medicine without a license or without being exempt from licensure as provided in this chapter.

D. The board may convert an inactive license to an active license if the applicant pays the renewal fee and presents evidence satisfactory to the board that the applicant possesses the medical knowledge and is physically and mentally able to safely engage in the practice of

medicine. The board may require any combination of physical examination, psychiatric or psychological evaluation or successful passage of the special purpose licensing examination or interview it finds necessary to assist it in determining the ability of a physician holding an inactive license to return to the active practice of medicine.

32-1432. Teaching license

A. A board approved school of medicine in this state or a teaching hospital's accredited graduate medical education program in this state may invite a doctor of medicine to provide and promote professional education through lectures, clinics or demonstrations. The doctor of medicine is prohibited from opening an office or designating a place to meet patients or receive calls relating to the practice of medicine in this state outside of the facilities and programs of the approved school or teaching hospital.

B. To receive a teaching license, the doctor of medicine shall:

1. Complete an application as prescribed by the board.

2. Pay all required fees.

3. Meet the basic requirements of section 32-1422 except for those relating to completing an approved hospital internship, residency or clinical fellowship program.

C. A teaching license is limited to a one year period. The doctor of medicine may reapply annually for no more than a total of four years. With each reapplication the doctor of medicine must submit all required fees and a petition from the school or teaching hospital asking the board for continuation of the teaching license.

D. The holder of a teaching license is not exempt from the requirements of this chapter with the exception of the training and examination requirements of this article.

E. A doctor of medicine holding a current teaching license at an approved school of medicine may convert that license into an active license by filing an application and meeting all applicable requirements of this article.

32-1432.01. Education teaching permit

A. The dean of a board approved school of medicine or the chairman of a teaching hospital's accredited graduate medical education program may invite a doctor of medicine who is not licensed in this state to demonstrate and perform medical procedures and surgical techniques for the sole purpose of promoting professional education for students, interns, residents, fellows and doctors of medicine in this state.

B. The chairman or dean of the inviting institution shall provide to the board evidence that an applicant for an educational permit has malpractice insurance in an amount that meets the requirements of the institution and that the applicant accepts all responsibility and liability for the

procedures he performs within the scope of his permit. In a letter to the board, the chairman or the dean of the inviting institution shall outline the procedures and techniques that the doctor of medicine shall perform or demonstrate and the dates that this activity will occur. The letter shall also include a summary of the doctor's of medicine educational and professional background and be accompanied by the fee required pursuant to section 32-1436.

C. The inviting institution shall submit the fees and documents required pursuant to subsection B of this section no later than two weeks before the scheduled activity.

D. The board or its staff shall issue an educational teaching permit for no more than five days for each approved activity.

32-1432.02. Training permit; short-term permits; discipline

A. The board shall grant a one year renewable training permit to a person participating in a teaching hospital's accredited internship, residency or clinical fellowship training program to allow that person to function only in the supervised setting of that program. Before the board issues the permit, the person shall comply with the applicable registration requirements of this article and pay the fee prescribed in section 32-1436.

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

C. The board shall grant a training permit to a person who is not licensed in this state and who is participating in a short-term training program of four months or less conducted in an approved school of medicine or a hospital that has an accredited hospital internship, residency or clinical fellowship program in this state for the purpose of continuing medical education. Before the board issues the permit, the person shall comply with the applicable registration requirements of this article and pay the fee prescribed in section 32-1436.

D. A permittee is subject to the disciplinary regulation of article 3 of this chapter.

32-1432.03. Training permits; approved schools

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

1. Participates in a program at an approved school of medicine or a hospital that has an approved hospital internship, residency or clinical fellowship program if the purpose of the program is to exchange technical and educational information.

2. Pays the prescribed fee.

3. Submits a written statement from the dean of the approved school of medicine or from the chairman of a teaching hospital's accredited graduate medical education program that:
 - (a) Includes a request for the permit and describes the purpose of the exchange program.
 - (b) Specifies that the host institution will provide liability coverage.
 - (c) Provides the name of a doctor of medicine who will serve as the preceptor of the host institution and provide appropriate supervision of the participant.
 - (d) States that the host institution has advised the participant that the participant may serve as a member of an organized medical team but shall not practice medicine independently and that this training does not accrue toward postgraduate training requirements for licensure.

32-1433. Cancellation of active license

On request of an active licensee, the board may cancel that person's license if both of the following are true:

1. The licensee is not presently under investigation by the board.
2. The board has not commenced any disciplinary proceeding against the licensee.

32-1434. Continuing medical education; audit

- A. A person who holds an active license to practice medicine in this state shall satisfy a continuing medical education requirement that is designed to provide the necessary understanding of current developments, skills, procedures or treatment related to the practice of medicine in such amount and during such period as the board establishes by rule.
- B. Compliance with subsection A of this section shall be documented at such times and in such manner as the board shall establish.
- C. Failure of a person holding an active license to practice medicine to comply with this section without adequate cause being shown is grounds for probation, suspension or revocation of such person's license.
- D. The board shall randomly audit, once every two years, at least ten per cent of physicians to verify continuing medical education compliance.

32-1435. Change of address; costs; penalties

- A. Each active licensee shall promptly and in writing inform the board of the licensee's current residence address, office address and telephone number and of each change in residence address, office address or telephone number that may later occur.

B. The board may assess the costs incurred by the board in locating a licensee and in addition a penalty of not to exceed one hundred dollars against a licensee who fails to comply with subsection A within thirty days from the date of change. Notwithstanding any law to the contrary, monies collected pursuant to this subsection shall be deposited in the Arizona medical board fund.

32-1436. Fees and penalty

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

1. For processing an application for an active license, seven hundred dollars.
2. For issuance of an active license, seven hundred dollars.
3. For an application to reactivate an inactive status license, five hundred dollars.
4. For issuance of a duplicate license, fifty dollars.
5. For renewal of an active license, seven hundred dollars.
6. For late renewal of an active license, an eight hundred dollar penalty.
7. For annual registration of an approved internship, residency, clinical fellowship program or short-term residency program, fifty dollars.
8. For an annual teaching license at an approved school of medicine or at an approved teaching hospital's accredited graduate medical education program, four hundred dollars.
9. For a five day educational teaching permit at an approved school of medicine or at an approved teaching hospital's accredited graduate medical education program, one hundred dollars.
10. For locum tenens registration, five hundred dollars.
11. For the sale of those copies of the annual medical directory that are not distributed free of charge, thirty dollars.
12. For the sale of the annual medical directory on CD-ROM, one hundred dollars.
13. For the sale of computerized tapes or diskettes not requiring programming, one hundred dollars.
14. For verification of a license, ten dollars.

15. For a copy of the minutes to board meetings during the current calendar year, twenty-five dollars for each set of minutes.

16. For copying records, documents, letters, minutes, applications and files, one dollar for the first three pages and twenty-five cents for each additional page.

17. For initial and annual registration to dispense drugs and devices, two hundred dollars.

18. For renewal applications that the board returns to the licensee for proper completion, a fee that does not exceed the cost of processing the incomplete application.

B. The board shall charge additional fees for services that are not required to be provided by this chapter but that the board deems necessary and appropriate to carry out its intent and purpose, except that these fees shall not exceed the actual cost of providing those services.

C. Notwithstanding subsection A of this section, the board may return the license renewal fee on special request.

D. The board shall provide computerized tapes or diskettes free to the management information systems office of the Arizona health care cost containment system.

E. The fee for minutes provided pursuant to this section includes postage. Annual subscription requests and fees for minutes shall be paid before February 1 of each year. Subscriptions for minutes of board meetings are not available for past years.

F. The fee for copying provided in this section includes postage. Copying fees for subpoenaed records shall be as prescribed in section 12-351.

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

32-1437. Training permits; qualified military health professionals

A. The board shall issue a training permit to a qualified military health professional who is practicing allopathic medicine in the United States armed forces and who is discharging the health professional's official duties by participating in a clinical training program based at a civilian hospital affiliated with the United States department of defense.

B. Before the board issues the training permit, the qualified military health professional must submit a written statement from the United States department of defense that the applicant:

1. Is a member of the United States armed forces who is performing duties for and at the direction of the United States department of defense at a location in this state approved by the United States department of defense.

2. Has a current license or is credentialed to practice allopathic medicine in a jurisdiction of the United States.
3. Meets all required qualification standards prescribed pursuant to 10 United States Code section 1094(d) relating to the licensure requirements for health professionals.
4. Has not had a license to practice revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.
5. Is not currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.
6. Has not surrendered, relinquished or given up a license in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter. This paragraph does not prevent the board from considering the request for a training permit of a qualified military health professional who surrendered, relinquished or gave up a license in lieu of disciplinary action by a regulatory board in another jurisdiction if that regulatory board subsequently reinstated the qualified military health professional's license.

C. The qualified military health professional may not open an office or designate a place to meet patients or receive calls relating to the practice of allopathic medicine in this state outside of the facilities and programs of the approved civilian hospital.

D. The qualified military health professional may not practice outside of the professional's scope of practice.

E. A training permit issued pursuant to this section is valid for one year. The qualified military health professional may apply annually to the board to renew the permit. With each application to renew the qualified military health professional must submit a written statement from the United States department of defense asking the board for continuation of the training permit.

F. The board may not impose a fee to issue or renew a training permit to a qualified military health professional pursuant to this section.

32-1438. [Temporary licensure; requirements; fee](#)

A. Beginning July 1, 2017, the board may issue a temporary license, which may not be renewed or extended, to allow a physician who is not a licensee to practice in this state for a total of up to two hundred fifty consecutive days if the physician meets all of the following requirements:

1. Holds an active and unrestricted license to practice medicine in a state, territory or possession of the United States.

2. Has applied for a license pursuant to section 32-1422 and meets the requirements specified in section 32-1422, subsection A, paragraphs 1 through 7.

3. Has paid any applicable fees.

B. The physician shall submit to the board a notarized affidavit attesting that the physician meets the requirements of subsection A, paragraphs 1 and 2 of this section. The physician shall notify the board immediately if any circumstance specified in subsection A, paragraphs 1 and 2 of this section changes during the application period for a temporary license or while holding a temporary license, at which time the board may suspend, deny or revoke the temporary license. The board may suspend, deny or revoke a temporary license and withdraw the application for initial licensure if the applicant has made a misrepresentation in the attestation required by this section or any other portion of the application pursuant to this chapter.

C. The board shall approve or deny an application under this section within thirty days after an applicant files a complete application. The approval of a temporary license pursuant to this section allows the physician to practice in this state without restriction.

D. If granted, the physician's temporary license expires the earlier of two hundred fifty days after the date the temporary license is granted or on approval or denial of the physician's license application submitted pursuant to section 32-1422.

E. For the purpose of meeting the requirements of subsection A of this section, an applicant shall provide the board the name of each state, territory or possession of the United States in which the person is licensed or has held a license and the board shall verify with the applicable regulatory board that the applicant holds an active and unrestricted license to practice medicine and has never had a license revoked or suspended or surrendered a license for disciplinary reasons. An applicant shall also provide the board with all medical employment as required by section 32-1422, subsection A. The board may accept the confirmation of this information from each other regulatory board verbally, in writing or through the use of the other regulatory board's website, which shall be followed by either an electronic or hard copy of the verification required by section 32-1422, subsection F before the physician's permanent license is granted. If the board is unable to verify the information within the initial thirty days as required by subsection C of this section, the board may extend the time frame by an additional thirty days to receive the necessary verification.

F. The board may establish a fee in rule for temporary licensure under this section.

32-1439. Specialty certification; prohibited requirement for licensure; definition

A. The board may not require an applicant for licensure pursuant to this article to hold or maintain a specialty certification as a condition of licensure in this state. This subsection does not prohibit the board from considering an applicant's specialty certification as a factor in whether to grant a license to the applicant.

B. For the purposes of this section, "specialty certification" means certification by a board that specializes in one particular area of medicine and that may require examinations in addition to those required by this state to be licensed to practice medicine.

32-1451. Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice requirements

A. The board on its own motion may investigate any evidence that appears to show that a doctor of medicine is or may be medically 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 medicine. On written request of a complainant, the board shall review a complaint that has been administratively closed by the executive director and take any action it deems appropriate. Any person may, and a doctor of medicine, the Arizona medical association, a component county society of that association and any health care institution shall, report to the board any information that appears to show that a doctor of medicine is or may be medically 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 medicine. The board or the executive director shall notify the doctor 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. If requested, the board shall not disclose the name of a person who supplies information regarding a licensee's drug or alcohol impairment. It is an act of unprofessional conduct for any doctor of medicine to fail to report as required by this section. The board shall report any health care institution that fails to report as required by this section to that institution's licensing agency.

B. The chief executive officer, the medical director or the medical chief of staff of a health care institution shall inform the board if the privileges of a doctor to practice in that health care institution are denied, revoked, suspended or limited because of actions by the doctor that appear to show that the doctor is or may be medically 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 medicine, along with a general statement of the reasons, including patient chart numbers, that led the health care institution to take the action. The chief executive officer, the medical director or the medical chief of staff of a health care institution shall inform the board if a doctor under investigation resigns or if a doctor resigns in lieu of disciplinary action by the health care institution. Notification shall include a general statement of the reasons for the resignation, including patient chart numbers. The board shall inform all appropriate health care institutions in this state as defined in section 36-401 and the Arizona health care cost containment system administration of a resignation, denial, revocation, suspension or limitation, and the general reason for that action, without divulging the name of the reporting health care institution. A person who reports information in good faith pursuant to this subsection is not subject to civil liability.

C. The board or, if delegated by the board, the executive director shall require, at the doctor's expense, any combination of mental, physical or oral or written medical competency examinations and conduct necessary investigations, including investigational interviews between representatives of the board and the doctor to fully inform itself with respect to any information filed with the board under subsection A of this section. These examinations may include

biological fluid testing and other examinations known to detect the presence of alcohol or other drugs. The board or, if delegated by the board, the executive director may require the doctor, at the doctor's expense, to undergo assessment by a board approved rehabilitative, retraining or assessment program. This subsection does not establish a cause of action against any person, facility or program that conducts an assessment, examination or investigation in good faith pursuant to this subsection.

D. If the board finds, based on the information it receives under subsections A and B of this section, that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the board may restrict a license or order a summary suspension of a license pending proceedings for revocation or other action. If the board takes action pursuant to this subsection, it shall also serve the licensee with a written notice that states the charges and that the licensee is entitled to a formal hearing before the board or an administrative law judge within sixty days.

E. If, after completing its investigation, the board finds that the information provided pursuant to subsection A of this section is not of sufficient seriousness to merit disciplinary action against the license of the doctor, the board or a board committee may take any of the following actions:

1. Dismiss if, in the opinion of the board, the information is without merit.
2. Require the licensee to complete designated continuing medical education courses.
3. File an advisory letter. The licensee may file a written response with the board within thirty days after receiving the advisory letter.

F. If the board finds that it can take rehabilitative or disciplinary action without the presence of the doctor at a formal interview, it may enter into a consent agreement with the doctor to limit or restrict the doctor's practice or to rehabilitate the doctor in order to protect the public and ensure the doctor's ability to safely engage in the practice of medicine. The board may also require the doctor to successfully complete a board approved rehabilitative, retraining or assessment program at the doctor's own expense.

G. The board shall not disclose the name of the person who provided information regarding a licensee'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 formal interview with the doctor. If the doctor refuses the invitation for a formal interview or accepts and the results indicate that grounds may exist for revocation or suspension of the doctor's license for more than twelve months, the board shall issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. If after completing a formal interview the board finds that the protection of the public requires emergency action, it may order a summary suspension of the license pending formal revocation proceedings or other action authorized by this section.

I. If after completing the formal interview the board finds the information provided under subsection A of this section is not of sufficient seriousness to merit suspension for more than twelve months or revocation of the license, it may take the following actions:

1. Dismiss if, in the opinion of the board, the complaint is without merit.
 2. Require the licensee to complete designated continuing medical education courses.
 3. File an advisory letter. The licensee may file a written response with the board within thirty days after the licensee receives the advisory letter.
 4. Enter into an agreement with the doctor to restrict or limit the doctor's practice or professional activities or to rehabilitate, retrain or assess the doctor in order to protect the public and ensure the doctor's ability to safely engage in the practice of medicine. The board may also require the doctor to successfully complete a board approved rehabilitative, retraining or assessment program at the doctor's own expense pursuant to subsection F of this section.
 5. File a letter of reprimand.
 6. Issue a decree of censure. A decree of censure is an official action against the doctor's license and may include a requirement for restitution of fees to a patient resulting from violations of this chapter or rules adopted under this chapter.
 7. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the doctor concerned. Probation may include temporary suspension for not to exceed twelve months, restriction of the doctor's license to practice medicine, a requirement for restitution of fees to a patient or education or rehabilitation at the licensee's own expense. If a licensee fails to comply with the terms of probation, the board shall serve the licensee with a written notice that states that the licensee is subject to a formal hearing based on the information considered by the board at the formal interview and any other acts or conduct alleged to be in violation of this chapter or rules adopted by the board pursuant to this chapter, including noncompliance with the term of probation, a consent agreement or a stipulated agreement. A licensee shall pay the costs associated with probation monitoring each year during which the licensee is on probation. The board may adjust this amount on an annual basis. The board may allow a licensee to make payments on an installment plan if a financial hardship occurs. A licensee who does not pay these costs within thirty days after the due date prescribed by the board violates the terms of probation.
- J. If the board finds that the information provided in subsection A of this section warrants suspension or revocation of a license issued under this chapter, it shall initiate formal proceedings pursuant to title 41, chapter 6, article 10.
- K. In a formal interview pursuant to subsection H of this section or in a hearing pursuant to subsection J of this section, the board in addition to any other action may impose a civil penalty in the amount of not less than one thousand dollars nor more than ten thousand dollars for each violation of this chapter or a rule adopted under this chapter.

L. An advisory letter is a public document.

M. Any doctor of medicine 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 medicine or to be medically incompetent is subject to censure, probation as provided in this section, suspension of license or revocation of license or any combination of these, including a stay of action, and for a period of time or permanently and under conditions as the board deems appropriate for the protection of the public health and safety and just in the circumstance. The board may charge the costs of formal hearings to the licensee who it finds to be in violation of this chapter.

N. If the board acts to modify any doctor of medicine's prescription writing privileges, the board shall immediately notify the state board of pharmacy of the modification.

O. If the board, during the course of any investigation, determines that a criminal violation may have occurred involving the delivery of health care, it shall make the evidence of violations available to the appropriate criminal justice agency for its consideration.

P. The board may divide into review committees of not less than three members, including a public member. The committees shall review complaints not dismissed by the executive director and may take the following actions:

1. Dismiss the complaint if a committee determines that the complaint is without merit.
2. Issue an advisory letter. The licensee may file a written response with the board within thirty days after the licensee receives the advisory letter.
3. Conduct a formal interview pursuant to subsection H of this section. This includes initiating formal proceedings pursuant to subsection J of this section and imposing civil penalties pursuant to subsection K of this section.
4. Refer the matter for further review by the full board.

Q. Pursuant to sections 35-146 and 35-147, the board shall deposit all monies collected from civil penalties paid pursuant to this chapter in the state general fund.

R. Notice of a complaint and hearing is effective by a true copy of it being sent by certified mail to the doctor's last known address of record in the board's files. Notice of the complaint and hearing is complete on the date of its deposit in the mail. The board shall begin a formal hearing within one hundred twenty days of that date.

S. A physician who submits an independent medical examination pursuant to an order by a court or pursuant to section 23-1026 is not subject to a complaint for unprofessional conduct unless, in the case of a court-ordered examination, the complaint is made or referred by a court to the board, or in the case of an examination conducted pursuant to section 23-1026, the complaint alleges unprofessional conduct based on some act other than a disagreement with the findings

and opinions expressed by the physician as a result of the examination. For the purposes of this subsection, "independent medical examination" means a professional analysis of medical status that is based on a person's past and present physical, medical and psychiatric history and conducted by a licensee or group of licensees on a contract basis for a court or for a workers' compensation carrier, self-insured employer or claims processing representative if the examination was conducted pursuant to section 23-1026.

T. The board may accept the surrender of an active license from a person who admits in writing to any of the following:

1. Being unable to safely engage in the practice of medicine.
2. Having committed an act of unprofessional conduct.
3. Having violated this chapter or a board rule.

U. In determining the appropriate disciplinary action under this section, the board shall consider all previous nondisciplinary and disciplinary actions against a licensee.

V. In determining the appropriate action under this section, the board may consider a direct or indirect competitive relationship between the complainant and the respondent as a mitigating factor.

32-1451.01. Right to examine and copy evidence; witnesses; documents; testimony; representation

A. In connection with the investigation by the board on its own motion, or as the result of information received pursuant to section 32-1451, subsection A, the board or its duly authorized agents or employees at all reasonable times may examine and copy any documents, reports, records or other physical evidence of the person it is investigating or that is in possession of any hospital, clinic, physician's office, laboratory, pharmacy, public or private agency, health care institution as defined in section 36-401 and health care provider and that relates to medical competence, unprofessional conduct or the mental or physical ability of a licensee to safely practice medicine.

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

1. The board on its own initiative or on application of any person involved in the investigation may issue subpoenas to require the attendance and testimony of witnesses or to demand the production for examination or copying of documents or any other physical evidence that relates to medical competence, unprofessional conduct or the mental or physical ability of a licensee to safely practice medicine. Within five days after a person is served with a subpoena that person may petition the board to revoke, limit or modify the subpoena. The board shall do so if in its opinion the evidence required does not relate to unlawful practices covered by this chapter, is not relevant to the charge that is the subject matter of the hearing or investigation or does not describe with sufficient particularity the physical evidence whose production is required. Any

member of the board or any agent designated by the board may administer oaths or affirmations, examine witnesses and receive evidence.

2. Any person appearing before the board may be represented by counsel.
 3. On application by the board or by the person subpoenaed, the superior court may issue an order to either:
 - (a) Require the subpoenaed person to appear before the board or the duly authorized agent to produce evidence relating to the matter under investigation.
 - (b) Revoke, limit or modify the subpoena if in the court's opinion the evidence demanded does not relate to unlawful practices covered by this chapter, is not relevant to the charge which is the subject matter of the hearing or investigation or does not describe with sufficient particularity the evidence whose production is required.
- C. Patient records, including clinical records, medical reports, laboratory statements and reports, any file, film, other report or oral statement relating to diagnostic findings or treatment of patients, any information from which a patient or the patient's family might be identified or any information received and records or reports kept by the board as a result of the investigation procedure outlined in this chapter are not available to the public.
- D. This section and any other law making communications between a physician and a physician's patient privileged does not apply to investigations or proceedings conducted pursuant to this chapter. The board and its employees, agents and representatives shall keep in confidence the names of any patients whose records are reviewed during the course of investigations and proceedings pursuant to this chapter.
- E. Hospital records, medical staff records, medical staff review committee records and testimony concerning these records and proceedings related to the creation of these records are not available to the public, shall be kept confidential by the board and are subject to the same provisions concerning discovery and use in legal actions as are the original records in the possession and control of hospitals, their medical staffs and their medical staff review committees. The board shall use such records and testimony during the course of investigations and proceedings pursuant to this chapter.
- F. The court may find a person who does not comply with a subpoena issued pursuant to this section in contempt of court.

32-1451.02. Disciplinary action; reciprocity

- A. The board shall initiate an investigation pursuant to section 32-1451 if a medical regulatory board in another jurisdiction in the United States has taken disciplinary action against a licensee for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

B. The board shall order the summary suspension of a license pending proceedings for revocation or other action if a medical regulatory board in another jurisdiction in the United States has taken the same action because of its belief that the public health, safety or welfare imperatively required emergency action.

32-1451.03. Complaints; requirements; confidentiality; exception

A. The board shall not act on its own motion or on any complaint received by the board in which an allegation of unprofessional conduct or any other violation of this chapter against a professional who holds an Arizona license occurred more than four years before the complaint is received by the board. The time limitation does not apply to:

1. Medical malpractice settlements or judgments or allegations of sexual misconduct or if an incident or occurrence involved a felony, diversion of a controlled substance or impairment while practicing by the licensee.
2. A board's consideration of the specific unprofessional conduct related to a licensee's failure to disclose conduct or a violation as required by law.

B. If a complainant wishes to have the complainant's identifying information withheld from the physician against whom the allegation of unprofessional conduct is being made, the board shall enter into a written agreement with the complainant stating that the complainant's identifying information will not be provided to the physician against whom the allegation of unprofessional conduct is being made to the extent consistent with the administrative appeals process. The board shall post this policy on the board's website where a person would submit a complaint online.

C. The board shall not open an investigation if identifying information regarding the complainant is not provided.

32-1451.04. Burden of proof

Except for disciplinary matters brought pursuant to section 32-1401, paragraph 27, subdivision (z), the board has the burden of proof by clear and convincing evidence for disciplinary matters brought pursuant to this chapter.

32-1452. Substance abuse treatment and rehabilitation; confidential program; private contract; funding; license restrictions; immunity

A. The board may establish a confidential program for the treatment and rehabilitation of doctors of medicine who are licensed pursuant to this chapter and physician assistants who are licensed pursuant to chapter 25 of this title and 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. Release to the board on demand of all treatment records.
3. Immediate reporting to the board of the name of an impaired doctor or physician assistant whom the treating organization believes to be misusing chemical substances.
4. Reports to the board, as soon as possible, of the name of a doctor or physician assistant 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 forty dollars from each fee it collects from the biennial renewal of active licenses pursuant to section 32-1436 for the operation of the program established by this section.

D. A doctor of medicine or physician assistant who commits unprofessional conduct as defined in section 32-1401, paragraph 27, subdivision (f) shall agree to enter into a consent agreement with the board or the doctor or physician assistant shall be placed on probation or shall be subject to other action as provided by law.

E. In order to determine that a doctor of medicine or physician assistant who has been placed on probationary order or who has entered into a consent agreement pursuant to this section has not committed unprofessional conduct as defined in section 32-1401, paragraph 27, subdivision (f) after that order is no longer in effect, the board or its designee may require the doctor of medicine or physician assistant to submit to body fluid examinations and other examinations known to detect the presence of alcohol or other drugs at any time within five consecutive years following termination of the probationary order or consent agreement.

F. A doctor of medicine or physician assistant who is or was under a consent agreement or probationary order that is no longer in effect and who commits unprofessional conduct as defined in section 32-1401, paragraph 27, subdivision (f) shall request the board to place the license on inactive status with cause. If the doctor or physician assistant fails to do this, the board shall summarily suspend the license pursuant to section 32-1451, subsection D. In order to reactivate the license, the doctor or physician assistant shall successfully complete a long-term care residential program, an inpatient hospital treatment program, an intensive outpatient treatment program or any combination of these programs and shall meet the applicable requirements of section 32-1431, subsection D. After the doctor or physician assistant completes treatment, the board shall determine whether it should refer the matter for a formal hearing for the purpose of suspending or revoking the license or to place the licensee on probation for a minimum of five years with restrictions necessary to ensure the public's safety.

G. The board shall revoke the license of a doctor of medicine or physician assistant if that licensee commits unprofessional conduct as defined in section 32-1401, paragraph 27, subdivision (f) and was previously placed on probation pursuant to subsection D of this section and the probation is no longer in effect. The board may accept the surrender of the license if the licensee admits in writing to being impaired by alcohol or drug abuse.

H. An evaluator, teacher, supervisor or volunteer in the board's substance abuse treatment and rehabilitation program who acts in good faith within the scope of that program is not subject to civil liability, including malpractice liability, for the actions of a doctor or physician assistant who is attending the program pursuant to board action.

32-1452.01. Mental, behavioral and physical health evaluation and treatment; confidential program; private contract; immunity

A. The board may establish a confidential program for the evaluation, treatment and monitoring of persons who are licensed pursuant to this chapter and chapter 25 of this title and who have medical, psychiatric, psychological or behavioral health disorders that may impact their ability to safely practice medicine or perform health care tasks. The program shall include education, intervention, therapeutic treatment and posttreatment monitoring and support.

B. A licensee who has a medical, psychiatric, psychological or behavioral health disorder described in subsection A of this section may agree to enter into a consent agreement for participation in a program established pursuant to this section.

C. The board may contract with other organizations to operate a program established pursuant to this section. A contract with a private organization must include the following requirements:

1. Periodic reports to the board regarding treatment program activity.
2. Release to the board on demand of all treatment records.
3. Immediate reporting to the Arizona medical board of the name of a licensee who the treating organization believes is incapable of safely practicing medicine or performing health care tasks. If the licensee is a physician assistant, the Arizona medical board shall immediately report this information to the Arizona regulatory board of physician assistants.

D. An evaluator, teacher, supervisor or volunteer in a program established pursuant to this section who acts in good faith within the scope of that program is not subject to civil liability, including malpractice liability, for the actions of a licensee who is attending the program pursuant to board action.

32-1453. Judicial review

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

32-1454. Injunction

- A. An injunction shall issue forthwith to enjoin the practice of medicine by either of the following:
1. One not licensed to practice medicine or exempt from the requirement therefor pursuant to this chapter.
 2. A doctor of medicine whose continued practice will or well might cause irreparable damage to the public health and safety prior to the time proceedings under section 32-1451 could be instituted and completed.
- B. In a petition for injunction pursuant to the paragraph numbered 1 of subsection A of this section it shall be sufficient to charge that the respondent on a day certain in a named county engaged in the practice of medicine without a license and without being exempt from the requirements therefor pursuant to this chapter. No showing of damage or injury as the result thereof shall be required.
- C. In a petition for injunction pursuant to the paragraph numbered 2 of subsection A of this section there shall be set forth with particularity the facts which make it appear that irreparable damage to the public health and safety will or well might occur prior to the time proceedings under section 32-1451 could be instituted and completed.
- D. An injunction shall issue forthwith to enjoin any act specified in section 32-1455, subsection B.
- E. Such petition shall be filed by the board in the superior court of Maricopa county or in the county where the defendant resides or is found.
- F. Issuance of injunction shall not relieve the respondent from being subject to any other proceedings under law provided for in this chapter or otherwise, and violation of an injunction shall be punished as for contempt of court.
- G. In all other respects injunction proceedings under this section shall be governed as near as may be by the law otherwise applicable to injunctions.

32-1455. Violation; classification

- A. The following acts are class 5 felonies:
1. The practice of medicine by a person not licensed or exempt from licensure pursuant to this chapter.
 2. Securing a license to practice medicine pursuant to this chapter by fraud or deceit.
 3. Impersonating a member of the board in issuing a license to practice medicine to another.

B. The following acts if committed by a person not licensed under this chapter or exempt from licensure pursuant to section 32-1421 are class 2 misdemeanors:

1. The use of the designation "M.D." in a way that would lead the public to believe that a person was licensed to practice medicine in this state.
2. The use of the designation "doctor of medicine", "physician", "surgeon", "physician and surgeon" or any combination thereof unless such designation additionally contains the description of another branch of the healing arts.
3. The use of the designation "doctor" by a member of another branch of healing arts unless there is set forth with each such designation the other branch of the healing arts concerned.
4. The use of any other words, initials, symbols or combination thereof which would lead the public to believe such person is licensed to practice medicine in this state.

32-1456. Medical assistants; use of title; violation; classification

A. A medical assistant may perform the following medical procedures under the direct supervision of a doctor of medicine, physician assistant or nurse practitioner:

1. Take body fluid specimens.
2. Administer injections.

B. The board by rule may prescribe other medical procedures which a medical assistant may perform under the direct supervision of a doctor of medicine, physician assistant or nurse practitioner on a determination by the board that the procedures may be competently performed by a medical assistant.

C. Without the direct supervision of a doctor of medicine, physician assistant or nurse practitioner, a medical assistant may perform the following tasks:

1. Billing and coding.
2. Verifying insurance.
3. Making patient appointments.
4. Scheduling.
5. Recording a doctor's findings in patient charts and transcribing materials in patient charts and records.
6. Performing visual acuity screening as part of a routine physical.

7. Taking and recording patient vital signs and medical history on medical records.

D. The board by rule shall prescribe medical assistant training requirements.

E. A person who uses the title medical assistant or a related abbreviation is guilty of a class 3 misdemeanor unless that person is working as a medical assistant under the direct supervision of a doctor of medicine, physician assistant or nurse practitioner.

32-1457. Acquired immune deficiency syndrome; disclosure of patient information; immunity; definition

A. Notwithstanding section 32-1401, it is not an act of unprofessional conduct for a doctor of medicine to report to the department of health services the name of a patient's spouse or sex partner or a person with whom the patient has shared hypodermic needles or syringes if the doctor of medicine knows that the patient has contracted or tests positive for the human immunodeficiency virus and that the patient has not or will not notify these people and refer them to testing. Before making the report to the department of health services, the doctor of medicine shall first consult with the patient and ask the patient to release this information voluntarily.

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

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

D. If a doctor of medicine decides to make a disclosure pursuant to this section, he may request that the department of health services make the disclosure on his behalf.

E. For the purposes of this section, "significant exposure" means contact of a person's ruptured or broken skin or mucous membranes with another person's blood or body fluids, other than tears, saliva or perspiration, of a magnitude that the centers for disease control of the United States public health service have epidemiologically demonstrated can result in transmission of the human immunodeficiency virus.

32-1458. Reinstatement of revoked or surrendered license

A. On written application, the board may issue a new license to a physician whose license was previously revoked by the board or surrendered by the applicant if the applicant demonstrates to the board's satisfaction that the applicant is completely rehabilitated with respect to the conduct

that was the basis for the revocation or the surrender. In making its decision, the board shall determine:

1. That the applicant has not engaged in any conduct during the revocation or surrender period that would have constituted a basis for revocation pursuant to section 32-1451.
2. If a criminal conviction was a basis of the revocation or surrender, that the applicant's civil rights have been fully restored pursuant to statute or any other applicable recognized judicial or gubernatorial order.
3. That the applicant has made restitution to any aggrieved person as ordered by a court of competent jurisdiction.
4. That the applicant demonstrates any other standard of rehabilitation the board determines is appropriate.

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

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

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

32-1471. Health care provider and any other person; emergency aid; nonliability

Any health care provider licensed or certified to practice as such in this state or elsewhere, or a licensed ambulance attendant, driver or pilot as defined in section 41-1831, or any other person who renders emergency care at a public gathering or at the scene of an emergency occurrence gratuitously and in good faith shall not be liable for any civil or other damages as the result of any act or omission by such person rendering the emergency care, or as the result of any act or failure to act to provide or arrange for further medical treatment or care for the injured persons, unless such person, while rendering such emergency care, is guilty of gross negligence.

32-1472. Limited liability for emergency health care at amateur athletic events

A health care provider licensed or certified pursuant to title 32 who agrees with any person or school to voluntarily attend an amateur athletic practice, contest or other event to be available to render emergency health care within the provider's authorized scope of practice and without compensation to an athlete injured during such event is not liable for any civil or other damages as the result of any act or omission by the provider rendering the emergency care, or as the result of any act or failure to act to provide or arrange for further medical treatment or care for the injured athlete, if the provider acts in good faith without gross negligence.

32-1481. Limitation of liability

- A. No physician, surgeon, hospital or person who assists a physician, surgeon or hospital in obtaining, preparing, injecting or transfusing blood or its components from one or more human beings to another human being shall be liable on the basis of implied warranty or strict tort liability for any such activity but such person or entity shall be liable for his or its negligent or wilful misconduct.
- B. No nonprofit blood bank, tissue bank, donor or entity who donates, obtains, processes or preserves blood or its components from one or more human beings for the purpose of transfusing or transferring blood or its components to another human being shall be liable on the basis of implied warranty or strict tort liability for any such activity but such person or entity shall be liable for his or its negligent or wilful misconduct.

32-1482. Reporting of hepatitis cases

The director of the department of health services for the purposes of reducing the transmission of hepatitis by injection or transfusion of blood and its components shall adopt rules and regulations for reporting of cases of hepatitis and provide for the dissemination of information about such hepatitis cases to all federally licensed blood banks in the state and health care institutions which request such information.

32-1483. Notification to donors

Pursuant to rules promulgated by the director of the department of health services, all federally registered blood banks, blood centers and plasma centers in this state shall notify blood donors of any test results with significant evidence suggestive of syphilis, HIV or hepatitis B.

32-1491. Dispensing of drugs and devices; civil penalty; conditions; definition

- A. A doctor of medicine may dispense drugs and devices kept by the doctor if:
 - 1. All drugs are dispensed in packages labeled with the following information:
 - (a) The dispensing doctor's name, address and telephone number.
 - (b) The date the drug is dispensed.
 - (c) The patient's name.
 - (d) The name and strength of the drug, directions for its use and any cautionary statements.
 - 2. The dispensing doctor enters into the patient's medical record the name and strength of the drug dispensed, the date the drug is dispensed and the therapeutic reason.

3. The dispensing doctor keeps all drugs in a locked cabinet or room, controls access to the cabinet or room by a written procedure and maintains an ongoing inventory of its contents.
 4. The doctor registers with the board to dispense drugs and devices and pays the registration fee prescribed by section 32-1436.
- B. Except in an emergency situation, a doctor who dispenses drugs without being registered by the board to do so is subject to a civil penalty by the board of not less than three hundred dollars and not more than one thousand dollars for each transaction and is prohibited from further dispensing for a period of time as prescribed by the board.
- C. Before a physician dispenses a drug pursuant to this section the physician shall give the patient a prescription and inform the patient that the prescription may be filled by the prescribing physician or by a pharmacy of the patient's choice.
- D. A doctor shall dispense only to the doctor's own patient and only for conditions being treated by that doctor. The doctor shall provide direct supervision of a medical assistant, nurse or attendant involved in the dispensing process. In this subsection, "direct supervision" means that a doctor is present and makes the determination as to the legitimacy or the advisability of the drugs or devices to be dispensed.
- E. This section shall be enforced by the board, which shall establish rules regarding labeling, record keeping, storage and packaging of drugs that are consistent with the requirements of chapter 18 of this title. The board may conduct periodic reviews of dispensing practices to assure compliance with this section and applicable rules.
- F. For the purposes of this section, "dispense" means the delivery by a doctor of medicine of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.

D-8

DEPARTMENT OF ECONOMIC SECURITY (R19-1101)

Title 6, Chapter 7, Article 1, Child Support Enforcement

Amend: R6-7-103

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

TITLE 6. ECONOMIC SECURITY

CHAPTER 7. DIVISION OF CHILD SUPPORT ENFORCEMENT

ARTICLE 1. GENERAL PROVISIONS

1. Identification of the rulemaking:

The Division of Child Support Enforcement (DCSE) encourages parental responsibility to ensure children are supported by both parents and connects parents to resources that remove barriers and promote self-sufficiency. The Department accomplishes this by providing timely services to parents and caretakers that include establishing paternity; establishing and enforcing child support orders; locating the obligor; and collecting and disbursing child, medical, and spousal support. In Fiscal Year 2019, the Department disbursed nearly \$700,000,000.00 in support. In accordance with A.R.S § 25-510(D), the Director seeks to increase the existing handling fee from \$5.00 to \$8.00.

Over the last few years, the Department has implemented several initiatives designed to minimize waste and provide alternate payment options for obligors. The Department has utilized the Arizona Management System since 2017 to drive efficiencies in the most cost-effective and efficient manner. However, the Department continues to work to adopt federal rule changes. These mandated changes include incorporating new technology to enhance data integrity while also strengthening safeguards for personal information. Moreover, the Department aims to adopt additional automated processes to reduce errors, streamline business

processes, and create better outcomes for families. To do this, the Department conducted a comprehensive feasibility study to identify best alternatives. The most practical alternative yielding the highest return on investment is to replace the Department's legacy Arizona Tracking and Locate Automated System (ATLAS) used for case management, legal case processing, and child support financial management system. The ATLAS is over 20 years old and is no longer capable of adapting to changes in laws and business processes required to meet federal requirements. The Department must continue to invest in its technical infrastructure in order to automate processes to move forward with state plan requirements and leverage new technology that will benefit both the obligee and obligor.

The Department encourages family responsibility and works to ensure that children are supported by their parents by connecting them to resources that remove barriers and support self-sufficiency. As a recipient of services, the obligee and obligor are not responsible for the administrative costs associated with navigating the judicial process, which includes the legal processing of child support cases, court time, and filing of associated court documents.

While the existing funding level supports current business operations, it does not support new investments. However, in accordance with A.R.S § 25-510(D), the Director may establish a handling fee by rule. This fee is assessed to obligors with payments processed by the Department each month and is independent of support

obligations. The revenue generated from this fee is used to supplement the Department's operating budget and is matched with federal funding available under Title IV, Part D of the Social Security Act. This rulemaking will increase the existing handling fee of \$5.00 to \$8.00 per month. The proposed fee increase will impact an average of 21,100 paying obligors each month. This will generate a projected \$760,000.00 of revenue matched by an additional \$1,475,000.00 of federal funding. The Department will use the increase in funding to support its system replacement needed to comply with federal mandates and act in the best interest of its stakeholders.

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 St. Mail Drop 1292
Phoenix, AZ 85007

Telephone: (602) 542-9199
Fax: (602) 542-6000

E-mail: ceide@azdes.gov

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

Increasing the handling fee from \$5.00 to \$8.00 per month will directly impact obligors, as this population is currently assessed the \$5.00 fee each month and would be responsible for the \$3.00 increase. Because the fee is assessed when a payment is processed and not all obligors pay timely, the Department anticipates 21,100 obligors to be affected each month. The revenues collected through this fee currently support the Department's collection and disbursement activities. Revenue generated by this increase will be used to continue process improvement and system automation efforts for these activities. This will result in the obligor's access to a self-service web portal, reducing call wait times and walk-in traffic; greater accuracy of case information and debt activity; and improved system security to protect stored data such as personally identifiable information (PII) and federal tax information (FTI).

4. Cost-benefit analysis:

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

The proposed handling fee increase will generate approximately \$760,000.00 of funding annually. For every state dollar invested into the child support program, the federal government will match the State's investment by \$2.00. Therefore, the handling fee increase will allow the

Department to draw down approximately \$1,475,000.00 of additional federal dollars. This increase in funding will support the Department's system replacement and create operational efficiencies aimed to better serve Arizona families. Consequently, efficiencies gained from this fee increase will boost the Department's competitiveness with other states, which could result in the award of additional federal incentives.

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

Not applicable

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

Not applicable

5. Impact on private and public employment:

This rulemaking does not impact public or 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:

Obligees and their children are not affected by the rulemaking, as the handling fee is independent of court ordered child support obligations. All other private persons and consumers are also not affected by the rulemaking.

8. Probable effects on state revenues:

This rulemaking change will increase state revenue by approximately \$760,000.00 and be matched with \$1,475,000.00 of federal funding, generating a total of \$2,235,000.00 of new funding annually.

9. Less intrusive or less costly alternative methods considered:

To support the Department's investment of implementing a new case management system, the Department evaluated three alternatives to raising the handling fee: formally requesting state general fund, instituting an application fee for services, and foregoing a system replacement.

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

A formal budget request to increase general fund appropriation for the Department's operating budget would cost Arizona taxpayers \$760,000.00 annually and divert resources away from other state priorities.

Instituting an application fee would necessitate imposing a new fee of \$125.00 on all new applicants that have never received Temporary Assistance for Needy Families (TANF) Cash Assistance. This would affect approximately 6,000 new applicants annually.

Foregoing a system replacement would mean falling out of compliance with federal requirements and would adversely impact Arizona's eligibility to receive federal incentive funding.

b. Rationale for not using non-selected alternatives:

In working with the executive, the Department did not pursue a formal budget request for general fund due to competing state priorities.

The Department did not institute an application fee, as this fee could pose a financial barrier to services for new applicants. This would negatively impact the obligee and would not be in the best interest of the children.

Finally, the Department evaluated the need to replace its existing case management system that necessitates the increase in revenue. Given the antiquated programming language used for the existing system; security liabilities of its infrastructure; inflexibility to conform to changes in laws, rules, and business processes; as well as data reliability challenges, not

replacing the system would be detrimental to Arizona's families and would jeopardize the sustainability of the program.

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

Not applicable

STATE BOARD OF ACCOUNTANCY (F19-1101)

Title 4, Chapter 1, All Articles, Board of Accountancy



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: December 3, 2019

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

FROM: Council Staff

DATE: November 8, 2019

SUBJECT: STATE BOARD OF ACCOUNTANCY (F19-1101)

Title 4, Chapter 1, All Articles, Board of Accountancy

Summary

This Five-Year Review Report (5YRR) from the State Board of Accountancy (“Board”) relates to all articles in Title 4, Chapter 1 which relate to the following:

- Article 1. General
- Article 2. CPA Examination
- Article 3. Certification and Registration
- Article 4. Regulation

This 5YRR was originally due in August 2013. The Board received an extension to submit the report until February 26, 2014. However, due to a rulemaking which became effective on February 4, 2014, the Board received approval from the Council to reschedule the 5YRR which is now before the Council.

The Board's last 5YRR for these rules was approved by the Council in 2009. In that 5YRR, the Board's proposed course of action was to amend the following rules on or before December 31, 2009: R4-1-101, R4-1-115, R4-1-118, R4-1-226.01, R4-1-228, R4-1-229, R4-1-341, R4-1-342, R4-1-343, R4-1-453, and R4-1-454.

A final rulemaking was not submitted to GRRC by December 31, 2009. However, the Board addressed the above-referenced rules in its February 2014 rulemaking discussed above, by either amending the rules to address the issues identified in the 2009 5YRR, or repealing them as they were no longer considered necessary (e.g. R4-1-118 and R4-1-342).

Proposed Action

The Board plans to amend the following rules as outlined in more detail in their report:

- R4-1-101,
- R4-1-104,
- R4-1-115.03,
- R4-1-226.01,
- R4-1-228,
- R4-1-229,
- R4-1-341,
- R4-1-344
- R4-1-345,
- R4-1-346,
- R4-1-453,
- R4-1-454,
- R4-1-455,
- R4-1-455.01, and
- R4-1-456

On July 26, 2019, the Board submitted a request for an exemption from the rulemaking moratorium to the Governor's Office which was ultimately granted. The Board indicates that it has filed a Notice of Proposed Rulemaking to amend the above-referenced rules to address the issues outlined in their report with the Secretary of State's office and will have the rulemaking submitted to the Council in the near future.

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

Yes. The Board cites to go general and specific authority for the rule.

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

The review indicates that the Board performed a major overhaul of its rules to reflect changes required due to passage of Laws 2013, Ch. 136 (HB 2260), to ensure that they accurately reflected operating practice, and to provide technical, clarifying, and conforming changes to improve the organization and readability of the rules for the regulated community. The rules became effective February 14, 2014. Over the course of the five-year period under review the Board continued to make technical and conforming changes to the rules. The Board estimated that most of the technical and conforming changes had no fiscal impact. Any costs

associated with changes, during the period under review, were estimated to have minimal fiscal impact and that the regulated community benefited from rules that were more clear and easier to understand and interpret.

The stakeholders include the Board, CPA applicants, CPA's, accounting firms, 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?

Changes in the rules were made to make them clearer, more understandable, and to reduce bureaucracy. Changes were also made to reduce fraud and to protect the public from underperforming services.

The Board has determined that the probable benefit of the rules outweigh the probable costs. Most of the rules impose the least burden and cost to regulated persons, but the Board has identified opportunities to further reduce regulatory burden. The Board indicates that it has filed a Notice of Proposed Rulemaking to amend the above-referenced rules to address the issues outlined in their report with the Secretary of State's office and will have the rulemaking submitted to the Council in the near future.

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

Yes. The Board indicates it has received three written criticisms over the last five years.

First, the Board received a comment requesting the reinstatement of a rule provision that would exempt CPAs that are over the age of 65 and not in public accounting from having to meet continuing professional education ("CPE") requirements. The Board responded that the repeal of this rule provision was related to statutory changes (Laws 2013, Ch. 136 (HB 2260)) that created a new "retired" status that could be requested by registrants if they were at least 55 years of age, had been a CPA for at least 20 years in any jurisdiction, and were not actively engaged in the practice of accounting. Individuals on retired status do not have any CPE requirements because they are not practicing accounting and are not posing any risk to the public. The Board then pursued a rulemaking which became effective February 4, 2014 to make changes to conform with Laws 2013, Ch. 136 (HB 2260), which included the provision in question. The response also provided that the commenter should consider applying for retired status as it results in a reduced registration fee and commenter would have no requirement to report CPE.

Second, the Board received a comment requesting that the Board adopt a provision of the Uniform Accountancy Act that would permit out-of-state registrants to be deemed compliant with Arizona's CPE requirements as long as they are compliant with CPE requirements in their principal place of business jurisdiction. The commenter also encouraged the Board to adopt NASBA model rules for CPE, especially nano-learning CPE courses. The Board amended its rules, effective February 4, 2019, to permit CPE reciprocity and the taking of nano-learning CPE courses.

Third, the Board received a comment from Randall Brookshier CPA, PLLC stating that the current language of R4-1-454(H) may allow for a situation wherein a firm not previously required to complete peer reviews, may find themselves in a “Catch-22” situation of non-compliance should the firm accept an engagement to review a report dated within a specific time period in the past. Commenter recommended that the Board modify its rules to more closely align with peer review standards. The Board indicates that the proposed amendments to R4-1-454 outlined in the report, and contained in the Board’s recent Notice of Proposed Rulemaking, would address the commenter’s concerns by repealing language that conflicts with the incorporated Standards for Performing and Reporting on Peer Reviews.

Council staff finds that the Board has adequately responded to written criticisms of the rules.

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

The Board indicates that the rules are not clear, concise, and understandable and proposes amendments to the following rules, outlined in more detail in Section 6 of their report, to improve clarity, conciseness, and understandability:

- R4-1-226.01
- R4-1-344
- R4-1-345
- R4-1-453
- R4-1-454
- R3-1-456

Also, the Board indicates that the following rules are not consistent with other rules and statutes for reasons outlined in more detail in Section 4 of their report:

- R4-1-101
- R4-1-104
- R4-1-115.03
- R4-1-226.01
- R4-1-228
- R4-1-341
- R4-1-344
- R4-1-345
- R4-1-453
- R4-1-455.01

Despite these issues, the Board indicates that the current rules are effective in achieving their objectives.

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

The Board indicates that the following rules are not enforced as written as outlined in Section 5 of their report:

- R4-1-115.03
- R4-1-226.01
- R4-1-346

The Board is currently proceeding with a rulemaking to address these enforcement concerns.

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.

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 require issuance of a certificate of certified public accountant from the Board, which qualifies as an “agency authorization.” Issuance of this certificate is specifically authorized by state statute, specifically A.R.S. § 32-721(A). As such, the agency is in compliance with A.R.S. § 41-1037.

9. Conclusion

As outlined above and in the Board’s report, the Board has identified rules which are not clear, concise, understandable, consistent, or effective. The Board has initiated a rulemaking to address these issues, having filed a Notice of Proposed Rulemaking with the Secretary of State’s office and is in the midst of the public comment period. The Board intends to submit its final rulemaking package to the Council in the near future after the close of record. Council staff recommends approval of this report.



ARIZONA STATE BOARD OF ACCOUNTANCY

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August 21, 2019

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Ave, #305
Phoenix, AZ 85007

Dear Ms. Sornsin,

As required by A.R.S. § 41-1056, the Arizona State Board of Accountancy (Board) submits for the Council's approval its five-year review report. The Board has 28 rules but reviewed only 27 of them for this report. The Board did not review and report on R4-1-105. The Board intends that this rule expire under A.R.S. § 41-1056(J).

The Board hereby certifies compliance with A.R.S. § 41-1091.

If you have any questions regarding this report, please contact me at 602-364-0870 or mpetersen@azaccountancy.gov. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Monica L. Petersen".

Monica L. Petersen
Executive Director

Arizona State Board of Accountancy

Five-Year-Review Report

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 32-703(B)(7) and (13)

Specific Statutory Authority: A.R.S. § 32-703(B)(8)

2. The objective of each rule:

Rule	Objective
R4-1-101	The objective of this rule is to incorporate the definitions in A.R.S. § 32-701 and define additional terms that are used in rule.
R4-1-102	The objective of this rule is to outline the applicability of the Board's rules, its ability to excuse failures to comply, and ability to grant extensions of time to comply with its rules.
R4-1-104	This rule describes Board records and procedures for public access.
R4-1-105	The Board of Accountancy is choosing to not include this rule in the Five-Year Review Report and to allow it to expire.
R4-1-113	This rule outlines how the Board and its Committees conduct their meetings.
R4-1-114	This rule outlines hearing and rehearing/review processes.
R4-1-115	This rule establishes the Accounting and Auditing Advisory Committee and Tax Advisory Committee.
R4-1-115.01	This rule establishes the Law Review Advisory Committee.
R4-1-115.02	This rule establishes the Continuing Professional Education (CPE) Advisory Committee.
R4-1-115.03	This rule establishes the Peer Review Oversight Advisory Committee (PROAC).
R4-1-115.04	This rule establishes the Certification Advisory Committee.
R4-1-117	This rule supplements the hearing procedures provided in R4-1-114.
R4-1-226.01	This rule outlines the Uniform CPA examination process and requirements.
R4-1-228	This rule outlines how applicants are to receive exam scores and how they may be reviewed or appealed.
R4-1-229	This rule clarifies how conditioned credit is earned by an applicant and how it may be transferred to Arizona from another jurisdiction.
R4-1-341	This rule outlines the certification and reinstatement process and requirements.
R4-1-343	This rule outlines education and accounting experience requirements.
R4-1-344	This rule outlines the appeal process for the denial of a certificate or registration.
R4-1-345	This rule outlines initial and renewal registration due dates and registration fees.

R4-1-346	This rule outlines change of address notice requirements and when a registrant should notify the Board of a new or additional office, or the closing of an existing office.
R4-1-453	This rule outlines CPE requirements.
R4-1-454	This rule outlines peer review requirements.
R4-1-455	This rule incorporates the American Institute of Certified Public Accountants' (AICPA) Code of Professional Conduct.
R4-1-455.01	This rule explains how definitions will be interpreted within the AICPA's Code of Professional Conduct.
R4-1-455.02	This rule outlines conduct in performing an attest service that would constitute a violation of A.R.S. § 32-741(A)(4).
R4-1-455.03	This rule outlines specific responsibilities and practices with which registrants must comply.
R4-1-455.04	This rule explains that a registrant may retain and dispose of documents prescribed in A.R.S. § 32-744(C) in compliance with a reasonable document retention policy.
R4-1-456	This rule outlines when and how a registrant must report final judgments, convictions, and violations to the Board.

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.

4. **Are the rules consistent with other rules and statutes?** Yes No X

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
R4-1-101	R4-1-101(B)(1) - This definition of "Compilation services" is redundant to the definition of "Compilation services" in A.R.S. § 32-701(8). The Board intends to proceed with rulemaking, which will include omitting the redundant definition in rule.
R4-1-104	R4-1-104(A)(1) – The term "P.A." is inconsistent with Laws 2018, Ch. 268 (SB 1443) as "P.A." is no longer used in our statutes. The Board intends to proceed with rulemaking, which will include omitting "P.A." from R4-1-104(A)(1).
R4-1-115.03	R4-1-115.03(A)(3) and (4) – These provisions state that PROAC shall provide the Board with a list of firms that have met the peer review requirements and update the Board on the status of participating firms' noncompliance. Board staff now handles these functions

	<p>with the Executive Director delegated powers as a result of Laws 2018, Ch. 268 (SB 1443). The Board intends to proceed with rulemaking to omit these provisions.</p> <p>R4-1-115.03(A)(5) – This provision speaks to the manner in which certain documents will be treated by PROAC. This provision is no longer applicable as PROAC no longer performs educational enhancement reviews (EERs), pursuant to rule changes made effective on January 1, 2018, and peer review reports are not confidential. The Board intends to proceed with rulemaking to omit this provision.</p> <p>R4-1-115.03(A)(6) – This provision provides that PROAC shall report to the Board and obtain approval of any modifications to the peer review program. The peer review program is overseen by the AICPA and administered by the California Society of Certified Public Accountants (CalCPA). Accordingly, this provision is irrelevant, and the Board intends to proceed with rulemaking to omit it.</p>
R4-1-226.01	<p>R4-1-226.01(C) – The second-to-last sentence of this provision requires that if the Certification Advisory Committee recommends approval of an exam application, the application shall be put on a future Board meeting agenda for consent. This language is not consistent with A.R.S. §32-703(B)(14)(a) which permits the Board to delegate to the Executive Director the authority to approve an applicant to take the Uniform CPA Examination (the Exam). The last sentence of this provision provides that the Certification Advisory Committee shall provide the Board with the reasons for the recommendation of denial. These last two sentences are procedural rather than regulatory, and do not need to be in rule. Further, it is redundant to the first sentence of this provision which already provides, “The Board’s certification advisory committee (CAC) shall evaluate the applicant’s file and make a recommendation to the Board to approve or deny the application.” The Board intends to proceed with rulemaking, which will include omitting the last two sentences of this provision.</p> <p>R4-1-226.01(D) – While this provision provides that the Board shall notify the applicant in writing of the reasons the application was denied, it does not state, as R4-1-341(C) does, that such a written notice would explain the applicant’s right to seek a fair hearing to challenge the denial and the time periods for appealing the denial. Operationally, however, the Board does afford these appellate rights. To be consistent and clear, the Board intends to proceed with rulemaking to add this language.</p>

R4-1-228	This rule is procedural rather than regulatory and only outlines National Association of State Boards of Accountancy (NASBA) processes. Accordingly, the Board intends to replace this rule in its entirety with language regarding denials of examination and applicants' respective appeal rights.
R4-1-341	<p>The rule outlines the requirements to apply for certification as a CPA or reinstatement as a CPA, the rule however is lacking in outlining the requirements for firm registration or reinstatement. To be consistent, the Board intends to proceed with rulemaking to codify requirements to apply for registration of a CPA firm within R4-1-341.</p> <p>R4-1-341(A)(2)(c) – This provision requires that an applicant for certification submit one signed and dated letter of recommendation by a CPA. A similar provision in R4-1-343 requires that applicants submit certificates of completion that are signed by individuals that are CPAs or individuals that have accounting education and experience similar to that of a CPA. To be consistent, the Board intends to proceed with rulemaking that would allow the required letter of recommendation to be signed by a CPA or an individual who has accounting education and experience similar to that of a CPA.</p> <p>R4-1-341(A)(5) and (6) – These provisions require updates to their legal citations due to Laws 2018, Ch. 268 (SB 1443) and rule changes made effective on February 4, 2019.</p>
R4-1-344	The rule provides for appeal rights of an individual denied certification, but does not clearly communicate that such appeal rights are applicable to firm registration or reinstatement situations as well, which is inconsistent with how A.R.S. §41-1001(12) defines the term “license” and Title 41, Chapter 6, Article 10 regarding Uniform Administrative Hearing procedures. Accordingly, the Board intends to proceed with rulemaking to clarify that these appeal rights are applicable to firm registration and reinstatement situations as well.
R4-1-345	R4-1-345(C)(1) – The term “P.A.” is inconsistent with Laws 2018, Ch. 268 (SB 1443) as “P.A.” is no longer used in our statutes. The Board intends to proceed with rulemaking, which will include omitting “P.A.” from R4-1-345(C)(1).
R4-1-453	R4-1-453(C) – This provision contains an incorrect legal citation. Due to Laws 2019, Ch. 268 (SB 1443), A.R.S. § 32-730.01 should be changed to A.R.S. § 32-732(A), and the Board intends to proceed with rulemaking to do so.
R4-1-455.01	R4-1-455.01(A)(1) – This provision states that the term “practice of public accounting” shall be defined as set forth in statute. The term “practice of public accounting” was

	eliminated in Laws 2018, Ch. 268 (SB 1443). Accordingly, the Board intends to proceed with rulemaking to omit the provision.
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5. Are the rules enforced as written?

Yes No X

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation
R4-1-115.03	R4-1-115.03(A)(3) and (4) – These provisions state that PROAC shall provide the Board with a list of firms that have met the peer review requirements and update the Board on the status of participating firms' noncompliance. Board staff now handles these functions with the Executive Director delegated powers as a result of Laws 2018, Ch. 268 (SB 1443). The Board intends to proceed with rulemaking to omit these provisions.
R4-1-226.01	R4-1-226.01(C) – Part of this provision requires that if the Certification Advisory Committee recommends approval of an Exam application, the application shall be put on a future Board meeting agenda for consent. Pursuant to Laws 2018, Ch. 268 (SB 1443), the Board may and has delegated to the Executive Director the ability to approve an applicant for the Exam. Accordingly, this language has not been enforced since the effective date of SB 1443 and applications have not been placed on a Board meeting agenda as the Executive Director has approved them. The Board intends to proceed with rulemaking, which will include omitting part of this provision.
R4-1-346	R4-1-346(A) – This provision requires registrants to notify the Board of a new address within 30 days. Historically, this provision has not been enforced because the effort and cost to do so is not a good use of board resources. Further, we don't believe that the Ducey administration or the conservative political environment would support regulation and sanctions for minor infractions. Further, registrants who fail to update their addresses may receive discipline in other manners such as through failure to respond to Board communications, or failure to timely respond. R4-1-346(B) – This provision requires that registrants notify the Board in a letter signed by the registrant of the opening of any new or additional office, or the closing of any existing office. Historically, this provision has not been enforced, as it is archaic, and it serves no business purpose. The Board intends to pursue rulemaking to omit this provision from R4-1-346.

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
R4-1-226.01	R4-1-226.01(D) – While this provision provides that the Board shall notify the applicant in writing of the reasons the application was denied, it does not state, as R4-1-341(C) does, that such a written notice would explain the applicant’s right to seek a fair hearing to challenge the denial and the time periods for appealing the denial, though operationally the Board already does. To be consistent and clear, the Board intends to proceed with rulemaking to add this language.
R4-1-344	Generally, while the rule provides information related to the appeal rights of an individual denied certification, it does not clearly communicate that such appeal rights are applicable to firm registration or reinstatement situations as well, which would be inconsistent with how A.R.S. §41-1001(12) defines the term “license” and Title 41, Chapter 6, Article 10 regarding Uniform Administrative Hearing procedures. Accordingly, the Board intends to proceed with rulemaking to clarify that these appeal rights are applicable to firm registration and reinstatement situations as well.
R4-1-345	R4-1-345(B)(2) – While generally clear and concise, the rule language could benefit from properly distinguishing the periods for which a business organization firm would renew their registration in contrast to an individual or a sole proprietorship firm. The Board intends to proceed with rulemaking to make this clarification.

R4-1-453	<p>R4-1-453(B)(3) – This provision outlines ethics programs that would not qualify for the ethics requirement in the Board’s rule. It currently provides that an ethics program taught by an employee or a co-worker of a registrant does not qualify for ethics. The provision does not explicitly state that an ethics courses taught by the registrant would not count for their own ethics requirement. The Board intends to proceed with rulemaking to make this clarification that falls in line with the spirit of the provision.</p> <p>R4-1-453(C)(2) and (8)(a) – These provisions outline CPE requirements and use percentages in some instances and hours in others. To increase clarity, the Board intends to proceed with rulemaking to consistently use hours.</p> <p>R4-1-453(D) – This provision outlines the details that must be reported regarding a registrant’s CPE. The Board’s renewal requests the details that are enumerated, but also the subject and method of CPE. The Board intends to proceed with rulemaking to include subject and method into the enumerated list.</p>
R4-1-454	<p>While the rule is generally clear and concise, the Board has identified the opportunity to increase clarity and reduce conflicting requirements by relying on the definition of “due date” as defined in the incorporated Standards for Performing and Reporting on Peer Reviews rather than within the three years immediately preceding a firm’s registration due date. This will reduce confusion for CPA firms subject to peer review and as a result increase compliance with peer review requirements and reduce regulatory action regarding non-compliance with peer review requirements. The Board intends to proceed with rulemaking to modify and simplify this rule to remove any language which conflicts with the incorporated Standards for Performing and Reporting on Peer Reviews.</p>
R4-1-456	<p>R4-1-456(A) and (B) – The rule contains terms such as individual or firm, which are redundant when the term registrant is already being used¹. The Board intends to proceed with rulemaking to remove the unnecessary, redundant terms.</p>

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

If yes, please fill out the table below:

Commenter	Comment	Agency’s Response
Anonymous (Ducey Regulation)	Commenter requested the reinstatement of a rule provision that would exempt CPAs	The agency’s response to the Governor’s office explained that the repeal of this rule

¹ A.R.S. § 32-701(24) defines “Registrant” as meaning “... any certified public accountant or firm that is registered with the board.”

Rollback Initiative)	that are over the age of 65 and not in public accounting from having to meet CPE requirements.	provision was related to statutory changes (Laws 2013, Ch. 136 (HB 2260)) that created a new “retired” status that could be requested by registrants if they were at least 55 years of age, had been a CPA for at least 20 years in any jurisdiction, and were not actively engaged in the practice of accounting. Individuals on retired status do not have any CPE requirements because they are not practicing accounting and are not posing any risk to the public. The Board then pursued a rulemaking which became effective February 4, 2014 to make changes to conform with Laws 2013, Ch. 136 (HB 2260), which included the provision in question. The response also provided that the commenter should consider applying for retired status as it results in a reduced registration fee and commenter would have no requirement to report CPE.
Anonymous (Ducey Regulation Rollback Initiative)	Commenter requested that the Board adopt a provision of the Uniform Accountancy Act that would permit out-of-state registrants to be deemed compliant with Arizona’s CPE requirements as long as they are compliant with CPE requirements in their principal place of business jurisdiction. Commenter also encouraged the Board to adopt NASBA model rules for CPE, especially nano-learning CPE courses.	The agency response to the Governor’s Office noted that the Board planned to review its CPE rules once national model rules were finalized. The Board eventually amended its rules, effective February 4, 2019, to permit CPE reciprocity and the taking of nano-learning CPE courses.
Randall Brookshier CPA, PLLC	Commenter shared with the Board his perspective that the current language of R4-1-454(H) may allow for a situation wherein a firm not previously required to	While the Board did not take any action originally when it reviewed this letter, the above-referenced recommended changes related to R4-1-454 would address the

	<p>complete peer reviews, may find themselves in a “catch-22” situation of non-compliance should the firm accept an engagement to review a report dated within a specific time period in the past.</p> <p>Commenter recommended that the Board modify its rules to more closely align with peer review standards.</p>	<p>Commenter’s concerns by repealing language that conflicts with the incorporated Standards for Performing and Reporting on Peer Reviews.</p>
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8. Economic, small business, and consumer impact comparison:

2014 Economic, Small Business and Consumer Impact Statement:

The Board performed a major overall of its rules to reflect changes required due to the passage of Laws 2013, Ch. 136 (HB 2260), to ensure that they accurately reflect operating practice, and to provide technical, clarifying, and conforming changes to improve the organization and readability of the rules for the regulated community. The rules became effective February 14, 2014.

The Economic, Small Business and Consumer Impact Statement (EIS) covered various topics, which are addressed and compared below:

Reinstatement Application Fee

Laws 2013, Ch. 136 (HB 2260) allowed the Board to establish a uniform application fee to reinstate a certificate. The Board decided on an amount of \$100 which is the same application fee charged to exam applicants and certification applicants. At the time, the EIS outlined that there were 15, 22, and 24 reinstatements for fiscal years 2010, 2011, and 2012 respectively, equating to a three-year average of 20 reinstatement applications annually. By a way of comparison, at the time, the Board only regulated approximately 10,500 CPAs. As such, it was anticipated that there would only be a minimal number of individuals would be impacted. In comparison with recent data, there were 28, 28, and 37 reinstatements for 2017, 2018, and 2019 respectively, equating to a three-year average of 31 reinstatement applications annually. The Board regulates approximately 11,300 CPAs now, and despite the marginal increase in number of reinstatements, Staff would concur that this reinstatement application fee continues to have a minimal impact on the regulated community.

Reinstatement CPE and Education Requirements

Laws 2013, Ch. 136 (HB 2260) established reinstatement requirements from cancelled, expired, relinquished, and revoked statuses². R4-1-341(A)(5) requires that an applicant for reinstatement have CPE that meets the requirements of R4-1-453(C)(6)³ and (E) which require that an applicant complete up to 160 hours of CPE during the four-year period immediately before application to reinstatement. The amount of CPE required is based on the number of months prorated by quarter between the last registration due date the applicant completed CPE to the time of the applicant applied for reinstatement⁴. The Board felt that no more than 160 hours would be necessary to ensure that it could achieve its primary duty to protect the public.

In the EIS, it was difficult to quantify the costs to a reinstatement applicant to complete requisite CPE because there are many different CPE providers that offer a wide and disparate range of costs, ranging from a one-time fee of \$149 to take all the self-study courses available for one year at no additional charge to \$115 for a one-time eight-hour course. Costs of CPE for reinstatement applicants can vary from almost nothing if the applicant for reinstatement holds a valid CPA certificate in another jurisdiction where they have taken CPE to maintain that certificate, which could be used, to a couple hundred dollars to a couple thousand dollars depending on how an applicant pursues completing their CPE credits and the number of prorated hours that would be required for reinstatement. It remains difficult to quantify these costs, but CPE remains invaluable to the Board's mission to ensure that those CPAs who reinstate their certificate maintain a level of education that is required by the Board and expected by consumers.

Additionally, and pursuant to R4-1-341(A)(6), if not waived by the Board as part of a disciplinary order, a reinstatement applicant from relinquished or revoked status must have 150 hours of education including 36 semester hours of accounting of which 30 must be upper level and at least 30 hours of related courses, which is consistent with the existing educational requirements of A.R.S. § 32-721(B). The education requirement for certification was changed by Laws 2003, Ch. 82 (SB 1062) when it was increased from a bachelor's degree (approximately 120 hours, though an hour requirement was not part of law) to a bachelor's degree and 150-hour requirement.

The Board has the discretion to waive, and has waived in the past, this requirement as part of a disciplinary order if it feels that the reason for revocation or relinquishment does not warrant a more challenging reinstatement requirement for education if an individual was certified before 2003 when the

² These reinstatement requirements were further modified and consolidated into a single statute (A.R.S. § 32-732) vis-à-vis Laws 2018, Ch. 268 (SB 1443).

³ The Board knows that this legal citation is currently incorrect and plans to fix it with upcoming rulemaking.

⁴ How CPE is prorated can be found on the Board's website regarding reinstatement:

<https://www.azaccountancy.gov/Certification/Reinstatement.aspx#Q4>.

educational requirements were less rigorous. However, if the Board feels that it is important to make reinstatement more of a challenge for someone who relinquished or revoked for serious misconduct, they can require that an applicant for reinstatement meet the higher educational standards. At the time of writing the EIS, it was anticipated that the fiscal impact would be negligible since it was not common practice to see former certificate holders from relinquished or revoked statuses apply and be approved for reinstatement⁵. The fiscal impact continues to be negligible as there has only been three instances from 2017 to 2019 wherein an individual applied and was approved for reinstatement from relinquished or revoked status.

Late Fee

This rulemaking also raised the late fee from \$25 to \$50⁶. It was anticipated that the impact would be minimal for CPAs and CPA firms as only an estimated 5% of CPAs on average and 2% of CPA firms on average would be suspended for non-registration. Staff continues to believe that the impact for CPAs and CPA firms remain minimal. This impact can be totally negated by CPAs and CPA firms registering in a timely fashion. The Board created a new business procedure in April 2017 to send email reminders to CPAs and in April 2018 to CPA firms when their renewal due dates approach to reduce the already minimal impact further.

CPE Credit Hours

The rulemaking allowed for the counting of CPE credits in $\frac{1}{2}$ hour increments, which was anticipated to provide a benefit and savings. Staff concurs with this analysis and believes that allowing for $\frac{1}{2}$ hour credit increments provides a benefit through savings and flexibility of taking and reporting CPE courses. The amount of savings though is variable depending on the type of CPE taken (online vs. live) as well as from which CPE provider as costs vary considerably.

General Changes

There is also a benefit to the public for other technical, clarifying, and conforming changes that improve the overall organization and readability of the rules. The rules are more clear and easier to understand and interpret and as a result there has been a benefit to the regulated community and the Board's operations.

⁵ In the EIS, it was reported that the Board staff could only remember one instance from 1999 – 2009 when someone applied for reinstatement and was approved from a certificate that was previously revoked or relinquished.

⁶ Authorized per A.R.S. § 32-729(3) and (4).

2017 Economic, Small Business and Consumer Impact Statement:

Effective June 15, 2017, the Board repealed a rule provision that was determined to be overbroad by the Board's Assistant Attorney General. The rule stated that a CPA may practice public accounting whether as an owner or an employee, only in a firm as defined in statute.

The EIS provided that amending the rule would not have a fiscal impact, as under the Board's long-time statutory and regulatory framework, CPAs who have registered firms as sole practitioners are not required to pay a firm registration fee. It was anticipated that amending the rule would result in a positive impact to small business.

CPAs who are sole practitioners of accounting firms who do not perform attest services would not be required to register their firms with the Board and would no longer be required to file biennial firm renewal paperwork. The EIS also addressed that the Board did not foresee a consumer impact, as amending the rule was unlikely to change the rates CPAs charge for their services. Lastly, it was noted that while the Board would continue to be able to regulate sole practitioner CPAs through their individual certificates, it was likely that it would lose some regulatory oversight with respect to peer review requirements for non-attest services like compilation services.

Effective January 1, 2018, the Board amended its peer review rule to conform with the AICPA's requirements by requiring that non-disclosure compilations be subject to peer review, and effective August 3, 2018, Laws 2018, Chapter 268 (SB 1443) amended A.R.S. § 32-731 to require that business organizations, sole proprietorships, or individuals that perform attest or compilation services be registered as a firm with the Board. Accordingly, and due to these supplemental statutory and regulatory changes, we do not believe there was a long-term loss of regulatory oversight.

2018 Economic, Small Business and Consumer Impact Statement:

Effective January 1, 2018, the Board amended its rules to eliminate EERs, make the Board's peer review requirements more consistent with the AICPA's peer review program, and incorporate the AICPA's Code of Conduct and Professional Standards by reference, amongst other technical and conforming changes.

As it relates to peer review requirements, the EIS outlined that firms that are already members of the AICPA must follow its peer review program requirements, which include peer reviews for non-disclosure compilations. However, firms that are not members of the AICPA and which perform non-disclosure compilations are currently not subject to peer review, but rather the Board's EER requirement. By conforming the Board's rules to be consistent with the AICPA's peer review program, non-AICPA member firms who do non-disclosure compilations would now be subject to peer review. The pros of requiring peer reviews for firms issuing non-disclosure compilations were expected to significantly outweigh the con of increased costs for non-AICPA member firms, since greater scrutiny and examination of deficient work in this type of service would benefit consumers by identifying issues that the reviewed firms need to address in order to provide quality services, thereby protecting the public. Staff would contend that this estimate remains accurate as the Board has received

no evidence or information that would argue that the increased costs for non-AICPA member firms outweigh the public safety benefit. Aside from the educational benefit highlighted above, Staff would also argue that an additional consumer benefit is obtained by discouraging firms that “dabble” into non-disclosure compilation engagements, which is often a compliance issue involved in consumer complaints that the Board receives.

The EIS also stated that no economic, small business or consumer impact was expected from the incorporation of the AICPA’s Code of Conduct and Professional Standards. Staff believes this estimate remains accurate.

Other technical and conforming changes were not anticipated to have a fiscal impact, which Staff agrees has not happened.

2019 Economic, Small Business and Consumer Impact Statement:

Effective February 4, 2019, the Board amended its rules to address two primary areas: foreign transcript evaluation and CPE requirements. As it relates to foreign transcript evaluations, the Board modified its rules by requiring that course-by-course evaluations be done by the National Association of State Boards of Accountancy International Evaluation Services (NIES) rather than from a service that is a member of either the National Association of Credential Evaluation Services (NACES) or the Association of International Credential Evaluators (AICE). Furthermore, the Board amended its CPE rules to reduce regulatory burdens by:

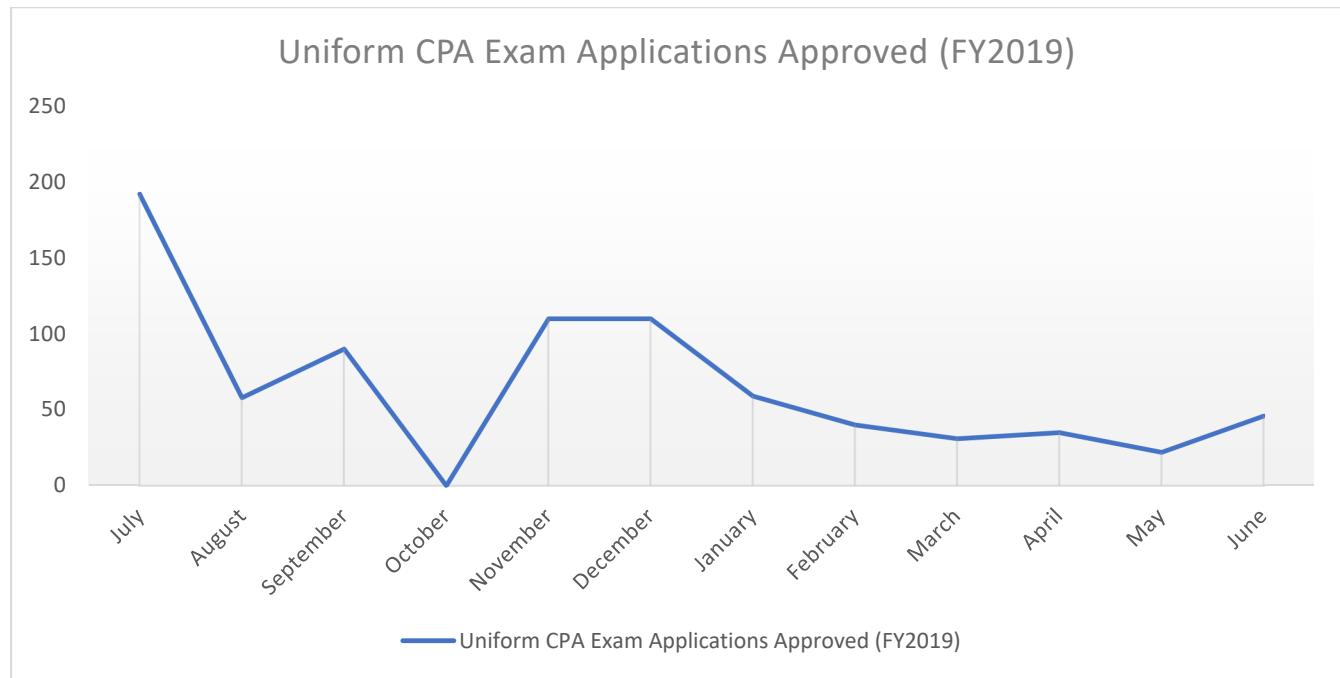
1. Allowing CPE to be credited in smaller increments (one-fifth vs. one-half hour);
2. Only requiring 80 hours of CPE to be reported rather than all CPE hours completed during the CPE reporting period;
3. Allowing a registrant who is certified as a CPA in another jurisdiction from having to meet the individual CPE requirements of Arizona, so long as the registrant is a non-resident and complies with the CPE requirements applicable in the state where their principal place of business is located (CPE Reciprocity); and
4. Allowing for a new delivery method of CPE instruction called “nano-learning,” which is a tutorial program designed to permit a participant to conveniently learn a given subject in a 10-minute time frame.

Other technical and conforming changes were also made to the rules.

The EIS noted that requiring course-by-course evaluations to be done by NIES was not expected to have any significant consumer impact in financial terms, as applicants are already required to pay for such evaluations for education taken outside the United States from NACES or AICE member evaluators. Transcript evaluation pricing varies and is determined by any foreign language documents, including transcripts, that must be translated into English, and potentially by the length and complexity of the documents. As a result, it is believed that most transcript evaluation companies would prefer to offer quotes to customers on a case-by-case basis. A rough

comparison of charges to applicants was provided in the EIS, showing an average cost of \$217 for basic transcript evaluation services.

Apart from the financial implications for applicants, it was also expected that fewer foreign applicants would qualify to be approved in Arizona to sit for the Exam or to be approved to become a CPA. It is strongly believed that NIES evaluation services are the premier transcript evaluation service, in terms of effectiveness, thoroughness, and reliability in identifying and reducing fraud – not only in Arizona, but nationally. As a result, some applicants would have to find another jurisdiction to accept a foreign transcript evaluation service other than NIES. Accordingly, it was estimated that the amendment would have a fiscal impact to the Board, in terms of a reduction in the number of applications and accompanying application fees that are submitted to the Board. Though a full year has not passed since the effective date of this rulemaking, the estimated effects are already becoming apparent due to the reduced number of applications approved. From July 2018 to December 2018, an average of 93 applications per month were approved. From January 2019 to June 2019, an average of 39 applications per month were approved.



The EIS did not anticipate any economic, small business or consumer impact as it related to the amendment of its CPE rule, aside from the fact that registrants who qualify for CPE reciprocity would save time and money by no longer having to take and report a one-hour ethics course specific to Arizona statutes and administrative rules, nor be required to report all CPE completed during the CPE reporting period, as long as they meet the CPE reciprocity requirements. Further, it was estimated that all registrants would benefit by having CPE credited one-fifth vs. one-half hour increments, thereby maximizing the total crediting of CPE to the advantage of the registrant, likely reducing the number of courses that need to be taken in order to reach the total 80-hour CPE

requirement. Staff would concur with this estimation as the Board has not received evidence or information to the contrary.

Other technical and conforming were not anticipated to have a fiscal impact, to which Staff continues to believe is accurate.

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

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

Due to a rulemaking which became effective on February 4, 2014, the Board received approval from the Governor's Regulatory Review Council (GRRC) to reschedule its Five-Year Review Report. Accordingly, we will address whether the proposed course of action for the 2009 Five-Year Review Report was completed.

In the 2009 Five-Year Review Report, the Board stated that its planned course of action was to amend the following rules and submit the final rulemaking for the GRRC approval on or before December 31, 2009: R4-1-101, R4-1-115, R4-1-118, R4-1-226.01, R4-1-228, R4-1-229, R4-1-341, R4-1-342, R4-1-343, R4-1-453, and R4-1-454.

While a final rulemaking was not submitted to GRRC by December 31, 2009, the Board addressed the above-referenced rules in its rulemaking, effective February 4, 2014, by either amending the rules to address the issues identified in the 2009 Five-Year Review Report, or repealing them as they were no longer considered necessary (e.g. R4-1-118 and R4-1-342).

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:**

Rule	Do the probable benefits of the rule outweigh within this State the probable costs of the rule?	Does the rule impose the least burden and costs to regulated persons?
R4-1-101	Yes. The application of statutory and regulatory definitions into the Board's rules provide readers clarity in understanding how	Yes. There is no other option that would reduce the burden and costs of regulated persons even further.

	those terms are defined when used in the rules.	
R4-1-102	Yes. The rule's objective is to outline the applicability of the Board's rules, its ability to excuse failures to comply, and ability to grant extensions of time to comply with its rules. It does not impose a cost on regulated persons.	Yes. The rule imposes a burden on regulated persons by determining that all parties, including the regulated persons, are deemed to have knowledge of this chapter. This is necessary though to ensure appropriate regulation and fulfill the Board's mission to protect the public ⁷ . As stated before, this rule does not impose a cost on regulated persons.
R4-1-104	Yes. The probable benefits of this rule outweigh the costs as the rule describes Board records and procedures for public access. Costs are limited to what would be normally required to obtain public records pursuant to A.R.S. Title 39, Chapter 1, related to public records.	Yes. This rule is consistent with A.R.S. Title 39, Chapter 1, and costs and burdens are limited to what is required in statute.
R4-1-105	The Board of Accountancy is choosing to not include this rule in the Five-Year Review Report and to allow it to expire.	The Board of Accountancy is choosing to not include this rule in the Five-Year Review Report and to allow it to expire.
R4-1-113	Yes. This rule simply outlines how the Board and its Committees conduct their meetings. No costs are imposed on regulated persons.	Yes. This rule simply outlines how the Board and its Committees conduct their meetings. There are no burdens or costs imposed on regulated persons.
R4-1-114	Yes. The rule clearly defines hearing and rehearing/review processes which are beneficial to the Board and regulated persons.	Yes. The rule is consistent with A.R.S. Title 41, Chapter 6, related to administrative procedure.
R4-1-115	Yes. This rule establishes the Accounting and Auditing Advisory Committee and Tax Advisory Committee, which assist the Board in the investigation of complaints and is essential to fulfilling the Board's mission to protect the public.	Yes. This rule simply establishes the two advisory committees and outlines their responsibilities.

⁷ A.R.S. § 32-703(A), “The primary duty of the board is to protect the public from unlawful, incompetent, unqualified or unprofessional certified public accountants through certification, regulated and rehabilitation.”

R4-1-115.01	Yes. This rule establishes the Law Review Advisory Committee, which assists the Board in the evaluation of statutory and regulatory provisions.	Yes. This rule simply establishes the committee and outlines its responsibilities.
R4-1-115.02	Yes. This rule establishes the CPE Advisory Committee, which assists the Board in the evaluation of CPE.	Yes. This rule simply establishes the committee and outlines its responsibilities.
R4-1-115.03	Yes. This rule establishes PROAC, which assists the Board in monitoring the peer review program.	Yes. This rule simply establishes the committee and outlines its responsibilities.
R4-1-115.04	Yes. This rule establishes the Certification Advisory Committee, which assists the Board in the evaluation of applicants for the Exam and for CPA certification.	Yes. This rule simply establishes the committee and outlines its responsibilities.
R4-1-117	Yes. This rule supplements the hearing procedures provided in R4-1-114, and establishes processes for pleadings, witness' depositions, witness' interrogatories, subpoenas, and service of specific documents.	Yes. The rule is consistent with A.R.S. Title 41, Chapter 6, related to administrative procedure.
R4-1-226.01	Yes. This rule assists applicants in understanding the requirements and process for application for examination.	Yes. The rule only requires what information is necessary to establish whether applicants meet statutory requirements.
R4-1-228	No. This rule is procedural rather than regulatory, and the Board will be replacing it with appealable action language for exam denials.	No. This rule is procedural rather than regulatory, and the Board will be replacing it with appealable action language for exam denials.
R4-1-229	Yes. This rule provides applicants flexibility in taking the Exam.	Currently yes. By June 2020, the AICPA and NASBA want to provide "continuous testing", which allows applicants to retake a test section once their grade for any previous attempt of the same test section during that window has been released. The Board intends to proceed with rulemaking to amend its rules to allow for continuous testing, which will provide greater flexibility to applicants.

R4-1-341	Yes. This rule assists applicants in understanding the requirements and process for applicants for certification and reinstatement ⁸ , and enumerates timeframes for certification pursuant to A.R.S. Title 41, Chapter 6, Article 7.1.	No. As noted in question four of the Five-Year Review Report for this rule, R4-1-341(A)(2)(c) currently requires that a letter of recommendation be signed and dated by a CPA. The Board intends to proceed with rulemaking to modify the subparagraph and allow for CPAs and individuals who have accounting education experience similar to that of a CPA to sign and date letters of recommendation. Modifying the rule to allow for this will reduce the burden even further for applicants.
R4-1-343	Yes. This rule outlines how applicants should demonstrate compliance with education and accounting experience requirements required in statute, and accordingly, provides clarity.	Yes. The rule does not ask for any more information than what is required to comprehensively determine that applicants have met education and experience requirements.
R4-1-344	Yes. This rule outlines the appeal process for the denial of a certificate or registration, consistent with A.R.S. Title 41, Chapter 6, Article 10.	Yes. The rule reiterates and codifies many of the requirements of A.R.S. Title 41, Chapter 6, Article 10 into rule.
R4-1-345	Yes. This rule outlines when initial and renewal registrations should be submitted for registrants and their associated fees. The information of when initial and renewal registrations should be submitted provide clarity to regulated persons. As it relates to fees, the Board is a self-supporting 90/10 agency ⁹ . Its fees are necessary for the operation of the agency and for the fulfillment of its mandate to protect the public.	Yes. The fees are consistent with A.R.S. § 32-729 and apply to individual CPAs and CPA firms (with the exception of a sole proprietorship or an individual required to register a firm, which per A.R.S. § 32-729, are not charged a fee for their registration.)
R4-1-346	Yes. With the exception of subsection B, which the Board intends to repeal, the benefits	Yes. With the exception of subsection B, the Board merely requires that regulated persons

⁸ As noted in the response to question four for this rule – the Board also intends to proceed with rulemaking to codify CPA firm registration requirements in this rule.

⁹ 90% of the Board's revenue goes to the Board's fund and 10% goes into the general fund.

	<p>of this rule outweigh the costs.</p> <p>Communication is pertinent for an effective regulatory agency. Just as the agency owes a responsibility to effectively communicate to its regulated community, regulated persons have a responsibility to respond to inquiries and letters from the agency. This helps ensure that the Board can fulfill its mission in protecting the public.</p>	<p>inform the Board, within 30 days, of a change in address. A form is available on the Board's website that regulated persons can fill out and either mail, email, or fax to the Board.</p>
R4-1-453	<p>Yes. CPE is a foundational pillar of the CPA profession and helps differentiate CPAs from regular accountants. CPE allows regulated persons to stay on top of the ever-evolving fields of taxation, consulting, auditing, compilations, and much more, and helps ensure that clients, and the public-at-large, receive quality and competent service.</p>	<p>Yes. Effective February 4, 2019, the Board amended its CPE rules to reduce regulatory burdens by:</p> <ol style="list-style-type: none"> 1. Allowing CPE to be credited in smaller increments (one-fifth vs. one-half hour); 2. Only requiring 80 hours of CPE to be reported rather than all CPE hours completed during the CPE reporting period; 3. Allowing a registrant who is certified as a CPA in another jurisdiction from having to meet the individual CPE requirements of Arizona, so long as the registrant is a non-resident and complies with the CPE requirements applicable in the state where their principal place of business is located (CPE Reciprocity); and 4. Allowing for a new delivery method of CPE instruction called "nano-learning," which is a tutorial program designed to permit a participant to conveniently learn a given subject in a 10-minute time frame.
R4-1-454	<p>Yes. Whereas CPE is essential for individual CPAs, peer reviews are essential for CPA firms who provide attest or compilation services. Peer review is proactive and helps</p>	<p>No. As noted in the response to question 6 for R4-1-454, the Board has identified opportunities to further reduce regulatory burdens for applicable CPA firms by</p>

	identify system or quality control issues before it has the potential to affect the public. The peer review program is managed by the AICPA.	repealing any language that conflicts with the incorporated Standards for Performing and Reporting on Peer Reviews.
R4-1-455	Yes. This rule incorporates the AICPA's Code of Professional Conduct, which is a collection of codified standards that outline a CPA's ethical and professional responsibilities. Compliance with the AICPA's Code of Professional Conduct correlates with the Board's responsibility to protect the public.	Yes. Incorporation of the AICPA's Code of Professional Conduct reduces confusion over regulatory requirements by ensuring that the accounting community only has one set of standards by which it is regulated.
R4-1-455.01	Yes. This rule simply explains how definitions will be interpreted within the AICPA's Code of Professional Conduct.	Yes. This rule simply explains how definitions will be interpreted within the AICPA's Code of Professional Conduct.
R4-1-455.02	Yes. This rule outlines conduct in performing an attest service that would constitute a violation of A.R.S. § 32-741(A)(4) ("Dishonesty, fraud or gross or continuing negligence in the practice of accounting."). Attest services are pertinent to the public and may be relied upon by financial institutions in order to offer loans to businesses or various other financial services. The public's reliance on these services therefore underscores its importance in relation to the Board's mission to protect the public.	Yes. This rule outlines unacceptable conduct in performing attest services and correlates with the Board's mission to protect the public from incompetent or unqualified CPAs.
R4-1-455.03	Yes. This rule outlines specific responsibilities and practices that registrants must comply with, including advertising and solicitation practices, misleading firm names, and a requirement to respond to Board communications.	Yes. This rule outlines specific responsibilities and practices that registrants must comply with and correlates with the Board's mission to protect the public.
R4-1-455.04	Yes. This rule explains that a registrant may retain and dispose of documents prescribed in	Yes. This rule does not impose any additional costs or burden to regulated persons.

	A.R.S. § 32-744(C) in compliance with a reasonable document retention policy.	
R4-1-456	Yes. This rule outlines when and how a registrant must report final judgments, convictions, and violations to the Board. The reporting of such information is pertinent to the Board's mission of protecting the public.	Yes. This rule only requires registrants to report information that may constitute a violation of A.R.S. § 32-741(A).

12. **Are the rules more stringent than corresponding federal laws?** Yes _____ No X _____

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

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 require the issuance of a regulatory permit, license, or agency authorization. These rules only apply to those who are issued a CPA certificate or CPA firm registration by the Board, pursuant to A.R.S. § 32-701, *et seq.*

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 proposed course of action described below is contingent on obtaining a rulemaking exemption from the Governor's Office. On July 26, 2019, the Board submitted to the Governor's Office a rulemaking exemption request, and we are currently awaiting a response.

If approved by the Governor's Office, the Board will amend the following rules and submit the final rulemaking for the Council's approval on or before November 1, 2019:

- R4-1-101,
- R4-1-104,
- R4-1-115.03,
- R4-1-226.01,
- R4-1-228,
- R4-1-229,
- R4-1-341,
- R4-1-344,
- R4-1-345,
- R4-1-346,
- R4-1-453,
- R4-1-454,
- R4-1-455,
- R4-1-455.01, and
- R4-1-456.

Arizona Administrative CODE

4 A.A.C. 1 Supp. 18-4

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, 2018 through December 31, 2018

Title 4



**ARD Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION**

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 1. BOARD OF ACCOUNTANCY

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.

R4-1-226.01. Applications; Examination - Computer-based	7	R4-1-453. Continuing Professional Education	12
R4-1-343. Education and Accounting Experience	10		

Questions about these rules? Contact:

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E-mail: mpetersen@azaccountancy.gov
Website: www.azaccountancy.gov

The release of this Chapter in Supp. 18-4 replaces Supp. 17-4, 16 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

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. 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, 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

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

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 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 1. BOARD OF ACCOUNTANCY

Authority: A.R.S. § 32-701 et seq.

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R4-1-203.	Reserved
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ARTICLE 1. GENERAL**R4-1-101. Definitions**

- A. The definitions in A.R.S. § 32-701 apply to this chapter.
- B. In this chapter, unless the context otherwise requires:
1. “Compilation services” means services, the objective of which is defined in Section 80.04 of the Statement on Standards for Accounting and Review Services No. 21, issued October 2014 and published June 1, 2017 in the AICPA Professional Standards by the American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, New York 10036-8775, which is incorporated by reference. This incorporation by reference does not include any later amendments or editions. The incorporated material is available for inspection and copying at the Board’s office.
 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 any agency after an opportunity for hearing.
 3. “CPE” or “continuing professional education” means attending classes, writing articles, conducting or teaching courses, and taking self-study courses if the activities contribute to maintaining and improving of professional competence in accounting.
 4. “Facilitated State Board Access (FSBA)” means the sponsoring organization’s process for providing the Board access to peer review results via a secured website.
 5. “Party” means each person or agency named or admitted as a party, or properly seeking and entitled, as of right, to be admitted as a party.
 6. “Peer review” means an assessment, conducted according to R4-1-454(J), of one or more aspects of the professional work of a firm.
 7. “Peer review program” means the sponsoring organization’s entire peer review process, including but not limited to the standards for administering, performing and reporting on peer reviews, oversight procedures, training, and related guidance materials.
 8. “Person” may include any individual, and any form of corporation, partnership, or professional limited liability company.
 9. “Sponsoring organization” means a Board-approved professional society, or other organization approved by the Board responsible for the facilitation and administration of peer reviews through use of its peer review program and peer review standards.
 10. “Upper level course” means a course taken beyond the basic level, after any required prerequisite or introductory accounting course and does not include principals of accounting or similar introductory accounting courses.

Historical Note

Former Rule 1A; Amended effective February 22, 1978 (Supp. 78-1). Former Section R4-1-01 renumbered as Section R4-1-101 without change effective July 1, 1983 (Supp. 83-4). Amended effective August 21, 1986 (Supp. 86-4). Amended effective December 6, 1995 (Supp. 95-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 4352, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1). Amended by final rulemaking at 23 A.A.R. 3246, effective January 1, 2018 (Supp. 17-4).

R4-1-102. Powers of the Board: Applicability; Excuse; Extension

- A. This chapter applies to all actions and proceedings of the Board and is deemed part of the record in every action or proceeding without formal introduction or reference. All parties are deemed to have knowledge of this chapter, which the Board shall make available on the Board’s website.
- B. The Board, when within the Board’s jurisdiction, may, in the interest of justice, excuse the failure of any person to comply with any part of this chapter.
- C. The Board, or in case of an emergency, the President or Executive Director, when within the Board’s jurisdiction, may grant an extension of time to comply with this chapter.

Historical Note

Former Rules 1B, 1C, 1D, 1E; Former Section R4-1-02 renumbered as Section R4-1-102 without change effective July 1, 1983 (Supp. 83-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

R4-1-103. Repealed**Historical Note**

Former Rule 2E; Former Section R4-1-03 renumbered as Section R4-1-103 without change effective July 1, 1983 (Supp. 83-4). Repealed effective August 21, 1986 (Supp. 86-4).

R4-1-104. Board Records; Public Access; Copying Fees

- A. The Board shall maintain all records, subject to A.R.S. Title 39, Chapter 1, reasonably necessary or appropriate to maintain an accurate knowledge of the Board’s official activities including, but not limited to:
1. Applications for C.P.A. and P.A. certificates and supporting documentation and correspondence;
 2. Applications to take the Uniform Certified Public Accountant Examination;
 3. Registration for registrants;
 4. Documents, transcripts, and pleadings relating to disciplinary proceedings and to hearings on the denial of a certificate; and;
 5. Investigative reports; staff memoranda; and general correspondence between any person and the Board, members of the Board, or staff members.
- B. Except as provided in R4-1-105, all records of the Board are available for public inspection and copying as provided in this Section.
- C. Any person desiring to inspect or obtain copies of records of the Board available to the public under this section shall make a request to the Board’s Executive Director or the Director’s designee. The Executive Director or the director’s designee shall, as soon as possible within a reasonable time, advise the person making the request whether the records sought can be made available, or, if the Executive Director or the director’s designee is unsure whether a record may be made available for public inspection and copying, the Executive Director or the director’s designee shall refer the matter to the Board for final determination.
- D. A person shall not remove original records of the Board from the office of the Board unless the records are in the custody and control of a board member, a member of the Board’s committees or staff, or the Board’s attorney. The Executive Director or the director’s designee may designate a staff member to observe and monitor any examination of Board records.
- E. The Board shall provide copies of all records available for public inspection and copying shall be provided according to the procedures described in A.R.S. Title 39, Chapter 1, Article 2.

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- F. Any person aggrieved by a decision of the Executive Director or the director's designee denying access to records of the Board may request a hearing before the Board to review the action of the Executive Director or the director's designee by filing a written request for hearing. Within 60 days of receipt of the request, the Board shall conduct a hearing on the matter. If the person requires immediate access to Board records, the person may request and may be granted an earlier hearing, if the person sets forth sufficient grounds for immediate access.

Historical Note

Adopted effective January 3, 1977 (Supp. 77-1). Amended effective February 22, 1978 (Supp. 78-1). Amended effective July 17, 1978 (Supp. 78-4). Former Section R4-1-04 renumbered as Section R4-1-104 without change effective July 1, 1983 (Supp. 83-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

R4-1-105. Confidential Records

- A. Complaints, reports, photographs, transcripts, correspondence and other documents relating to an investigation by the Board of possible violations of the Arizona State Board of Accountancy statutes or this chapter shall not be made available for public inspection and copying, except that investigative records shall be made available for public inspection and copying when a civil enforcement or disciplinary proceeding against the person who is the subject of the investigation is instituted.
- B. Correspondence between the Board, members of the Board or staff members, or members of the Board's committees and the Board's attorney shall not be made available for public inspection and copying.
- C. An examinee's scores on the Uniform Certified Public Accountant Examination shall not be made available for public inspection and copying, except that the Board may disclose the identity of those who pass the examination after the date set by it for the release of scores.
- D. Letters of reference received in connection with applications for certificates shall not be made available for public inspection and copying.
- E. Resumes, employment applications, personnel evaluations and injury reports regarding employees of the Board or applicants for employment shall not be made available for public inspection and copying, except that the records shall be disclosed as directed by the employee or applicant concerned.
- F. Minutes of executive sessions of the Board and its advisory committees and executive session agendas containing confidential information shall not be made available for public inspection or copying.
- G. The Board may, in the case of a record not otherwise made confidential by this Section, order that the record not be made available for public inspection or copying whenever the Board determines that public disclosure of the record would have a significant and adverse effect on the Board's ability to perform its duties or would otherwise be detrimental to the best interests of the state.
- H. Notwithstanding subsections (A) through (G), the Board may order that any record of the Board made confidential under this Section be made available for public inspection and copying when it determines that the reasons justifying the confidentiality of the record no longer exist.

Historical Note

Adopted effective January 3, 1977 (Supp. 77-1). Former Section R4-1-05 renumbered as Section R4-1-105 and amended in subsections (C) and (D) effective July 1,

1983 (Supp. 83-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

R4-1-106. Reserved**R4-1-107. Reserved****R4-1-108. Reserved****R4-1-109. Reserved****R4-1-110. Reserved****R4-1-111. Reserved****R4-1-112. Reserved****R4-1-113. Meetings**

The Board and Board committees shall conduct meetings in accordance with the current edition of Robert's Rules of Order if the rules are compatible with the laws of the state of Arizona or the Board's own resolutions regarding meetings.

1. Regular and special meetings of the Board for the purpose of conducting business shall be called by the President or a majority of the board members.
2. Regular and special meetings of the committees shall be called by the chairperson or a majority of the committee members.

Historical Note

Former Rules 2A, 2B, 2C, 2D; Former Section R4-1-13 renumbered as Section R4-1-113 without change effective July 1, 1983 (Supp. 83-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

R4-1-114. Hearing; Rehearing or Review

- A. **Hearing:** The Board or an Administrative Law Judge (ALJ) employed by the Office of Administrative Hearings (OAH) shall hear all contested cases and appealable agency actions. The Board shall conduct hearings according to the provisions of A.R.S. Title 41, Chapter 6, Article 10 as supplemented by R4-1-117. The OAH shall conduct hearings according to A.R.S. Title 41, Chapter 6, Article 10 and the rules and procedures established by the OAH. To the extent that there is no conflict with A.R.S. Title 41, Chapter 6, Article 10, the provisions of A.R.S. § 32-743 apply to hearings conducted by the Board and the OAH. The following subsections apply to hearings conducted by the Board and hearings conducted by the OAH where applicable.
 1. **Power to join any interested party:** Any board member or the ALJ may join as a party applicant or as a party defendant, any person, firm or corporation, that appears to have an interest in the matter before the Board.
 2. **Stipulation at hearing:** The parties may stipulate to facts that are not in dispute. The stipulation may be in writing or may be made orally by reading the stipulation into the record at the hearing. The stipulation is binding upon the parties unless the Board or the ALJ grants permission to withdraw from the stipulation. The Board or the ALJ may set aside any stipulation.
 3. **Settlements and consent orders:** At any time before or after formal disciplinary proceedings have been instituted against a registrant, the registrant may submit to the Board an offer of conditional settlement to avoid formal disciplinary proceedings by the Board. In the offer of conditional settlement, the registrant shall agree to take specific remedial steps such as enrolling in CPE courses,

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- limiting the scope of the registrant's practice, accepting limitation on the filing of public reports, and submitting the registrant's work product for peer review. If the Board determines that the proposed conditional settlement will protect the public safety and welfare and is more likely to rehabilitate or educate the registrant than formal disciplinary action under A.R.S. § 32-741, the Board may accept the offer and enter an order that incorporates the registrant's proposed conditional settlement and to which the registrant consents. A consent order issued under this subsection shall provide that, upon successful compliance by the registrant with all provisions of the order, the disciplinary proceedings shall be terminated and any notice of hearing previously issued shall be vacated. The consent order shall further provide that, upon failure of the registrant to comply with all provisions of the order, or upon the discovery of material facts unknown to the Board at the time the Board issued the order, formal disciplinary proceedings against the registrant may be instituted or resumed. The consent order additionally may provide that, upon failure of the registrant to comply with all provisions of the order, the Board may immediately and summarily suspend the registrant's certificate for not more than one year. Within 30 days after the summary suspension, the registrant may request a hearing solely concerning the issue of compliance with the consent order.
- 4. Decisions and orders:** The Board shall make all decisions and orders by a majority vote of the members considering the case. The Board shall issue a final written decision in a contested case or state the decision on the record. The decision shall state separately the findings of fact and conclusions of law on which the decision is based, and the Board's order to implement the decision. All written decisions and orders of the Board shall be signed by the President or Secretary of the Board. When the Board suspends or revokes the certificate of a registrant, the Board may order the registrant to return the registrant's certificate within 30 days after receipt of the order. The Board shall serve each party, each attorney of record, and the Attorney General with a copy of each decision or order of the Board, as provided in R4-1-117.
- B. ALJ:** In hearings conducted by the OAH, the ALJ shall provide the Board with written findings of fact, conclusions of law, and a recommended order within 20 days after the conclusion of the hearing or as otherwise provided by A.R.S. Title 41, Chapter 6, Article 10. The Board's decision approving or modifying the ALJ's recommendations is the final decision of the Board, subject to the filing of a motion for rehearing or review as provided in subsection (C).
- C. Rehearing or Review:** Any party aggrieved by a decision of the Board may file with the Board a written motion for rehearing or review within 30 days after service of the decision specifying the particular grounds for the motion. The Attorney General may file a response to the motion for rehearing within 15 days after service of the motion. The Board may require the filing of written briefs upon issues raised in the motion for rehearing or review and provide for oral argument. Upon review of the documents submitted, the Board may modify the decision or vacate it and grant a rehearing for any of the following causes materially affecting a party's rights:
1. Irregularity in the administrative proceedings or any order or abuse of discretion, that deprived a party of a fair hearing;
 2. Misconduct of the Board or the ALJ;

3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence, that could not with reasonable diligence have been discovered and produced at the original hearing;
5. Excessive or insufficient penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing, or during the progress of the proceeding; or
7. That the findings of fact or decision is not justified by the evidence or is contrary to law.

Historical Note

Former Rules 5A, 5B, 5C; Amended effective January 3, 1977 (Supp. 77-1). Amended effective February 22, 1978 (Supp. 78-1). Former Section R4-1-14 renumbered as Section R4-1-114 without change effective July 1, 1983 (Supp. 83-4). Amended effective December 6, 1995 (Supp. 95-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

R4-1-115. Accounting and Auditing and Tax Advisory Committees

- A.** The Board may appoint advisory committees concerning accounting reports, taxation and other areas of public accounting as the Board deems appropriate. The committees shall evaluate investigation files referred by the Board, hold voluntary informal interviews and make advisory recommendations to the Board concerning settlement, dismissal or other disposition of the reviewed matter.
- B.** The Board, in its discretion, may accept, reject, or modify the recommendation of the advisory committee.

Historical Note

Adopted effective July 1, 1983 (Supp. 83-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

R4-1-115.01. Law Review Advisory Committee

- A.** The Board may appoint an advisory committee to assist in the evaluation of statutory and regulatory provisions. The committee shall make advisory recommendations to the Board.
- B.** The Board, in its discretion, may accept, reject, or modify the recommendations of the advisory committee.

Historical Note

Adopted effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

R4-1-115.02. Continuing Professional Education Advisory Committee

- A.** The Board may appoint an advisory committee to assist in the evaluation of CPE. The committee shall make advisory recommendations to the Board concerning the following:
1. CPE programs;
 2. A registrant's satisfaction of CPE requirements; and
 3. A registrant's compliance with disciplinary orders requiring CPE.
- B.** The Board, in its discretion, may accept, reject, or modify the recommendations of the advisory committee.

Historical Note

Adopted effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

R4-1-115.03. Peer Review Oversight Advisory Committee

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- A. The Board may appoint an advisory committee to monitor and conduct the peer review program. Upon appointment the committee shall:
 - 1. Advise the Board on matters relating to the peer review program;
 - 2. Report to the Board on effectiveness of the peer review program;
 - 3. Provide the Board with a list of firms that have met the peer review requirements;
 - 4. Update the Board on the status of participating firms' noncompliance with the requirements of R4-1-454;
 - 5. Maintain documents in a manner that preserves the confidentiality of persons, including information pertaining to a specific business organization which may be disclosed to the committee during the course of its business; and
 - 6. Report to the Board and obtain approval of any modification to the peer review program.
- B. The Board may accept, reject, or modify recommendations of the Peer Review Oversight Advisory Committee.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 4352, effective December 4, 2004 (04-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

R4-1-115.04. Certification Advisory Committee

- A. The Board may appoint an advisory committee to assist in the evaluation of applicants for the Uniform Certified Public Accountant Examination and for certified public accountant. The committee shall review applications, transcripts, and related materials, and make advisory recommendations to the Board concerning the qualifications of applicants for the Uniform Certified Public Accountant Examination and for certification of certified public accountants.
- B. The Board, in its discretion, may accept, reject, or modify the advisory recommendation in determining the qualifications of applicants.

Historical Note

New Section R4-1-115.04 renumbered from R4-1-116 and amended by final rulemaking, effective February 4, 2014 (Supp. 14-1).

R4-1-116. Renumbered**Historical Note**

Adopted effective July 1, 1983 (Supp. 83-4). Amended effective November 20, 1998 (Supp. 98-4). Section R4-1-116 renumbered to R4-1-115.04 by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

R4-1-117. Procedure: Witnesses; Service

- A. Pleadings; depositions; briefs; and related documents. A party shall print or type all pleadings, depositions, briefs, and related documents and use only one side of the paper.
- B. Witness' depositions. If a party wants to take the oral deposition of a witness residing outside the state, the party shall file with the Board a petition for permission to take the deposition stating the name and address of the witness and describing in detail the nature and substance of the testimony expected to be given by the witness. The petition may be denied if the testimony of the witness is not relevant and material. If the petition is granted, the party may proceed to take the deposition of the witness by complying with the Arizona Rules of Civil Procedure. The party applying to the Board for permission to take a deposition shall bear the expense of the deposition.
- C. Witness' interrogatories. A party desiring to take the testimony of a witness residing outside the state by means of interrogato-

ries may do so by serving the adverse party as in civil matters and by filing with the Board a copy of the interrogatories and a statement showing the name and address of the witness. The adverse party may file in duplicate cross-interrogatories with a copy of the statement within 10 days following service on the adverse party. A party that objects to the form of an interrogatory or cross-interrogatory may file a statement of the objection with the Board within five days after service of the interrogatories or cross-interrogatories and may suggest to the Board any amendment to an interrogatory or cross-interrogatory. The Board may amend, add, or strike out an interrogatory or cross-interrogatory when the Board determines it is proper to do so.

- 1. Notwithstanding the fact that a party may petition for permission to take the oral deposition of a witness, the Board may require that the information be provided through written interrogatories and vice versa.
- 2. A party shall provide a copy of answers to the interrogatories to the Board within 45 days after the interrogatories are answered.
- D. Subpoenas. The Board officer presiding at a hearing may authorize subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence, and shall administer oaths. A party desiring the Board to issue a subpoena for the production of evidence, documents or to compel the appearance of a witness at a hearing shall apply for the subpoena in writing stating the substance of the witness's testimony. If the testimony appears to be relevant and material, the Board shall issue the subpoena. Affixing the seal of the Board and the signature of a Board officer is sufficient to show that the subpoena is genuine. The party applying for the subpoena shall bear the expense of service.

E. Service.

- 1. Service of any decision, order, subpoena, notice, or other document may be made personally in the same manner as a summons served in a civil action. If a document is served personally, service is deemed complete at the time of delivery.
- 2. Except as provided in subsection (E)(5), service of any document may also be made by personal service or by enclosing a copy of the document in a sealed envelope and depositing the envelope in the United States mail, with first-class postage prepaid, addressed to the party, at the address last provided to the Board.
- 3. Service by mail is deemed complete when the document to be served is deposited in the United States mail. If the distance between the place of mailing and the place of address is more than 100 miles, service is deemed complete one day after the deposit of the document for each 100 miles to a maximum of six days after the date of mailing.
- 4. In computing time, the date of mailing is not counted. All intermediate Sundays and holidays are counted. If the last day falls on a Sunday or holiday, that day is not counted and service is considered completed on the next business day.
- 5. The Board shall mail each notice of hearing and final decision by certified mail to the last known address reflected in the records of the Board.
- 6. Service on attorney. Service on an attorney who has appeared for a party constitutes service on the party.
- 7. Proof of service. A party shall demonstrate proof of service by filing an affidavit, as provided by law, proof of mailing by certified mail, or an affidavit of first-class mailing.

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Historical Note

Former Rules 3A, 3B, 3C, 3D, 4A, 4B, 4C, 4D; Amended effective January 3, 1977 (Supp. 77-1). Former Section R4-1-15 renumbered as Section R4-1-117 without change effective July 1, 1983 (Supp. 83-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

R4-1-118. Repealed**Historical Note**

Former Rule 8; Amended effective January 3, 1977 (Supp. 77-1). Amended effective November 5, 1980 (Supp. 80-6). Former Section R4-1-16 renumbered as Section R4-1-118 without change effective July 1, 1983 (Supp. 83-4). Amended effective November 1, 1995 (Supp. 95-4). Repealed by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

ARTICLE 2. CPA EXAMINATION**R4-1-201. Reserved****R4-1-202. Reserved****R4-1-203. Reserved****R4-1-204. Reserved****R4-1-205. Reserved****R4-1-206. Reserved****R4-1-207. Reserved****R4-1-208. Reserved****R4-1-209. Reserved****R4-1-210. Reserved****R4-1-211. Reserved****R4-1-212. Reserved****R4-1-213. Reserved****R4-1-214. Reserved****R4-1-215. Reserved****R4-1-216. Reserved****R4-1-217. Reserved****R4-1-218. Reserved****R4-1-219. Reserved****R4-1-220. Reserved****R4-1-221. Reserved****R4-1-222. Reserved****R4-1-223. Reserved****R4-1-224. Reserved****R4-1-225. Reserved****R4-1-226. Expired****Historical Note**

Former Rules 6A, 6B, 6C; Amended effective January 15, 1976 (Supp. 76-1). Amended effective December 1, 1976 (Supp. 76-5). Amended effective July 17, 1978 (Supp. 78-4). Amended effective November 5, 1980

(Supp. 80-5). Former Section R4-1-26 renumbered as Section R4-1-226 and amended in subsections (B) and (C) effective July 1, 1983 (Supp. 83-4). Amended effective August 21, 1986 (Supp. 86-4). Amended subsection (C) effective May 25, 1989 (Supp. 89-2). Amended effective January 1, 1994; filed in the Office of the Secretary of State September 21, 1993 (Supp. 93-3). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 5 A.A.R. 4575, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 4815, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 9 A.A.R. 5022, effective January 3, 2004 (Supp. 03-4). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 372, effective December 31, 2008 (Supp. 09-1).

R4-1-226.01. Applications; Examination - Computer-based

- A. A person desiring to take the Uniform Certified Public Accountant Examination who is qualified under A.R.S. § 32-723 may apply by submitting an initial application. A person whose initial application has already been approved by the Board to sit for the Uniform CPA Examination may apply by submitting an application for re-examination.
 1. The requirements for initial application for examination are:
 - a. A completed application for initial examination,
 - b. A \$100 initial application fee if:
 - i. The applicant has not previously filed an application for initial examination in Arizona, or
 - ii. The Board administratively closed a previously submitted application, or
 - iii. The applicant has been previously denied by the Board.
 - c. University or college transcripts to verify that the applicant meets the educational requirements and if necessary for education taken outside the United States an additional course-by-course evaluation from the National Association of State Boards of Accountancy International Evaluation Services (NIES).
 - d. Other information or documents requested by the Board to determine compliance with eligibility requirements.
 2. The requirements for application for re-examination are:
 - a. A completed application for re-examination, and
 - b. A \$50 re-examination application fee.- B. Within 30 days of receiving an initial application, board staff shall notify the applicant that the application is either complete or incomplete. If the application is incomplete, the notice shall specify what information is missing. The applicant has 30 days from the date of the Board's letter to respond to the Board's request for additional information or the Board or its designee may administratively close the file. An applicant whose file is administratively closed and who later wishes to apply shall reapply under subsection (A)(1).
- C. The Board's certification advisory committee (CAC) shall evaluate the applicant's file and make a recommendation to the Board to approve or deny the application. The CAC may defer a decision on the applicant's file to a subsequent CAC meeting to provide the applicant opportunity to submit any information requested by the CAC that the CAC believes is relevant to make a recommendation to the Board. The applicant has 30 days from the date of the Board's letter to respond to the CAC's request for additional information or the Board or its designee may administratively close the file. If the CAC recommends approval, the application shall be put on a future board meeting agenda for consent. If the CAC recommends

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- denial, the application will be put on a future board meeting agenda and the CAC shall provide the Board with the reasons for the recommendation of denial.
- D.** If the Board approves the application, the Board shall notify the applicant in writing and send an authorization to test (ATT) to the National Association of State Boards of Accountancy (NASBA) to permit the applicant to take the specified section or sections of the examination for which the applicant applied. If the Board denies the application, the Board shall notify the applicant in writing of the reasons the application was denied.
 - E.** If the applicant does not timely pay to the NASBA the fees owed for the examination section or sections for which the applicant applied, the ATT expires. An applicant that still wishes to take a section or sections of the Uniform CPA Examination shall submit an application for reexamination under subsection (A)(2).
 - F.** After an applicant has paid NASBA, NASBA shall issue a notice to schedule (NTS) to the applicant. A NTS enables an applicant to schedule testing at an approved examination center. The NTS is effective on the date of issuance and expires when the applicant sits for all sections listed on the NTS or six months from the date of issuance, whichever occurs first. Upon written request to the Board and showing good cause that prevents the applicant from appearing for the examination, an applicant may be granted by the Board a one-testing-window extension to a current NTS.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5022, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1). Amended by final rulemaking at 24 A.A.R. 3413, effective February 4, 2019 (Supp. 18-4).

R4-1-227. Repealed**Historical Note**

Former Rule 6D; Amended effective July 17, 1978 (Supp. 78-4). Former Section R4-1-27 renumbered and amended as Section R4-1-227 effective July 1, 1983 (Supp. 83-4). Section R4-1-227 repealed effective November 20, 1998 (Supp. 98-4).

R4-1-228. Examination Scores; Review and Appeal of Scores

- A.** The National Association of State Boards of Accountancy (NASBA) shall mail or email examination scores to each applicant based upon the applicant's contact preference.
- B.** Examination scores
 1. An applicant may request a score review by submitting NASBA'S CPA Examination Score Review form to NASBA.
 2. An applicant may appeal an exam score by submitting NASBA's CPA Examination Score Appeal form to NASBA.

Historical Note

Former Rules 6E, 6F; Former Section R4-1-28 renumbered as Section R4-1-228 without change effective July 1, 1983 (Supp. 83-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

R4-1-229. Conditioned Credit

- A.** An applicant is allowed to sit for each section individually and in any order.
 1. An applicant is given conditioned credit for each section of the examination passed. A conditioned credit is valid for 18 months.

- 2. The applicant shall not retake a failed section in the same examination window. An examination window is the three-month period in which the applicant has an opportunity to take an examination section or sections.

- B.** Transfer of conditioned credit. The Board shall give an applicant credit for all sections of an examination passed in another jurisdiction if the credit has been conditioned. If an applicant transfers conditioned credit from another jurisdiction, the applicant shall pass the remaining sections of the examination within the 18-month period from the date that the first section was passed. An applicant who fails to pass all sections of the Uniform CPA Examination within 18 months shall retake previously passed sections of the Uniform CPA Examination to ensure passage of all sections within an 18-month period.

Historical Note

Former Rules 6G, 6H; Former Section R4-1-29 renumbered as Section R4-1-229 without change effective July 1, 1983 (Supp. 83-4). Amended effective August 21, 1986 (Supp. 86-4). Section repealed, new Section adopted effective January 1, 1994; filed in the Office of the Secretary of State September 21, 1993 (Supp. 93-3). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 9 A.A.R. 5022, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

R4-1-230. Expired**Historical Note**

Former Rule 6I; Former Section R4-1-30 renumbered as Section R4-1-230 without change effective July 1, 1983 (Supp. 83-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 9 A.A.R. 5022, effective January 3, 2004 (Supp. 03-4). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 372, effective December 31, 2008 (Supp. 09-1).

R4-1-231. Expired**Historical Note**

Former Rule 6J; Former Section R4-1-31 renumbered as Section R4-1-231 without change effective July 1, 1983 (Supp. 83-4). Section repealed, new Section adopted effective January 1, 1994; filed in the Office of the Secretary of State September 21, 1993 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 419, effective December 31, 2003 (Supp. 04-1).

ARTICLE 3. CERTIFICATION AND REGISTRATION

- R4-1-301.** Reserved
- R4-1-302.** Reserved
- R4-1-303.** Reserved
- R4-1-304.** Reserved
- R4-1-305.** Reserved
- R4-1-306.** Reserved
- R4-1-307.** Reserved
- R4-1-308.** Reserved
- R4-1-309.** Reserved
- R4-1-310.** Reserved
- R4-1-311.** Reserved

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- R4-1-312. Reserved
- R4-1-313. Reserved
- R4-1-314. Reserved
- R4-1-315. Reserved
- R4-1-316. Reserved
- R4-1-317. Reserved
- R4-1-318. Reserved
- R4-1-319. Reserved
- R4-1-320. Reserved
- R4-1-321. Reserved
- R4-1-322. Reserved
- R4-1-323. Reserved
- R4-1-324. Reserved
- R4-1-325. Reserved
- R4-1-326. Reserved
- R4-1-327. Reserved
- R4-1-328. Reserved
- R4-1-329. Reserved
- R4-1-330. Reserved
- R4-1-331. Reserved
- R4-1-332. Reserved
- R4-1-333. Reserved
- R4-1-334. Reserved
- R4-1-335. Reserved
- R4-1-336. Reserved
- R4-1-337. Reserved
- R4-1-338. Reserved
- R4-1-339. Reserved
- R4-1-340. Reserved
- R4-1-341. CPA Certificates; Reinstatement**
- A. An applicant may apply for a certificate of certified public accountant or for reinstatement by submitting:
1. An application fee of \$100; and
 2. For an applicant applying for certification under A.R.S. § 32-721(A) and (B), a completed application including:
 - a. Verification that the applicant passed the Uniform CPA Examination,
 - b. Verification that the applicant meets the education and experience requirements specified in R4-1-343,
 - c. One signed and dated letter of recommendation by a CPA,
 - d. Proof of a score of at least 90% on the American Institute of Certified Public Accountants (AICPA) examination in professional ethics taken within the two years immediately before the application is submitted,
 - e. Evidence of lawful presence in the United States, and
- f. Other information or documents requested by the Board to determine compliance with eligibility requirements.
3. For an applicant applying for certification under A.R.S. § 32-721(A) and (C), a completed application including:
 - a. Verification that the applicant passed the Uniform CPA Examination or the International Qualification Examination (IQEX),
 - b. License verification from each jurisdiction in which the applicant has ever been issued a certificate as a certified public accountant of which at least one must be an active certification from a jurisdiction with requirements determined by the Board to be substantially equivalent to the requirements in A.R.S. § 32-721(B) or verification that the applicant meets the education and experience requirements specified in R4-1-343,
 - c. Evidence of lawful presence in the United States, and
 - d. Other information or documents requested by the Board to determine compliance with eligibility requirements.
4. For an applicant applying for certification under A.R.S. § 32-721(A) and (D) for mutual recognition agreements adopted by the Board a completed application including:
 - a. Verification that the applicant has passed the International Qualification Examination (IQEX),
 - b. License verification from the applicant's country which has a mutual recognition agreement with the National Association of State Boards of Accountancy that has been adopted by the Board,
 - c. Evidence of lawful presence in the United States, and
 - d. Other information or documents requested by the Board to determine compliance with eligibility requirements.
5. For an applicant applying for reinstatement from cancelled or expired status under A.R.S. §§ 32-730.02 or 32-730.03 respectively a completed application including:
 - a. CPE that meets the requirements of R4-1-453(C)(6) and (E), and
 - b. Evidence of lawful presence in the United States.
6. For an applicant applying for reinstatement from revoked or relinquished status under A.R.S. §§ 32-741.03 or 32-741.04 respectively a completed application including:
 - a. CPE that meets the requirements of R4-1-453(C)(6) and (E),
 - b. Evidence of lawful presence in the United States,
 - c. If not waived by the Board as part of a disciplinary order, evidence from an accredited institution or a college or university that maintains standards comparable to those of an accredited institution that the individual has completed at least one hundred fifty semester hours of education as follows:
 - i. At least 36 semester hours are accounting courses of which at least 30 semester hours are upper level courses.
 - ii. At least 30 semester hours are related courses.
- d. If prescribed by the Board as part of a disciplinary order, evidence that the individual has retaken and passed the Uniform Certified Public Accountant Examination.
- B. Within 30 days of receiving an application, the Board shall notify the applicant that the application is either complete or incomplete. If the application is incomplete, the notice shall specify what information is missing.

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1. The Board shall make service of written notice regarding an incomplete application in accordance with R4-1-117(E)(1) or (2). The applicant has 30 days from the date of the notice to respond in writing to the Board's notice or the Board may administratively close the file. An applicant whose file is administratively closed and who later wishes to become certified shall reapply under subsection (A).
 2. Within 60 days of receipt of all the missing information, the Board shall notify the applicant that the application is complete.
 3. The Board shall issue a certification decision no later than 150 days after receipt of a completed application.
 4. If the Board finds deficiencies during the substantive review of the application, the Board may issue a written request to the applicant for additional information.
 5. The 150-day timeframe in subsection (B)(3) for a substantive review for the issuance of a certificate is suspended from the date of the written request for additional information made under subsection (B)(4) until the date that all information is received. The Board shall serve a written request under subsection (B)(4) in accordance with R4-1-117(E)(1) or (2). The applicant has 30 days to respond to the Board's request for additional information. If the applicant fails to timely respond to the Board's request, the Board shall finish its substantive review based upon the information the applicant has presented.
 6. When the applicant and the Board mutually agree in writing, the substantive review time frame specified in subsection (B)(3) may be extended in accordance with A.R.S. § 41-1075.
- C. If the Board denies an applicant's request for certification, the Board shall send the applicant written notice explaining:
1. The reason for denial, with citations to supporting statutes or rules;
 2. The applicant's right to seek a fair hearing to challenge the denial; and
 3. The time periods for appealing the denial.
- D. The Board establishes the following licensing time-frames for the purpose of A.R.S. § 41-1073:
1. Administrative completeness review time-frame: 30 days;
 2. Substantive review time-frame: 150 days; and
 3. Overall time-frame: 180 days.

Historical Note

Former Rule 7A; Amended effective December 1, 1976 (Supp. 76-5). Amended effective November 5, 1980 (Supp. 80-5). Former Section R4-1-41 renumbered as Section R4-1-341 without change effective July 1, 1983 (Supp. 83-4). Amended effective August 21, 1986 (Supp. 86-4). Amended effective September 24, 1997 (Supp. 97-3). Amended by final rulemaking at 9 A.A.R. 5022, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 13 A.A.R. 2151, effective August 4, 2007 (Supp. 07-2). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1). Amended by final rulemaking at 23 A.A.R. 3246, effective January 1, 2018 (Supp. 17-4).

R4-1-341.01. Repealed**Historical Note**

Adopted effective November 1, 1995 (Supp. 95-4). Amended effective September 24, 1997 (Supp. 97-3). Amended by final rulemaking at 9 A.A.R. 5022, effective January 3, 2004 (Supp. 03-4). Section repealed by final

rulemaking at 13 A.A.R. 2151, effective August 4, 2007 (Supp. 07-2).

R4-1-342. Repealed**Historical Note**

Former Rule 7B; Amended effective December 1, 1976 (Supp. 76-5). Amended effective November 5, 1980 (Supp. 80-6). Former Section R4-1-42 renumbered as Section R4-1-342 without change effective July 1, 1983 (Supp. 83-4). Amended effective March 26, 1987 (Supp. 87-1). Amended effective September 24, 1997 (Supp. 97-3). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 13 A.A.R. 2151, effective August 4, 2007 (Supp. 07-2). Repealed by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

R4-1-343. Education and Accounting Experience

- A. To demonstrate compliance with the experience requirements of A.R.S. § 32-721(B), an applicant for certification by examination or grade transfer shall submit to the Board:
1. One or more certificates of experience, completed, signed and dated by an individual who:
 - a. Possesses personal knowledge of the applicant's work, and
 - b. Is able to confirm the applicant's accounting experience, and
 - c. Is a certified public accountant; or
 - d. Has accounting education and experience similar to that of a certified public accountant; and
 2. Other information requested by the Board for explanation or clarification of experience.
- B. To demonstrate compliance with the experience requirements of A.R.S. § 32-721(C), an applicant for certification by reciprocity shall submit to the Board:
1. One or more certificates of experience, completed, signed and dated by an individual who:
 - a. Possesses personal knowledge of the applicant's work, and
 - b. Is able to confirm the applicant's accounting experience, and
 - c. Is a certified public accountant; or
 - d. Has accounting education and experience similar to that of a certified public accountant; or
 2. If the applicant is self-employed, the applicant shall provide a signed and dated statement indicating self-employment and three signed and dated client letters, confirming years of work experience, and
 3. Other information requested by the Board for explanation or clarification of experience.
- C. To demonstrate compliance with the education requirements of Title 32, Chapter 6, an applicant for certification or reinstatement shall submit to the Board:
1. University or college transcripts verifying that the applicant meets the educational requirements and if necessary for education taken outside the United States, an additional course-by-course evaluation from the National Association of State Boards of Accountancy International Evaluation Services (NIES), and
 2. Other information requested by the Board for explanation or clarification of education.

Historical Note

Former Rule 7C; Former Section R4-1-43 repealed, new Section R4-1-43 adopted effective February 22, 1978 (Supp. 78-1). Former Section R4-1-43 renumbered as Section R4-1-343 without change effective July 1, 1983

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(Supp. 83-4). Amended effective May 31, 1991 (Supp. 91-2). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 13 A.A.R. 2151, effective August 4, 2007 (Supp. 07-2). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1). Amended by final rulemaking at 24 A.A.R. 3413, effective February 4, 2019 (Supp. 18-4).

R4-1-344. Denial of Certification

An applicant who is denied certification or registration by the Board is entitled to a hearing before the Board or an ALJ.

1. Written application. The applicant shall file a notice of appeal under A.R.S. § 41-1092.03 within 30 days after receipt of the notice of denial.
2. Hearing notice. The Board shall provide the applicant with notice of the hearing in the manner prescribed by A.R.S. § 41-1092.05.
3. Conduct of hearing. The Board or the ALJ shall conduct the hearing in accordance with A.R.S. Title 41, Chapter 6, Article 10 and applicable rules governing hearings.
4. Burden of persuasion: At the hearing, the applicant is the moving party and has the burden of persuasion.
5. Matters limited. At the hearing, the Board or ALJ shall limit the issues to those originally presented to the Board.

Historical Note

Former Rule 7D; Former Section R4-1-44 renumbered as Section R4-1-344 without change effective July 1, 1983 (Supp. 83-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

R4-1-345. Registration; Fees

- A. Initial registration: After the Board approves an applicant's request for certification or firm registration, the applicant shall file an application for initial registration in a format prescribed by the Board and pay a registration fee under subsection (C).
- B. Renewal registration: A registrant shall file an application for renewal registration in a format prescribed by the Board no later than 5:00 p.m. on the last business day of the month. A renewal registration is deemed filed on the date and time received in the Board office. The Board shall record the date and time either by electronic date stamp in Arizona time or on physical receipt in the board's office. The Board shall not accept a postmark as evidence of timely filing. It is the sole responsibility of the registrant to complete the renewal registration requirements at the following times:
 1. Individual registrant: An individual registrant shall renew registration at the following times:
 - a. A registrant born in an even-numbered year shall renew registration during the month of birth in each even-numbered year.
 - b. A registrant born in an odd-numbered year shall renew registration during the month of birth in each odd-numbered year.
 2. Firm registrant: A firm shall renew registration at the following times:
 - a. A firm that initially registered with the Board in an even-numbered year shall renew registration during the board-approved month of the initial registration in each even-numbered year.
 - b. A firm that initially registered with the Board in an odd-numbered year shall renew registration during the board-approved month of the initial registration in each odd-numbered year.
- C. Registration fees: The biennial registration fee is:
 1. \$300 and, if applicable, a late fee of \$50 for each certified public accountant and, each public accountant. For a cer-

tified public accountant or public accountant, the registration fee shall be prorated by month for an initial registration period of less than two years.

2. \$300 and, if applicable, a late fee of \$50 for a firm. Under A.R.S. § 32-729, the Board shall not charge a fee for the registration of additional offices of the same firm or for the registration of a sole practitioner.

Historical Note

Former Rule 7E; Amended effective December 1, 1976 (Supp. 76-5). Amended effective February 22, 1978

(Supp. 78-1). Amended effective July 17, 1978 (Supp. 78-4). Amended effective November 5, 1980 (Supp. 80-6).

Former Section R4-1-54 renumbered and amended as Section R4-1-345 effective July 1, 1983 (Supp. 83-4).

Amended effective March 26, 1987 (Supp. 87-1).

Amended effective July 1, 1991; filed May 2, 1991

(Supp. 91-2). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 5 A.A.R. 4575, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 4815, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

Amended by final rulemaking at 23 A.A.R. 3246, effective January 1, 2018 (Supp. 17-4).

R4-1-346. Notice of Change of Address

- A. Within 30 days of any business, mailing, or residential change of address, a registrant shall notify the Board of the new address by filling out the change of address form prescribed by the Board.
- B. Within 30 days of the opening of any new or additional office, or the closing of any existing office, a registrant shall notify the Board in a letter signed by the registrant.

Historical Note

Former Rule 7F; Amended effective January 3, 1977 (Supp. 77-1). Amended effective November 5, 1980

(Supp. 80-6). Former Section R4-1-55 renumbered and amended as Section R4-1-346 effective July 1, 1983 (Supp. 83-4). Amended effective January 1, 1994; filed in the Office of the Secretary of State September 21, 1993

(Supp. 93-3). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 13 A.A.R. 2151, effective August 4, 2007 (Supp. 07-2). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

ARTICLE 4. REGULATION**R4-1-401. Reserved****R4-1-402. Reserved****R4-1-403. Reserved****R4-1-404. Reserved****R4-1-405. Reserved****R4-1-406. Reserved****R4-1-407. Reserved****R4-1-408. Reserved****R4-1-409. Reserved****R4-1-410. Reserved****R4-1-411. Reserved****R4-1-412. Reserved**

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- R4-1-413. Reserved
- R4-1-414. Reserved
- R4-1-415. Reserved
- R4-1-416. Reserved
- R4-1-417. Reserved
- R4-1-418. Reserved
- R4-1-419. Reserved
- R4-1-420. Reserved
- R4-1-421. Reserved
- R4-1-422. Reserved
- R4-1-423. Reserved
- R4-1-424. Reserved
- R4-1-425. Reserved
- R4-1-426. Reserved
- R4-1-427. Reserved
- R4-1-428. Reserved
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- R4-1-447. Reserved
- R4-1-448. Reserved
- R4-1-449. Reserved
- R4-1-450. Reserved
- R4-1-451. Reserved
- R4-1-452. Reserved
- R4-1-453. Reserved
- A.** Measurement Standards. The Board shall use the following standards to measure the hours of credit given for CPE programs completed by an individual registrant.
1. CPE credit shall be given in one-fifth or one-half hour increments for periods of not less than one class hour except as noted in subsection (A)(8). The computation of CPE credit shall be measured as follows:
 - a. A class hour shall consist of a minimum of 50 continuous minutes of instruction,
 - b. A half-class hour shall consist of a minimum of 25 continuous minutes of instruction, and
 - c. A one-fifth class hour shall consist of a minimum of 10 continuous minutes of instruction.
 2. Courses taken at colleges and universities apply toward the CPE requirement as follows:
 - a. Each semester - system credit hour is worth 15 CPE credit hours,
 - b. Each quarter - system credit hour is worth 10 CPE credit hours, and
 - c. Each noncredit class hour is worth one CPE credit hour.
 3. Each correspondence program hour is worth one CPE credit hour.
 4. Acting as a lecturer or discussion leader in a CPE program, including college courses, may be counted as CPE credit. The Board shall determine the amount of credit on the basis of actual presentation hours, and shall allow CPE credit for preparation time that is less than or equal to the presentation hours. A registrant may only claim as much preparation time as is actually spent for a presentation. Total credit earned under this subsection for service as a lecturer or discussion leader, including preparation time may not exceed 40 credit hours of the renewal period's requirement. Credit is limited to only one presentation of any seminar or course with no credit for repeat teaching of that course.
 5. Writing and publishing articles or books that contribute to the accounting profession may be counted for a maximum of 20 hours of CPE credit during each renewal period.
 - a. Credit may be earned for writing accounting material not used in conjunction with a seminar if the material addresses an audience of certified public accountants, is at least 3,000 words in length, and is published by a recognized third-party publisher of accounting material or a sponsor.
 - b. For each 3,000 words of original material written, the author may earn two credit hours. Multiple authors may share credit for material written.
 6. A registrant may earn a combined maximum of 40 hours of CPE credit under subsections (A)(4) and (5) above during each renewal period.
 7. A registrant may earn a maximum of 20 hours of CPE during each renewal period by completing introductory computer-related courses. Computer-related courses may qualify as consulting services pursuant to subsection (C).
 8. A registrant may earn a maximum of 4 hours of CPE during each renewal period by completing nano-learning courses. A nano-learning program is a tutorial program designed to permit a participant to learn a given subject in a ten-minute time-frame through the use of electronic media and without interaction with a real time instructor.
 9. CPE credit shall be given in one-fifth or one-half hour increments if the CPE is a segment of a continuing series related to a specific subject as long as the segments are connected by an overarching course that is a minimum of

R4-1-453. Continuing Professional Education

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- one hour and taken within the same CPE reporting period.
10. Credit shall not be allowed for repeat participation in any seminar or course during the registration period.
- B.** Programs that Qualify. CPE credit may be given for a program that provides a formal course of learning at a professional level and contributes directly to the professional competence of participants.
1. The Board shall accept a CPE course as qualified if it:
 - a. Is developed by persons knowledgeable and experienced in the subject matter,
 - b. Provides written outlines or full text,
 - c. Is administered by an instructor or organization knowledgeable in the program, and
 - d. Uses teaching methods consistent with the study program.
 2. The Board shall accept a correspondence program which includes online or computer based programs if the sponsors maintain written records of each student's participation and records of the program outline for three years following the conclusion of the program.
 3. An ethics program taught or developed by an employer or co-worker of a registrant does not qualify for the ethics requirements of subsection (C)(4).
- C.** Hour Requirement. As a prerequisite to registration pursuant to A.R.S. § 32-730(C) or to reactivate from inactive status pursuant to A.R.S. § 32-730.01, a registrant shall complete the CPE requirements during the two-year period immediately before registration as specified under subsections (C)(1) through (C)(5). For registration periods of less than two years CPE may be prorated, with the exception of ethics.
1. A registrant whose last registration period was for two years shall complete 80 hours of CPE.
 2. A registrant shall complete a minimum of 50 percent of the required hours in the subject areas of accounting, auditing, taxation, business law, or consulting services with a minimum of 16 hours in the subject areas of accounting, auditing, or taxation.
 3. A registrant shall complete a minimum of 16 of the required hours:
 - a. In a classroom setting,
 - b. Through an interactive live webinar, or
 - c. By acting as a lecturer or discussion leader in a CPE program, including college courses
 4. A registrant shall complete four hours of CPE in the subject area of ethics. The four hours required by this subsection shall include a minimum of one hour of each of the following subjects:
 - a. Ethics related to the practice of accounting including the Code of Professional Conduct of the American Institute of Certified Public Accountants, and
 - b. Board statutes and administrative rules.
 5. A registrant shall report, at a minimum, the CPE hours required for the registration period.
 6. Hours that exceed the number required for the current registration period may not be carried forward to a subsequent registration period.
 7. Any CPE hours completed to vacate a suspension for nonregistration or for noncompliance with CPE requirements may not be used to meet CPE requirements for the registration period.
 8. As a prerequisite to reactivate from retired status or reinstate from cancelled, expired, relinquished or revoked status, a registrant or an applicant shall complete up to 160 hours of CPE during the four-year period immediately before application to reactivate or reinstate. For periods of less than four years CPE may be prorated by quarter, with the exception of ethics.
- a. A registrant or an applicant shall complete a minimum of 50 percent of the required hours in the subject areas of accounting, auditing, taxation, business law, or consulting services with a minimum of 32 hours in the subject areas of accounting, auditing or taxation.
- b. A registrant or an applicant shall complete a minimum of 32 hours of the required hours:
- i. In a classroom setting,
 - ii. Through an interactive live webinar, or
 - iii. By acting as a lecturer or discussion leader in a CPE program, including college courses.
- c. A registrant or an applicant shall complete CPE in the subject area of ethics. Four hours of ethics CPE shall be required if 1 – 24 months have passed since the last registration due date for which CPE was completed. Eight hours of ethics CPE shall be required if 25 – 48 months have passed since the last registration due date for which CPE was completed. The hours required by this subsection shall include a minimum of one hour of each of the following subjects. The following subjects shall be completed during the two-year period immediately preceding application for reactivation or reinstatement:
- i. Ethics related to the practice of accounting including the Code of Professional Conduct of the American Institute of Certified Public Accountants; and
 - ii. Board statutes and administrative rules.
- D.** Reporting: A registrant or an applicant for reactivation or reinstatement, a registrant who is subject to an audit, or a registrant completing their registration must report the following details about their completed CPE:
1. Sponsoring organization;
 2. Number of CPE credit hours;
 3. Title of program or description of content; and
 4. Dates attended.
- E.** In addition to the information required under subsection (D), a registrant or an applicant for reactivation or reinstatement from cancelled, expired, relinquished or revoked status, or a registrant subject to a CPE audit pursuant to subsection (G) shall provide the Board the following CPE records at its request: copies of transcripts, course outlines, and certificates of completion that include registrant's name, course provider or sponsor, course title, credit hours, and date of completion.
- F.** CPE Record Retention: A registrant shall maintain CPE records for three years from the date the registration was dated as received by the Board the following documents for all CPE completed for the registration period, even if not reported on the registration: transcripts, course outlines, and certificates of completion that include registrant's name, course provider or sponsor, course title, credit hours, and date of completion.
- G.** CPE audits: The Board, at its discretion, may conduct audits of a registrant's CPE and require that the registrant provide the CPE records that the registrant is required to maintain under subsection (F) to verify compliance with CPE requirements.
- H.** The Board may grant a full or partial exemption from CPE requirements on demonstration of good cause for a disability for only one registration period.
- I.** A non-resident registrant seeking renewal of a certificate in this state shall be determined to have met the CPE requirements of this rule by meeting the CPE requirements for renewal of a certificate in the jurisdiction in which the registrant's principal place of business is located.

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1. Non-resident applicants for renewal shall demonstrate compliance with the CPE renewal requirements of the jurisdiction in which the registrant's principal place of business is located by signing a statement to that effect on the renewal application of this state.
2. If a non-resident registrant's principal place of business jurisdiction has no CPE requirements for renewal of a certificate or license, the non-resident registrant must comply with all CPE requirements for renewal of a certificate in this state.

Historical Note

Adopted effective December 19, 1979 (Supp. 79-6). Amended effective November 5, 1980 (Supp. 80-6). Former Section R4-1-53 renumbered as Section R4-1-453 and amended in subsections (A) and (B) effective July 1, 1983 (Supp. 83-4). Former Section R4-1-453 repealed, new Section R4-1-453 adopted effective July 15, 1988 (Supp. 88-3). Correction, Historical Note for Supp. 88-3 should read "Former Section R4-1-453 repealed, new Section R4-1-453 adopted effective January 1, 1990, filed July 15, 1988" (Supp. 89-1). Section repealed, new Section adopted effective December 6, 1995 (Supp. 95-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 1886, effective January 1, 2005 (Supp. 04-2). Amended by final rulemaking at 14 A.A.R. 2927, effective January 1, 2009 (Supp. 08-3). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1). Amended by final rulemaking at 23 A.A.R. 3246, effective January 1, 2018 (Supp. 17-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1). Amended by final rulemaking at 24 A.A.R. 3413, effective February 4, 2019 (Supp. 18-4).

R4-1-454. Peer Review

- A. Each firm that performs attest services or compilation services shall have a peer review performed and reported on within the three years immediately preceding the firm's registration date.
 1. Firms shall submit a copy of the results of their most recently accepted peer review pursuant to R4-1-345 or by a Board approved extension date to the Board which includes the following documents:
 - a. Peer review report which has been accepted by the sponsoring organization,
 - b. Firm's letter of response accepted by the sponsoring organization, if applicable,
 - c. Completion letter from the sponsoring organization,
 - d. Letter or letters accepting the documents signed by the firm with the understanding that the firm agrees to take any actions required by the sponsoring organization, if applicable, and
 - e. Letter signed by the sponsoring organization notifying the firm that required actions have been appropriately completed, if applicable.
 2. For firms whose peer reviews are scheduled before January 1, 2018, the firm shall submit the peer review documents pursuant to R4-1-454(A)(1) to the Board prior to its next firm registration renewal via mail, electronic transmission or, if available, the AICPA Facilitated State Board Access (FSBA).
 3. For firms whose peer reviews are scheduled after January 1, 2018, the firm must allow the sponsoring organization to make the documents pursuant to R4-1-454(A)(1) accessible to the Board via the FSBA process.
 4. The Board may grant, upon written request and demonstration of good cause, excluding financial hardship pur-

suant to A.R.S. § 32-701(15)(E), an extension of time for completing the peer review or submitting the peer review documents to the Board.

- B. Only a peer reviewer or a review team approved by the sponsoring organization may conduct a peer review. In approving a peer reviewer or a review team, the sponsoring organization shall ensure that each peer reviewer or member of a review team holds a certificate or license in good standing to practice public accounting, and is not affiliated with the firm under review.
- C. The Peer Review Oversight Advisory Committee (PROAC) shall review the peer review results to determine whether the firm is complying with the standards in subsection (J). If the results of peer review indicate that a firm is complying with the standards in subsection (J), PROAC shall recommend to the Board that it accept the firm's peer review and that the firm be notified of its compliance with this Section.
- D. If the results of the peer review indicate that a firm is not complying with the standards in subsection (J) the Board may take disciplinary action.
- E. If the results of the peer review suggest one or more violations of A.R.S. Title 32 Chapter 6 or Board rules, the Board may conduct or direct an authorized committee to conduct an initial analysis and take other action as authorized by A.R.S. § 32-742.01.
- F. Information discovered solely as a result of a peer review is not grounds for suspension or revocation of a certificate.
- G. Failure of a firm to complete a peer review under this Section may constitute grounds for disciplinary action.
- H. A firm is exempt from the requirements of this Section if the firm submits to the Board a written statement that it meets at least one of the following grounds for exemption:
 1. The firm has not previously practiced public accounting in this state, any other state, or a foreign country and the firm shall enroll in a Board approved peer review program with a peer review due date, in compliance with the peer review standards referenced in R4-1-454(J) of 18 months from the year end of the first engagement performed.
 2. The firm submits to the Board an affidavit, on a form prescribed by the Board, that states that all of the following apply:
 - a. Within the previous three years, the firm did not perform any attest services or compilation services; and
 - b. The firm agrees to notify the Board within 90 days after accepting an attest services or compilation services engagement and shall enroll in a Board approved peer review program with a due date, in compliance with the peer review standards referenced in R4-1-454(J) of 18 months from the year end of the initial engagement accepted.
- I. Firms that reorganize a current firm, rename a firm, or create a new firm, within which at least one of the prior CPA owners remains an owner or employee, shall remain subject to the provisions of this Section. If a firm is merged, combined, dissolved, or separated, the sponsoring organization shall determine which resultant firm shall be considered the succeeding firm. The succeeding firm shall retain its peer review status and the review due date.
- J. Each firm, review team, and member of a review team shall comply with the Standards for Performing and Reporting on Peer Reviews, issued January 2009 and published June 1, 2017 in the AICPA Professional Standards by the American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, New York 10036-8775 (www.aicpa.org), which is incorporated by reference. This incorporation by ref-

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erence does not include any later amendments or editions. The incorporated material is available for inspection and copying at the Board's office.

- K.** Peer review record retention. A firm shall maintain for five years, and provide the Board upon request, the documents referenced in R4-1-454(A)(1), if applicable and however denominated, for the peer reviews required by this Section.

Historical Note

Adopted effective July 1, 1983 (Supp. 83-4). Repealed effective November 20, 1998 (Supp. 98-4). New Section made by final rulemaking at 10 A.A.R. 4352, effective December 4, 2004. Amended by final rulemaking at 12 A.A.R. 2823, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1). Amended by final rulemaking at 23 A.A.R. 3246, effective January 1, 2018 (Supp. 17-4).

R4-1-455. Professional Conduct and Standards

- A.** It is the Board's policy that the rules governing registrants be consistent with the rules governing the accounting profession generally. Except as otherwise set forth in these regulations, registrants shall conform their conduct to the Code of Professional Conduct, published June 1, 2017 in the AICPA Professional Standards by the American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, New York 10036-8775 (www.aicpa.org), available from the AICPA.
- B.** The AICPA Code of Professional Conduct, and any interpretations and ethical rulings by the issuing body, shall apply to all registrants, including those who are not members of the AICPA. The version specified above, including any interpretations and ethical rulings in effect shall apply. Any later amendments, additions, interpretations, or ethical rulings shall not apply.

Historical Note

Former Rule 9; Amended effective January 15, 1976 (Supp. 76-1). Amended effective January 3, 1977 (Supp. 77-1). Amended effective February 22, 1978 (Supp. 78-1). Amended effective November 5, 1980 (Supp. 80-6). Former Section R4-1-56 renumbered as Section R4-1-455 and amended in subsections (B) and (D) effective July 1, 1983 (Supp. 83-4). Section R4-1-455 amended and divided into R4-1-455 and R4-1-455.01 thru R4-1-455.04 effective April 22, 1992 (Supp. 92-2). Amended effective December 6, 1995 (Supp. 95-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1). Amended by final rulemaking at 23 A.A.R. 3246, effective January 1, 2018 (Supp. 17-4).

R4-1-455.01. Professional Conduct: Definitions; Interpretations

Interpretation of definitions: All terms defined in A.R.S. § 32-701 et seq. shall be construed, to the extent possible, to be consistent with corresponding definitions in the professional standards adopted in R4-1-455. The foregoing notwithstanding, for purposes of R4-1-455 and the professional standards adopted therein:

1. The term "practice of public accounting" shall be defined as set forth in A.R.S. § 32-701; and
2. References to "member" shall be to "registrant" as defined in A.R.S. § 32-701.

Historical Note

Section R4-1-455.01 renumbered from R4-1-455(B) and amended effective April 22, 1992 (Supp. 92-2). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4,

2014 (Supp. 14-1). Amended by final rulemaking at 23 A.A.R. 3246, effective January 1, 2018 (Supp. 17-4).

R4-1-455.02. Professional Conduct: Competence and Technical Standards

- A.** In reporting on financial statements for which a registrant has performed attest services (as defined in A.R.S. § 32-701) any of the following will constitute a violation of A.R.S. § 32-741(A)(4):
1. In an audit engagement, failing to:
 - a. Prepare audit documentation that is sufficient to enable an experienced auditor, having no previous connection with the audit, to understand:
 - i. The nature, timing, and extent of the audit procedures performed;
 - ii. The results of the audit procedures performed, and the audit evidence obtained; and
 - iii. Significant findings or issues arising during the audit, the conclusions reached thereon, and significant professional judgments made in reaching those conclusions;
 - b. Obtain sufficient appropriate evidence to conclude that the financial statements taken as a whole are free from material misstatement; or
 - c. Modify the opinion in the auditor's report when:
 - i. The financial statements as a whole are materially misstated; or
 - ii. Sufficient appropriate audit evidence to conclude that the financial statements as a whole are free from material misstatement has not been obtained.
 2. In a review engagement, failing to:
 - a. Accumulate sufficient review evidence to provide a reasonable basis for obtaining limited assurance that there are no material modifications that should be made to the financial statements in order to be in conformity with the applicable financial reporting framework; or
 - b. Modify the accountant's review report for a departure from the applicable financial reporting framework, including inadequate disclosure, that is material to the financial statements.
 3. In an examination of prospective financial statements engagement, failing to:
 - a. Obtain sufficient evidence to provide a reasonable basis for the conclusion that is expressed in the report; or
 - b. Modify the report when:
 - i. One or more significant assumptions do not provide a reasonable basis for the prospective financial statements; or
 - ii. The examination is affected by conditions that preclude application of one or more procedures considered necessary in the circumstances.
- B.** The provisions of this subsection are not intended to be all inclusive or to limit the application of A.R.S. § 32-741(A)(4).

Historical Note

Section R4-1-455.02 renumbered from R4-1-455(C) and amended effective April 22, 1992 (Supp. 92-2). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1). Amended by final rulemaking at 23 A.A.R. 3246, effective January 1, 2018 (Supp. 17-4).

R4-1-455.03. Professional Conduct: Specific Responsibilities and Practices

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- A. Discreditable acts: In addition to any other acts prohibited by any standards incorporated in these rules, a registrant shall not commit an act that reflects adversely on the registrant's fitness to engage in the practice of public accounting, including and without limitation:
 - 1. Violating a provision of R4-1-455, R4-1-455.01, R4-1-455.02, R4-1-455.03 or R4-1-455.04;
 - 2. Violating a fiduciary duty or trust relationship with respect to any person; or
 - 3. Violating a provision of A.R.S. Title 32, Chapter 6, Article 3, or this Chapter.
- B. Advertising practices and solicitation practices: A registrant has violated A.R.S. § 32-741(A)(4) and engaged in dishonest or fraudulent conduct in the practice of public accounting in connection with the communication or advertising or solicitation of accounting services through any media, if the registrant willfully engages in any of the following conduct:
 - 1. Violates A.R.S. § 44-1522 and a court finds the violation willful;
 - 2. Engages in fraudulent or misleading practices in the advertising of accounting services that leads to a conviction pursuant to A.R.S. § 44-1481; or
 - 3. Engages in fraudulent practices in the advertising of accounting services that leads to a conviction for a violation of any other state or federal law.
- C. Form of practice and name: A registrant shall not use a professional or firm name or designation that is misleading about the legal form of the firm, or about the persons who are partners, officers, members, managers, or shareholders of the firm, or about any other matter. A firm name or designation shall not include words such as “& Company,” “& Associates,” or “& Consultants” unless the terms refer to additional full-time CPAs that are not otherwise mentioned in the firm name.
- D. Communications: When requested, a registrant shall file a written response to a communication from the Board within 30 days of the date of the mailing of such communication by certified mail. A written response is deemed filed on the date and time received in the Board office. The Board shall record the date and time either by electronic date stamp in Arizona time or on physical receipt in the Board's office. The Board shall not accept a postmark as evidence of timely filing.
- E. The provisions of R4-1-455.03(A) through (C) are not intended to be all inclusive or to limit the application of any standards incorporated by R4-1-455.

Historical Note

Section R4-1-455.03 renumbered from R4-1-455(D) and amended effective April 22, 1992 (Supp. 92-2). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 12 A.A.R. 2823, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1). Amended by final rulemaking at 23 A.A.R. 1807, effective June 15, 2017 (Supp. 17-2). Amended by final rulemaking at 23 A.A.R. 3246, effective January 1, 2018 (Supp. 17-4).

R4-1-455.04. Professional Conduct: Records Disposition

Document retention policies. Except as set forth in A.R.S. § 32-744(D), a registrant may retain and dispose of documents prescribed in A.R.S. § 32-744(C) in compliance with a reasonable document retention policy.

Historical Note

Section R4-1-455.04 renumbered from R4-1-455(E) and amended effective April 22, 1992 (Supp. 92-2). Section

number corrected (Supp. 97-3). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1). Amended by final rulemaking at 23 A.A.R. 3246, effective January 1, 2018 (Supp. 17-4).

R4-1-456. Reporting Practice Suspensions and Violations

- A. A registrant, individual, or firm shall report to the Board:
 - 1. Any suspension or revocation of the right to practice accounting before the federal Securities and Exchange Commission, the Internal Revenue Service, or any other state or federal agency;
 - 2. Any final judgment in a civil action or administrative proceeding in which the court or public agency makes findings of violations, by the registrant, of any fraud provisions of the laws of this state or of federal securities laws;
 - 3. Any final judgment in a civil action in which the court makes findings of accounting violations, dishonesty, fraud, misrepresentation, or breach of fiduciary duty by the registrant;
 - 4. Any final judgment in a civil action involving negligence in the practice of public accounting by the registrant; and
 - 5. All convictions of the registrant of any felony, or any crime involving accounting or tax violations, dishonesty, fraud, misrepresentation, embezzlement, theft, forgery, perjury, or breach of fiduciary duty.
- B. A registrant, individual, or firm required to report under subsection (A) shall make the report in the form of a written letter and ensure that the report is received by the Board within 30 days after the entry of any judgment or suspension or revocation of the registrant's right to practice before any agency. The registrant, individual, or firm shall ensure that the letter contains the following information:
 - 1. Description of the registrant's activities that resulted in a suspension or revocation;
 - 2. Final judgment or conviction;
 - 3. Name of the state or federal agency that restricted the registrant's right to practice;
 - 4. Effective date and length of any practice restriction;
 - 5. Case file number of any court action, civil or criminal;
 - 6. Name and location of the court rendering the final judgment or conviction; and
 - 7. Entry date of the final judgment or conviction.

Historical Note

Adopted effective November 5, 1980 (Supp. 80-6). Former Section R4-1-57 renumbered as Section R4-1-456 without change effective July 1, 1983 (Supp. 83-4). Amended effective February 23, 1993 (Supp. 93-1). Amended by final rulemaking at 20 A.A.R. 520, effective February 4, 2014 (Supp. 14-1).

Appendix A. Repealed**Historical Note**

Adopted effective February 22, 1978 (Supp. 78-1). Amended effective December 19, 1979 (Supp. 79-6). Editorial correction, Footnote**, Rules reference corrected (Supp. 83-4). Repealed effective May 31, 1991 (Supp. 91-2).

Appendix B. Repealed**Historical Note**

Adopted effective February 22, 1978 (Supp. 78-1). Repealed effective April 22, 1992 (Supp. 92-2).

32-701. Definitions

In this chapter, unless the context otherwise requires:

1. "Accounting services" means services that are commonly and historically performed by accountants, including recording or summarizing financial transactions, bookkeeping, analyzing or verifying financial information, reporting financial results, financial planning or providing attest services, compilation services, tax services or consulting services.
2. "Accredited institution" means any public or private regionally or nationally accredited college or university that is accredited by an organization recognized by the council for higher education accreditation or its successor agency.
3. "Attest services" means the following services to be performed by the holder of a certificate issued by the board:
 - (a) Audits or other engagements to be performed in accordance with the statements on auditing standards adopted by the American institute of certified public accountants.
 - (b) Reviews of financial statements to be performed in accordance with the statements on standards for accounting and review services adopted by the American institute of certified public accountants.
 - (c) Any examination of prospective financial information to be performed in accordance with the statements on standards for attestation engagements adopted by the American institute of certified public accountants.
 - (d) Any engagement to be performed in accordance with the standards of the public company accounting oversight board or its successor.
 - (e) Any examination, review or agreed on procedure engagement to be performed in accordance with the statements on standards for attestation engagements adopted by the American institute of certified public accountants, other than an examination described in subdivision (c) of this paragraph.
4. "Board" means the Arizona state board of accountancy established by section 32-702.
5. "Business organization" means a partnership, professional corporation, professional limited liability company, limited liability company or limited liability partnership or any other entity that is recognized by the board and that is established under the laws of any state or foreign country.
6. "Certified public accountant" means an individual who has been issued a certificate of authority by the board to practice as a certified public accountant or who meets the limited reciprocity privilege requirements pursuant to section 32-725.
7. "Client" means a person or entity, other than one's employer, for whom accounting services are provided.
8. "Compilation services" means providing a service of any compilation engagement to be performed in accordance with the statements on standards for accounting and review services.
9. "Consulting services" includes management advisory services, litigation support services, valuation services and other services that require the use of technical skills, education, observation, experience and knowledge to develop an analytical approach to process and to present findings, conclusions or recommendations.
10. "Conviction" means a judgment of conviction by any state or federal court of competent jurisdiction in a criminal cause, regardless of whether an appeal is pending or could be taken, and includes any judgment or order based on a plea of no contest.

11. "CPA designation" means the title "certified public accountant" or any abbreviation or grammatical derivative of the term "certified public accountant".

12. "Disciplinary action" means any other regulatory sanctions imposed by the board in combination with, or as an alternative to, relinquishment, revocation or suspension of a certificate or registration, including the imposition of:

(a) An administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted pursuant to this chapter.

(b) Restrictions on the scope of the registrant's practice of accounting.

(c) Pre-issuance and post-issuance peer review.

(d) Professional education requirements.

(e) A decree of censure.

(f) Probation requirements best adapted to protect the public welfare.

(g) Reimbursement of the board's costs of investigations and proceedings initiated under this chapter, including attorney fees.

(h) A requirement for restitution payments to accounting services clients or to other persons suffering economic loss resulting from violations of this chapter or rules adopted pursuant to this chapter.

13. "Employer" means a person or entity that hires an individual to perform a service and that directs and controls the manner in which the service is performed.

14. "Federal securities laws" means the securities act of 1933, the securities exchange act of 1934, the public utility holding company act of 1935 and the investment company act of 1940, as amended.

15. "Financial statements":

(a) Means statements and footnotes related to statements that purport to show a financial position or changes in a financial position in conformity with generally accepted accounting principles or other comprehensive basis of accounting.

(b) Includes balance sheets, statements of income, statements of retained earnings, statements of cash flows, statements of changes in equity and other commonly used or recognized summaries of financial information.

(c) Does not include tax returns or information contained in tax returns.

16. "Firm" means a business organization, a sole proprietorship or an individual who is registered pursuant to section 32-731.

17. "Good cause" means factors that temporarily prevent a registrant from satisfying a particular requirement in a specific instance as determined by the board and may include:

(a) A disability.

(b) An illness.

(c) A physical or mental condition.

(d) Military service.

(e) Financial hardship.

(f) A natural disaster.

(g) Any condition or circumstance that the board deems relevant.

18. "Jurisdiction" means, for the purposes of examination, certification, firm registration or limited reciprocity privilege, the fifty states of the United States, the District of Columbia, the United States Virgin Islands, Guam, the Commonwealth of the northern Mariana Islands or the Commonwealth of Puerto Rico.

19. "Letter of concern" means an advisory letter to notify a registrant that, while the evidence does not warrant disciplinary action, the board believes that the registrant should modify or eliminate certain practices and that continuation of the activities that led to the evidence being submitted to the board may result in board action against the registrant. A letter of concern is not a disciplinary action.

20. "Limited reciprocity privilege" means the permission to practice as a certified public accountant in this state pursuant to section 32-725 for an individual whose principal place of business is outside of this state.

21. "Management advisory services" means advisory services consisting of the development of findings, conclusions or recommendations for the recipient's consideration and decision making.

22. "Office" for the purposes of firm registration, limited reciprocity privilege and fees, means any physical location used in the practice of accounting in this state and that is owned, leased, licensed for use or maintained by the firm or someone under the firm's authority.

23. "Practice of accounting" means providing accounting services for a client or an employer.

24. "Registrant" means any certified public accountant or firm that is registered with the board.

25. "Related courses" means:

(a) Business administration.

(b) Statistics.

(c) Computer science, information systems or data processing.

(d) Economics.

(e) Finance.

(f) Management.

(g) Business law.

(h) College algebra or more advanced mathematics.

(i) Advanced written communication.

(j) Advanced oral communication.

(k) General ethics.

(l) Marketing.

(m) Other courses closely related to the subject of accounting and satisfactory to the board.

26. "Sole proprietor" means the owner of a sole proprietorship.

27. "Sole proprietorship" means a business that is owned by one individual and that does not have a legal distinction between the owner and the business.

32-703. Powers and duties; rules; executive director; advisory committees and individuals

- A. The primary duty of the board is to protect the public from unlawful, incompetent, unqualified or unprofessional certified public accountants through certification, regulation and rehabilitation.
- B. The board may:
1. Investigate complaints filed with the board or on its own motion to determine whether a certified public accountant has engaged in conduct in violation of this chapter or rules adopted pursuant to this chapter.
 2. Establish and maintain high standards of competence, independence and integrity in the practice of accounting by a certified public accountant as required by generally accepted auditing standards and generally accepted accounting principles and, in the case of publicly held corporations or enterprises offering securities for sale, in accordance with state or federal securities agency accounting requirements.
 3. Establish reporting requirements that require registrants to report:
 - (a) The imposition of any discipline on the right to practice before the federal securities and exchange commission, the internal revenue service, any state board of accountancy, other government agencies or the public company accounting oversight board.
 - (b) Any criminal conviction, any civil judgment involving negligence in the practice of accounting by a certified public accountant and any judgment or order as described in section 32-741, subsection A, paragraphs 7 and 8.
 4. Establish basic requirements for continuing professional education of certified public accountants, except that the requirements shall not exceed eighty hours in any registration renewal period.
 5. Adopt procedures concerning disciplinary actions, administrative hearings and consent decisions.
 6. Issue to qualified applicants certificates executed for and on behalf of the board by the signatures of the president and secretary of the board.
 7. Adopt procedures and rules to administer this chapter.
 8. Require peer review pursuant to rules adopted by the board on a general and random basis of the professional work of a registrant engaged in the practice of accounting.
 9. Subject to title 41, chapter 4, article 4, employ an executive director and other personnel that it considers necessary to administer and enforce this chapter.
 10. Appoint accounting and auditing, tax, peer review, law, certification, continuing professional education or other committees or individuals as it considers necessary to advise or assist the board or the board's executive director in administering and enforcing this chapter. These committees and individuals serve at the pleasure of the board.
 11. Take all action that is necessary and proper to effectuate the purposes of this chapter.
 12. Sue and be sued in its official name as an agency of this state.
 13. Adopt and amend rules concerning the definition of terms, the orderly conduct of the board's affairs and the effective administration of this chapter.
 14. Delegate to the executive director the authority to:
 - (a) Approve an applicant to take the uniform certified public accountant examination pursuant to section 32-723.

- (b) Issue a certificate of certified public accountant pursuant to section 32-721.
- (c) Approve an application for firm registration pursuant to section 32-731.
- (d) Approve a registrant's name change and reissue a certificate of certified public accountant due to the name change.
- (e) Approve a registrant's cancellation request pursuant to section 32-730.02.
- (f) Approve a request for retired status pursuant to section 32-730.04.
- (g) Approve reactivation from inactive status or retired status pursuant to section 32-732.
- (h) Approve compliance with peer review requirements pursuant to this section.
- (i) Approve compliance with continuing professional education audits.
- (j) Approve continuing professional education compliance with decisions and orders.
- (k) Terminate decisions and orders based on a registrant's successful completion of all order requirements.

C. The board or an authorized agent of the board may:

- 1. Issue subpoenas to compel the attendance of witnesses or the production of documents. If a subpoena is disobeyed, the board may invoke the aid of any court in requiring the attendance and testimony of witnesses and the production of documents.
- 2. Administer oaths and take testimony.
- 3. Cooperate with the appropriate authorities in other jurisdictions in investigation and enforcement concerning violations of this chapter and comparable statutes of other jurisdictions.
- 4. Receive evidence concerning all matters within the scope of this chapter.

32-721. Certified public accountants; qualifications

A. The board shall issue a certificate of certified public accountant to any individual who complies with all of the following:

1. Meets the requirements of section 41-1080.
2. Is at least eighteen years of age.
3. Is of good moral character.
4. Has not engaged in any conduct that would constitute grounds for revocation or suspension of a certificate or other disciplinary action pursuant to section 32-741.
5. Meets the requirements of subsection B, C or D of this section.

B. If the applicant passes the uniform certified public accountant examination and has never been certified, registered or licensed as a certified public accountant in this state or another jurisdiction, the applicant must comply with both of the following:

1. Have had at least two thousand hours of paid or unpaid experience, either before or after passing all sections of the uniform certified public accountant examination, that has exposed the applicant to and provided the applicant with experience in the practice of accounting. The applicant's experience must be sufficient to demonstrate the applicant's ability for critical inquiry and analysis of financial accounting information, including balance sheets, income statements, cash flow statements or tax returns and the applicant's ability to communicate, either orally or in writing, on the results of an inquiry or analysis of that information to an employer, client or third party.
2. Present satisfactory evidence that the person has successfully obtained a baccalaureate degree or higher degree from an accredited institution or a college or university that maintains standards comparable to those of an accredited institution and that the applicant has completed at least one hundred fifty semester hours of education of which:
 - (a) At least thirty-six semester hours are nonduplicative accounting courses of which at least thirty semester hours are upper-level courses.
 - (b) At least thirty semester hours are related courses.

C. If the applicant passes the uniform certified public accountant examination or the international qualification examination and has a certificate, registration or license to practice as a certified public accountant in another jurisdiction and the applicant has never had a certificate issued by the board expire or be relinquished or revoked, at least one of the following shall apply:

1. The certificate, registration or license is issued by a jurisdiction whose requirements are determined by the board to be substantially equivalent to the requirements prescribed in subsection B of this section.
2. The applicant has a baccalaureate degree or its equivalent or a higher degree from an accredited institution or a college or university that maintains standards comparable to those of an accredited institution and either of the following applies:
 - (a) The applicant has been employed as a certified public accountant in the practice of accounting for at least three years and has completed at least one hundred fifty semester hours of education that includes both of the following:

(i) At least twenty-four semester hours of nonduplicative accounting courses, of which twelve semester hours are upper-level courses.

(ii) At least eighteen semester hours in related courses.

(b) The applicant has been employed as a certified public accountant in the practice of accounting for at least five of the ten preceding years and has completed both of the following:

(i) At least twenty-four semester hours of nonduplicative accounting courses, of which twelve semester hours are upper-level courses.

(ii) At least eighteen semester hours in related courses.

3. The applicant has been employed as a certified public accountant in the practice of accounting for at least ten of the fifteen preceding years.

D. If an applicant passes the international uniform certified public accountant qualification examination of the American institute of certified public accountants, all of the following apply:

1. The applicant's country has a mutual recognition agreement with the national association of state boards of accountancy that has been adopted by the board.

2. The board recognizes that the applicant's qualifications are substantially equivalent to the qualifications of certified public accountants in the United States in the areas of education, examination and experience.

32-723. Uniform certified public accountant examination; qualifications

A. A person shall not be permitted to take the uniform certified public accountant examination unless the person presents satisfactory evidence that the person has successfully obtained a baccalaureate degree or a higher degree from an accredited institution or a college or university that maintains standards comparable to those of an accredited institution. The evidence must show both of the following:

1. At least twenty-four semester hours of nonduplicative accounting courses of which twelve semester hours are upper-level courses.
2. At least eighteen semester hours in related courses.

B. The board may contract with a public or private entity for the administration of the examination. The examination may be conducted under a uniform examination system.

C. Within a reasonable time after the examination the board or its contracted agent shall notify each candidate of the candidate's grade. Any candidate may request a grade review or an appeal by submitting a uniform certified public accountant examination score review or appeal form to the board or the board's contracted agent.

32-729. Fees

The board shall establish and collect:

1. A uniform fee from an applicant for each initial examination and reexamination application pursuant to section 32-723 to cover reasonable costs of reviewing the applicant's eligibility to take the examination and facilitating the applicant to take the examination until the applicant passes all sections.
2. A uniform fee from each applicant for a certificate to be issued pursuant to section 32-721.
3. A uniform registration fee of at least one hundred and not more than three hundred dollars from each applicant for registration as a certified public accountant pursuant to section 32-730. The registration fee is due during the month of the anniversary of the registrant's birth. Registrants for less than two years shall be charged on a pro rata basis for the remainder of the registration period. The board shall establish and collect a late fee, if applicable, of not more than one hundred dollars.
4. A uniform registration fee of at least one hundred dollars and not more than three hundred dollars from each applicant for registration as a firm pursuant to section 32-730. The registration fee is due during the month of the anniversary of the effective date of the firm's formation. The board shall establish and collect a late fee, if applicable, of not more than one hundred dollars. The board shall not charge a fee for the registration of additional offices of the same firm or for the registration of a sole proprietorship or an individual who is required to register as a firm pursuant to section 32-731.
5. A uniform application fee in an amount to be determined by the board to reinstate pursuant to this chapter.
6. A uniform registration fee of fifty dollars for retired status registration as described in section 32-730.04. The board shall establish and collect a late fee, if applicable, and it is the intent of the legislature that the fee be not more than one hundred dollars.

32-730. Biennial registration; continuing professional education

- A. Except as provided in subsection B of this section and in section 32-4301, the board shall require every certified public accountant and firm to register once every two years with the board and pay a registration fee pursuant to section 32-729.
- B. The registration fee for certified public accountants may be reduced or waived by the board for registrants with a disability to a degree precluding the continuance of their practice for six months or more prior to the due date of any renewal fee.
- C. At the time of registration, every certified public accountant, as a prerequisite to biennial registration, shall submit to the board satisfactory proof in a manner prescribed by the board that the registrant has completed the continuing professional education requirements established by the board. The board may grant a full or partial exemption from continuing professional education requirements or an extension of time to complete the continuing professional education requirements for registrants on a demonstration of good cause.

DEPARTMENT OF ECONOMIC SECURITY (F19-1102)

Title 6, Chapter 7, Child Support Enforcement



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: December 3, 2019

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

FROM: Council Staff

DATE: November 4, 2019

SUBJECT: DEPARTMENT OF ECONOMIC SECURITY (F19-1102)
Title 6, Chapter 7, Child Support Enforcement

This Five Year Review Report (5YRR) from the Department of Economic Security relates to rules in Title 6, Chapter 7, regarding child support enforcement. The rules cover the following articles:

- Article 1 - General Provisions
- Article 4 - Passport Denial
- Article 6 - Title IV-D Distribution
- Article 7 - Title IV-D Disbursement

In the previous 5YRR the Department indicated it would amend the chapter heading and definition in R6-7-101 (Definitions). The Department indicates they filed a Notice of Proposed Rulemaking in November 2014, but the rulemaking was discontinued in January 2015 because of the newly enacted moratorium through Executive Order 2015-01 by the newly elected Governor.

Proposed Action

The Department indicates it plans to amend the Chapter heading and definition in R6-7-101(54) that will change the name of the Division of Child Support Enforcement to the Division of Child Support Services. The Department plans to request an exemption from the

rulemaking moratorium by March 30, 2020, and submit a Notice of Final Expedited Rulemaking to the Council upon approval.

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

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

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

Article 1 contains provisions for collecting a monthly Clearinghouse fee. Since the last five-year review, the Department submitted a Notice of Proposed Rulemaking that would increase the monthly Clearinghouse fee, applied to child support cases, from \$5.00 to \$8.00. It is anticipated this will increase State Share of Retained Earnings revenue by approximately \$760,000 per year, which will in turn allow the Division of Child Support Services to draw approximately \$1,500,000 of additional federal dollars with which to provide services. The Department continues to estimate the economic impact of this rule change that will be described in the Economic Impact Statement that will be filed with the Notice of Final Rulemaking.

The Department indicates that the cost-related requirements in Article 4 and Article 7 are directed by federal law and have no additional economic impact on the Department, consumers, or small businesses. The cost-related requirements in Article 6 are directed by statute and have no additional economic impact on the Department, consumers, or small businesses.

The stakeholders include the Division of Child Support Enforcement and non-custodial parents who are responsible for paying the monthly Clearinghouse fee.

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

The Department believes that the rules impose the least burden and cost to persons regulated by these rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives. Program subject matter experts indicate that the amendment to the rule, as proposed in the five-year review, are the most cost-effective way to bring the Department into compliance with state requirements and ensure that the rules reflect current program practice.

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

No, the Department indicates that it 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 Department indicates 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 indicates the rules are enforced as written.

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

No, the Department indicates the rules are not more stringent than corresponding federal law.

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

Not applicable. The Department indicates that the rules do not require the issuance of a permit or a license.

9. Conclusion

As mentioned above, the Department plans to amend the Chapter heading and a definition in R6-7-101(54) through an expedited rulemaking upon receiving approval to do so from the Governor's office. The Department plans to request an exemption from the rulemaking moratorium by March 30, 2020 and will submit a Notice of Final Expedited Rulemaking to the Council upon approval. Council staff finds that the rules are mostly clear, concise, understandable, and effective. Council staff recommends approval of this report.



DEPARTMENT OF ECONOMIC SECURITY

Your Partner For A Stronger Arizona

Douglas A. Ducey
Governor

Michael Trailor
Director

AUG 09 2019

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

Dear Ms. Sornsin:

Enclosed is the Arizona Department of Economic Security (Department) Five-Year Review Report on A.A.C. Title 6, Chapter 7, Child Support Enforcement. Included with the report are copies of the authorizing statutes and rules.

Pursuant to A.R.S. § 41-1056(A) and A.A.C. R1-6-301(C)(4), the Department certifies that it is in compliance with A.R.S. § 41-1091.

Thank you for your attention to this report. The Department will be present at the Council meetings to respond to any questions the Council members may have about the report. If you have any questions, please contact Christian Eide, Rules Analyst, Policy and Planning Administration, at (602) 542-9199.

Sincerely,

Michael Trailor
Director

Enclosure

-Preface-

Department of Economic Security

Five – Year Review Reports

A.R.S. § 41-1056 requires that at least once every five years, each agency shall review its administrative rules and produce reports that assess the rules with respect to considerations including the rule's effectiveness, clarity, conciseness and understandability. The reports also describe the agency's proposed action to respond to any concerns identified during the review. The reports are submitted in compliance with the schedule provided by the Governor's Regulatory Review Council. A.R.S. § 18-305, enacted in 2016, requires that statutorily required reports be posted on agency's website.

1. Authorization of the rule by existing statutes:

General Statutory Authority: A.R.S. §§ 41-1954 (A)(3) and 46-134 (10)

Specific Statutory Authority: A.R.S. §§ 8-243, 25-319, 25-320, 25-500, 25-503, 25-504, 25-505, 25-510, 25-522, 25-528, 25-809, 46-407, 46-408, 46-441, and 46-292.

2. The objective of each rule:

Rule	Objective
R6-7-101	The objective of this rule is to define terms used in Chapter 7.
R6-7-102	The objective of this rule is to explain that the support and related payments retained by the Clearinghouse for disbursement will not accrue interest.
R6-7-103	The objective of this rule is to specify the monthly payment handling fee.
R6-7-401	The objective of this rule is to define terms used in the sections of this Article.
R6-7-402	The objective of this rule is to specify the criteria for submission and certification of arrearages for a case subject to passport denial.
R6-7-403	The objective of this rule is to explain how the Title IV-D Agency provides written notice to an obligor that the obligor has a support arrearage.
R6-7-404	The objective of this rule is to explain the administrative review process for passport denial by the Title IV-D Agency.
R6-7-405	The objective of this rule is to explain the circumstances when the Title IV-D Agency notifies the Office of Child Support Enforcement (OCSE) in the United States Department of Health and Human Services to withdraw certification for passport denial for an obligor.
R6-7-406	The objective of this rule is to provide that a Title IV-D Agency determination made under this Article is subject to judicial review.
R6-7-601	The objective of this rule is to outline the procedure for the distribution of monies collected in a Title IV-D case.
R6-7-602	The objective of this rule is to outline the procedure for the Title IV-D Agency if it receives payments from an obligor or payor in a foreign currency.
R6-7-603	The objective of this rule is to provide that if monies received from a federal income

	tax refund offset do not satisfy the total arrearages for all cases submitted by the Title IV-D Agency to OCSE for payment owed by an obligor to multiple obligees, the Title IV-D Agency makes a proportionate allocation to each obligee whose case was submitted for federal income tax refund offset.
R6-7-604	The objective of this rule is to explain the procedure to determine the amount of support allocated to each obligee if the Title IV-D Agency receives a support payment not paid by an income withholding order that is undesignated as to case or obligee, and it does not satisfy the total current support owed by one obligor to multiple obligees.
R6-7-605	The objective of this rule is to provide that if the federal income tax refund offset received from the Internal Revenue Service on behalf of an obligor is greater than the total arrearages owed for all cases submitted for federal income tax refund offset, the Title IV-D Agency refunds any excess monies to the obligor.
R6-7-606	The objective of this rule is to explain the Title IV-D Agency applies futures, which are amounts in excess of the total current obligations due while support is still accruing, as provided in 45 CFR 302.51(b).
R6-7-607	The objective of this rule is to explain the Title IV-D Agency treats payments as prepaid support only if there is no alternative that would allow for prompt payment of support owed to an obligee in a future month, and that the Title IV-D Agency releases any prepaid support in the applicable future month for distribution.
R6-7-608	The objective of this rule is to explain how the Department distributes the monies when a Title IV-E foster care child support case is open or closed with arrearages owed to the state.
R6-7-609	The objective of this rule is to explain the procedure for the Title IV-D Agency to distribute current support in a current assistance case, when a child is determined to be a Child Not on Grant and ineligible for cash assistance due to the receipt of Social Security income and whose support is exempt from assignment under A.R.S. § 46-407.
R6-7-610	The objective of this rule is to outline the procedure for the distribution of cash medical support in Title XIX, Arizona Health Care Cost Containment System (AHCCCS), cases where medical support is assigned to the state.
R6-7-701	The objective of this rule is to outline the procedure for the disbursement, which is the issuance of support, and related payments that the Title IV-D Agency receives in a Title IV-D case.

R6-7-702	The objective of this rule is to specify the order in which the Title IV-D Agency disburses support in never assistance cases that never received cash assistance under Title IV-A through December 31, 2002.
R6-7-703	The objective of this rule is to outline the procedure for the disbursement of support and related payments collected for an Arizona never assistance case to a recipient of services under Title IV-D or Title XIX of the Social Security Act.
R6-7-704	The objective of this rule is to specify the order in which the Title IV-D Agency disburses support and related payments for federal income tax refund offsets collected for an Arizona Title IV-D current assistance cases through December 31, 2002.
R6-7-705	The objective of this rule is to specify the order in which the Title IV-D Agency disburses support and related payments for federal income tax refund offsets collected for an Arizona Title IV-D current assistance case on or after January 1, 2003.
R6-7-706	The objective of this rule is to outline the procedure for the disbursement of support when a child on the court order is not on grant and the support for that child is not assigned to the state.
R6-7-707	The objective of this rule is to solidify the disbursement process for federal income tax refund offsets from October 1, 1997 through September 30, 2000 when a child support recipient has formerly received assistance.
R6-7-708	The objective of this rule is to specify the order in which the Title IV-D Agency disburses support in former assistance cases from October 1, 2000 through December 31, 2002.
R6-7-709	The objective of this rule is to specify the order in which the Title IV-D Agency disburses support in former assistance cases on and after January 1, 2003.
R6-7-710	The objective of this rule is to specify the order in which the Title IV-D Agency disburses federal income tax refund offsets from October 1, 1997 through September 30, 2000.
R6-7-711	The objective of this rule is to specify the order in which the Title IV-D Agency disburses federal income tax refund offsets on and after October 1, 2000.
R6-7-712	The objective of this rule is to explain how the support and related payments are disbursed to a caretaker, who has physical custody of a child and is not the child's biological parent.
R6-7-713	The objective of this rule is to outline the procedure for the collection and disbursement of support when a court or an administrative entity orders past support that covers a period in which the obligee was on cash assistance.
R6-7-714	The objective of this rule is to describe how the Title IV-D Agency allocates the amount of interest on permanently assigned, temporarily assigned, never assigned, and unassigned arrearages.
R6-7-715	The objective of this rule is to specify the order in which the Title IV-D Agency

	unassigns the arrearages.
R6-7-716	The objective of this rule is to specify that if Arizona is the responding state in Uniform Interstate Child Support Act (UIFSA) Cases, the Title IV-D Agency sends payments received to the initiating or issuing state.

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

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation
N/A	N/A

4. **Are the rules consistent with other rules and statutes?** Yes
 No

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
N/A	N/A

5. **Are the rules enforced as written?** Yes
 No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency(s) proposal for resolving the issue.

Rule	Explanation
NA	NA

6. **Are the rules clear, concise, and understandable?** Yes
 No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation
R6-7-101(54)	The rules in Chapter 7 are generally clear, concise and understandable. However, the Department is implementing the name change from the Division of Child Support Enforcement to the Division of Child Support Services, and

	plans to amend the Chapter heading and R6-7-101(54) to reflect the name change.
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7. **Has the agency received written criticisms of the rules within the last five years?**

Yes
No

If yes, please fill out the table below:

Commenter	Comment	Agency's Response
NA	NA	NA

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

All states are required under Title IV-D of the Social Security Act to operate a Title IV-D child support program which serves the entire state. In Arizona, the Title IV-D program is administered by the Department of Economic Security in Maricopa, Pima, Pinal, Apache, Cochise, Coconino, Mohave, Graham, Greenlee, Navajo, La Paz, Santa Cruz, Yavapai and Yuma Counties. In Gila, the County Attorney's Office operates the Title IV-D child support program. In addition, the Navajo Nation also operates its own Title IV-D program on the Navajo Nation Reservation.

The child support offices assist an obligee or caretaker to establish paternity for a child, establish a support order for a Title IV-D child support case, locate the obligor, and enforce a child support order. These offices assist parents who are divorced, separated or not married to establish paternity, or establish or enforce a support obligation, and locate an obligor. Parents that receive cash assistance under the Temporary Assistance for Needy Families (TANF) program, the Title IV-E foster care program, or medical assistance under the Title XIX program, automatically receive child support services. As a result of state legislation enacted in 1997, a statewide, centralized clearinghouse was created to receive and disburse all child support payments in the Arizona. The State Disbursement Unit receives and posts child support and related payments in Title IV-D ATLAS (Arizona Tracking and Location Automated System) cases and non-Title IV-D ATLAS cases. Non-Title IV-D cases are those child support cases enforced through the Superior Court. ATLAS disbursed \$300,500,066.00 in Federal Fiscal Year 2019 to obligees in Title IV-D cases. At the present time, there are 161,390 open Title IV-D cases

in the state, of which 146,136 cases have court orders. These cases involve almost 322,780 obligees and obligors.

Parties in Title IV-D cases and the public benefit from clear, concise rules that delineate how child support and related payments are distributed and disbursed. Former recipients of public assistance benefit from the rules because they receive payment of support arrearages before the state of Arizona retains assigned arrearages to reimburse public assistance. The state also benefits from the rules because in some cases the state retains assigned arrearages. In addition, the state receives federal funding for the Arizona Title IV-D program as a result of its compliance with federal Title IV-D program distribution requirements.

Since the last Five-Year Review Report, the Department has submitted rulemaking for one rule, R6-7-103, impacting the monthly handling fee applied to child support cases. This proposed rule change was published in the Arizona Administrative Register in July 2019 and would increase the monthly handling fee from \$5.00 to \$8.00. The Department prepared an Economic Impact Statement for this 2019 rulemaking. No updates are available at this time regarding that Economic Impact Statement, since it was so recently submitted.

Article 1:

Article 1 contains provisions for collection of a monthly handling fee as a processing fee for the collection of child support. The State share of this fee is as follows: \$215,432.00 in 2014; \$218,318.00 in 2015; \$224,063.00 in 2016, \$233,166.00 in 2017; and \$241,259.00 in 2018. In 2019, the Department has submitted rulemaking that increases this fee from \$5.00 to \$8.00 per month. It is anticipated the Department will see increased State Share of Retained Earnings (SSRE) revenue of approximately \$760,000.00 per year which in turn will allow the Department to draw down approximately \$1,475,000.00 of additional federal dollars with which to provide services. Revenue generated by this increase will be used to continue process improvement and system automation efforts.

The economic impact of increasing the handling fee will directly affect the obligor as they are responsible for paying the fee each month. Arizona families will receive continued support in the collection and disbursement of owed monies.

This improves the well-being of children and families and reduces welfare costs to the taxpayer.

The Department continues to estimate the economic impact of the rules in Article 1 as described in the Economic Impact Statement filed with the rulemaking.

Article 4:

The cost related requirements in the rules in Article 4 are directed by federal law and have no additional economic impact on the Department, consumers, or small businesses.

Article 6:

The cost related requirements in the rules in Article 6 are directed by A.R.S. § 46-407 and 45 CFR 302.51, which allow the Department to collect and retain money for reimbursement of services provided under the Arizona Heath Care Cost Containment System (AHCCCS), and have no additional economic impact on the Department, consumers, or small businesses. Revenue collected for medical support is transferred to AHCCCS. The amount transferred to AHCCCS totaled \$344,250.00 in 2014; \$322,190.00 in 2015; \$292,913.00 in 2016; \$274,865.00 in 2017, and \$260,368.00 in 2018.

Article 7:

The cost-related requirements in the rules in Article 7 are directed by federal law and have no additional economic impact on consumers, or small businesses; however, these rules do create a lower priority for the payment of fees, as required by federal law, which results in a non-quantifiable loss of revenue for the Department.

9. **Has the agency received any business competitiveness analyses of the rules?**

Yes
No

10. Has the agency completed the course of action indicated in the agency's previous five-year review report?

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

The previous Five-Year Review Report indicated that the Department planned to amend the Chapter heading and R6-7-101 to change the name of the Division of Child Support Enforcement to the Division of Child Support Services. The Department received approval to a moratorium exception request from the Governor's Office on August 12, 2014. The Department filed a Notice of Proposed Rulemaking in November 2014; however, the Department did not receive support for this rule change. The Department plans to submit a new expedited request to the Governor's Office and other parties required by A.R.S. §41-1027(B) by March 30, 2020. Upon approval, the Department will submit a request to GRRC for final approval.

The Department also indicated plans to amend R6-7-101(4) to update the definition of an assistance unit to mirror the definition in A.R.S. § 46-101. Upon further review, it was determined that this change is not required and will not be submitted for rulemaking. Additionally, the Department outlined plans to amend R6-7-404 and R6-7-801 to allow electronic communication in the administrative review process. At this time, due to federal noticing requirements, the Department has not requested an exception to amend R6-7-101(4), R6-7-404, and R6-7-801.

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

Through analysis provided by the Department's program subject matter experts and Financial Services Administration, the Department believes that the rules impose the least burden and cost to persons regulated by these rules, including paperwork and other compliance costs, necessary to achieve the underlying regulator objectives. The amendment seeks to align the rule with statute and to make the rule more clear, concise, and understandable to the public. Program subject matter experts indicate that the amendment to the rule, as proposed in this report, are the most cost-effective way to

bring the Department into compliance with state requirements and ensure that the rules reflect current program practice.

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

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of the federal law(s)?

The Department has determined that the rules contained in this Chapter are not more stringent than corresponding federal law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The Department has determined that A.R.S. § 41-1037 does not apply to these rules because they do not require a regulatory permit, license, or agency authorization.

14. **Proposed course of action**

If possible, identify a month and year by which the agency plans to complete the course of action.

The Department plans to submit a Moratorium Exception Request on Title 6 Chapter 7 to the Governor's Office by March 30, 2020, and a Notice of Final Expedited Rulemaking to GRRC upon approval.

Department of Economic Security – Child Support Enforcement
TITLE 6. ECONOMIC SECURITY

CHAPTER 7. DEPARTMENT OF ECONOMIC SECURITY - CHILD SUPPORT ENFORCEMENT

Editor's Note: New 6 A.A.C. 7 made by final rulemaking at 10 A.A.C. 1973, effective April 23, 2004 (Supp. 04-2).

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of R6-7-101 through R6-7-102, made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

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ARTICLE 2. RESERVED

ARTICLE 3. RESERVED

ARTICLE 4. PASSPORT DENIAL

Article 4, consisting of R6-7-401 through R6-7-406, made by final rulemaking at 11 A.A.R. 4540, effective December 17, 2005 (Supp. 05-4).

Section

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ARTICLE 6. TITLE IV-D DISTRIBUTION

Article 6, consisting of R6-7-601 through R6-7-609, made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

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Article 7, consisting of R6-7-701 through R6-7-716, made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

Section

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ARTICLE 8. EXPIRED

Article 8, consisting of R6-7-801, expired under A.R.S. § 41-1056(J) at 23 A.A.R. 466, effective January 11, 2017 (Supp. 17-1).

Article 8, consisting of R6-7-801, made by final rulemaking at 10 A.A.C. 1973, effective April 23, 2004 (Supp. 04-2).

Section

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Department of Economic Security – Child Support Enforcement
ARTICLE 1. GENERAL PROVISIONS

R6-7-101. Definitions

The following definitions apply in this Chapter unless otherwise provided in a specific Article of this Chapter:

1. "Allocation" means the prorated division of collections.
2. "Annual fee" means the amount owed by the recipient of services when the Title IV-D Agency has collected \$500.00 of support in a federal fiscal year.
3. "Arrearages" means unpaid amounts of support owed.
4. "Assistance unit" means a group of persons whose needs, income, resources, and other circumstances are considered as a whole for the purpose of determining eligibility and benefit amount for cash assistance.
5. "Business day" means a day on which state offices are open for regular business. A.R.S. § 46-408.
6. "Caretaker" means an individual other than a parent in a Title IV-D case who has physical custody of a child and may have the right to support of that child under A.R.S. § 46-444.
7. "Cash assistance" means temporary payments for needy families paid to a recipient for the purpose of meeting basic living expenses, as described by the Department at 6 A.A.C. 12.
8. "Cash medical support" means the court ordered monthly amount to be paid as an alternative when medical insurance is not accessible or available at a reasonable cost in accordance with A.R.S. § 25-320.
9. "Child Not on Grant" means a child who:
 - a. Resides with an assistance unit receiving cash assistance,
 - b. Is not eligible for cash assistance due to the receipt of Social Security income, and
 - c. Is exempt from the assignment under A.R.S. § 46-407.
10. "Child Support Case Registry" or "Registry" means certain automated records of all Title IV-D cases, and all other cases in which a support order is established, modified, or registered in Arizona on or after October 1, 1998.
11. "Conditionally assigned arrearages" are arrearages that:
 - a. Do not exceed the total cumulative amount of unreimbursed cash assistance paid to a family as of the date the family stops receiving cash assistance;
 - b. Were temporarily assigned arrearages; and
 - c. Became conditionally assigned on the date that the family stopped receiving cash assistance or October 1, 2000, whichever date is later.
12. "Current assistance case" means a Title IV-D case in which an assistance unit is currently receiving cash assistance.
13. "Current support" means the monthly amount of money ordered by a court or an administrative entity for the support of a child, spouse, or former spouse and may include cash medical support.
14. "Department" means the Department of Economic Security.
15. "Disbursement" means the payment of monies to an obligee or other authorized recipient.
16. "Distribution" means application of support and related collections to one or more specific obligations or debts.
17. "F.A.A." means the Family Assistance Administration, the entity within the Department responsible for administering the Department's Cash Assistance Program.
18. "Federal fiscal year" means the 12 consecutive months beginning October 1 and ending September 30 for which the Office of Child Support Enforcement in the United States Department of Health and Human Services plans the use of its funds.
19. "Federal income tax refund offset" means the intercept of Internal Revenue Service income tax refunds to pay support as provided in 26 U.S.C. 6402 and 42 U.S.C. 664.
20. "Fees and costs" means amounts ordered by the court or administrative entity or agreed to be paid to the Title IV-D Agency for genetic testing, service of process, or other expenses.
21. "Former assistance case" means a Title IV-D case in which an assistance unit formerly received cash assistance and is no longer receiving cash assistance.
22. "Futures" means an amount of support received by the Title IV-D Agency, excluding any federal or state income tax refund offset, which when received exceeds the amount of current support owed in a Title IV-D case with no arrearages or other unpaid obligations as stated in 45 CFR 302.51(b). Futures do not include prepaid support.
23. "Handling fee" means the monthly charge prescribed in A.R.S. § 25-510, which is set by the Department director, and is payable to the Title IV-D Agency's Clearinghouse.
24. "Income withholding order" means an order that directs an obligor's employer, payor, or the obligor to withhold monies from the obligor's income.
25. "Initiating state" means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under A.R.S. Title 25, Chapter 9 or a law or procedure substantially similar to A.R.S. Title 25, Chapter 9. A.R.S. § 25-1202.
26. "Injured spouse claim" means a written request from the spouse of an obligor stating that the spouse has an interest in an income tax refund based on a joint federal income tax return.
27. "IRS tax reversal" means a rescission by the Internal Revenue Service of a federal income tax refund offset that was previously received by the Title IV-D Agency.
28. "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage. A.R.S. § 25-1202.
29. "Medical assistance" means benefits received from a state agency under Title XIX of the Social Security Act.

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30. "Medical support judgment" means a judgment for the costs of medical insurance coverage or uncovered medical expenses of the child.
31. "Never assigned arrearages" means arrearages that:
 - a. Accrue in a never assistance case, or in a former assistance case after an assistance unit's most recent period of cash assistance ends; and
 - b. Are not assigned.
32. "Never assistance case" means a Title IV-D case in which a family never received cash assistance, but could be receiving or has received medical assistance under Title XIX of the Social Security Act.
33. "Nonobligated spouse" means the spouse who filed an Arizona state income tax return jointly with an obligor.
34. "Non-periodic payment" means a non-recurring amount or an amount that is not paid at regular intervals.
35. "*Obligee*" means a person or agency entitled to receive support. A.R.S. § 25-500.
36. "*Obligor*" means a person obligated to pay support. A.R.S. § 25-500.
37. "OCSE" means the Office of Child Support Enforcement in the United States Department of Health and Human Services.
38. "Order" means a legal directive issued by an officer or entity legally authorized to issue orders.
39. "Past support" means the amount of support reduced to a written judgment for the care and support of a child for the period before a current child support order is established.
40. "Permanently assigned arrearages" means arrearages that do not exceed the total cumulative amount of unreimbursed cash assistance paid to an assistance unit at the time the assistance unit leaves assistance, and
 - a. Accrued before the family received assistance and were assigned to the state before October 1, 1997; or
 - b. Accrue during any period in which the assistance unit received cash assistance and were assigned to the state on or after October 1, 1997.
41. "Pregnancy and childbirth expenses" means the costs of pregnancy and childbirth, which may be reduced to a written judgment under A.R.S. § 25-809.
42. "Pregnancy and childbirth judgment" means a final court order for the costs of pregnancy and childbirth.
43. "Prepaid support" means payments for monthly support that the obligor or the obligor's agent designate in writing as payments for support in future months, even in cases with arrearages.
44. "Related payments" means monies other than support received under an order or agreement.
45. "*Responding state*" means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under A.R.S. Title 25, Chapter 9 or a law substantially similar to A.R.S. Title 25, Chapter 9. A.R.S. § 25-1202.
46. "Spousal maintenance" or "spousal support" means an amount of money ordered under A.R.S. § 25-319 or a similar law of another state, for the support or maintenance of a spouse or former spouse.
47. "State" has the meaning in A.R.S. § 25-1202(22).
48. "*Support*" means the provision of maintenance or subsistence and includes medical insurance coverage, or cash medical support, and uncovered medical costs for the child, arrearages, interest on arrearages, past support, interest on past support and reimbursement for expended public assistance. In a Title IV-D case, support includes spousal maintenance or spousal support that is included in the same order that directs child support. A.R.S. § 25-500.
49. "Support Payment Clearinghouse" or "Clearinghouse" means the state disbursement unit for the Title IV-D Agency established under A.R.S. § 46-441 to collect and disburse all payments under support orders or agreements.
50. "Temporarily assigned arrearages"
 - a. Means arrearages that:
 - i. Do not exceed the total cumulative amount of unreimbursed cash assistance paid to an assistance unit as of the date the unit stops receiving cash assistance;
 - ii. Accrue before any period in which the assistance unit receives cash assistance for arrearages assigned to the state on or after October 1, 1997; and
 - iii. Are not permanently assigned arrearages; and
 - b. The temporary assignment is no longer effective on October 1, 2000, or when the assistance unit stops receiving cash assistance, whichever is later.
 - c. Effective on and after October 1, 2009, no new temporary assignments of unpaid support begin.
51. "*Temporary assistance for needy families*" (TANF) means assistance granted under § 403 of Title IV of the Social Security Act, as it exists after August 21, 1996. A.R.S. § 46-101.
52. "Title IV-A" means Title IV-A of the Social Security Act, 42 U.S.C. 601 et seq.
53. "Title IV-D" means Title IV-D of the Social Security Act, 42 U.S.C. 651 et seq.
54. "Title IV-D Agency" means the Division of Child Support Enforcement and all of its contracting entities that administer Title IV-D services.
55. "Title IV-E" means Title IV-E of the Social Security Act, 42 U.S.C. 670 et seq.
56. "Title XIX" means Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq.
57. "Title XIX Agency" means the Arizona Health Care Cost Containment System (AHCCCS).
58. "*Tribunal*" means a court, administrative agency or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage. A.R.S. § 25-1202.
59. "UIPSA" means the Uniform Interstate Family Support Act, A.R.S. §§ 25-1201 et seq.

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60. “Unassigned arrearages” means previously permanently assigned and temporarily assigned arrearages that exceed the total cumulative amount of unreimbursed cash assistance paid to a family as of the date the family stops receiving cash assistance and includes both unassigned during-assistance arrearages and unassigned pre-assistance arrearages.
61. “Unassigned during-assistance arrearages” means all previously permanently assigned arrearages that:
 - a. Exceed the total cumulative amount of unreimbursed cash assistance paid to an assistance unit as of the date the assistance unit stops receiving cash assistance; and
 - b. Accrue during any period in which the assistance unit receives cash assistance for arrearages assigned to the state on or after October 1, 1997.
62. “Unassigned pre-assistance arrearages” means all previously temporarily assigned arrearages that:
 - a. Exceed the total cumulative amount of unreimbursed cash assistance paid to an assistance unit as of the date the assistance unit stops receiving cash assistance; and
 - b. Accrue before any period in which the assistance unit receives cash assistance for arrearages assigned to the state on or after October 1, 1997 but before October 1, 2009.
63. “Unreimbursed cash assistance” means the total, cumulative amount of cash assistance for which the state of Arizona has not received reimbursement.
64. “Voluntary payment” means monies received by the Title IV-D Agency on behalf of a child for whom no order for support is established.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4). Amended by final rulemaking at 15 A.A.R. 1250, effective September 5, 2009 (Supp. 09-3). Amended by exempt rulemaking at 16 A.A.R. 1138, effective July 1, 2010 (Supp. 10-2).

R6-7-102. Interest on Support and Related Payments

Interest shall not accrue on support and related payments retained by the Clearinghouse for disbursement and the Clearinghouse shall not pay interest on these monies unless state or federal statutes require payment of interest.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-103. Payment Handling Fee

Under A.R.S. § 25-510, the monthly payment handling fee shall be \$5.
00.

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1138, effective July 1, 2010 (Supp. 10-2).

ARTICLE 2. RESERVED

ARTICLE 3. RESERVED

ARTICLE 4. PASSPORT DENIAL

R6-7-401. Definitions

The following definitions apply in this Article unless otherwise provided in a specific Section of this Article:

1. “Certification” means to furnish OCSE with the name, identifying information, and amount of the arrearage owed by an individual determined delinquent in fulfilling a child support obligation.
2. “Federal administrative offset” means the interception of certain federal payments in order to collect past-due child support. Based on the Debt Collection Improvement Act (DCIA) of 1996, the process is managed by the Federal Office of Child Support Enforcement (OCSE), through the Financial Management Service (FMS) of the Department of the Treasury, in conjunction with the Federal Tax Refund Offset Program.
3. “Passport denial” means the certification process followed by the Title IV-D Agency and the United States Secretary of State, to refuse to issue a passport or to revoke, restrict, or limit a passport that was previously issued, because the obligor in a Title IV-D case has an arrearage in an amount that qualifies for certification under federal statute.
4. “Secretary” means the United States Secretary of State.
5. “Title IV-D case” means a proceeding for support managed by the Title IV-D Agency as required by Title IV-D of the Social Security Act, 42 U.S.C. 651 et seq.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4540, effective December 17, 2005 (Supp. 05-4).

R6-7-402. Certification and Criteria

A. The Title IV-D Agency shall:

1. Submit and certify to OCSE for passport denial any Title IV-D case with an arrearage that qualifies for certification under federal statute; and

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2. Refer the case to OCSE for federal income tax refund offset and federal administrative offset under federal statute.
- B. The Title IV-D Agency shall submit and certify a case for passport denial if the case meets both of the following criteria:
1. A support obligation has been established by a court or an administrative order; and
 2. The arrearage is in an amount that qualifies for certification under federal statute.
- C. The Title IV-D Agency shall not submit the following cases for passport denial:
1. Interstate cases in which the obligee receives temporary assistance for needy families and the state of Arizona does not have an assignment of rights.
 2. Cases in which federal law precludes action.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4540, effective December 17, 2005 (Supp. 05-4).

R6-7-403. Notice

- A. The Title IV-D Agency shall provide written notice to an obligor that the obligor has a support arrearage in an amount that qualifies for certification under federal statute, and that the obligor has been referred for federal administrative offset, federal income tax refund offset, and passport denial.
- B. The Title IV-D Agency shall send the notice to an obligor by first class mail. The mailing of the notice to the obligor's last known address of record with Title IV-D Agency constitutes proper and sufficient notice.
- C. The notice shall inform the obligor of the right to contest the enforcement action.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4540, effective December 17, 2005 (Supp. 05-4).

R6-7-404. Administrative Review

- A. An obligor may file a written request for administrative review by the Title IV-D Agency within 30 business days from the date on the notice mailed in accordance with R6-7-403.
- B. An obligor has the burden of proof regarding each issue raised in an administrative review.
- C. The issues in an administrative review are limited to:
1. Whether there has been a mistake regarding the identity of the obligor; and
 2. The amount of the obligor's arrearage, if any.
- D. If an obligor alleges that there has been a mistake regarding the identity of the obligor, the Title IV-D Agency shall issue a final written determination by first class mail to all parties within two business days after receipt of the request for administrative review.
- E. For all circumstances other than a mistake regarding the identity of the obligor, the Title IV-D Agency shall issue a final written determination by first class mail to all parties within 45 business days after receipt of the request for administrative review, or if additional information is required and provided, 45 business days after receipt of this information.
- F. In an interstate case, only the certifying state has the authority to withdraw an obligor from the passport denial process.
- G. If an obligor does not request an administrative review within 30 business days, the Title IV-D Agency's certification for purposes of passport denial remains in effect.
- H. If an obligor requests an administrative review within 30 business days and meets the requirements for withdrawal of certification for passport denial in R6-7-405, the Title IV-D Agency shall notify OCSE to withdraw certification for passport denial in accordance with OCSE requirements.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4540, effective December 17, 2005 (Supp. 05-4).

R6-7-405. Withdrawal of Certification for Passport Denial

- A. The Title IV-D Agency shall notify OCSE to withdraw certification for passport denial for an obligor if one or more of the following applies:
1. The Title IV-D Agency makes a final determination during an administrative review that:
 - a. The case does not meet the criteria for passport denial in R6-7-402; or
 - b. There has been a mistake regarding the identity of the obligor;
 2. The obligor has paid the arrearage down to:
 - a. An amount less than the amount that qualifies for certification under federal statute, and has entered into a payment agreement with the Title IV-D Agency; or
 - b. Zero; or
 - c. An amount agreed to by the Title IV-D Agency, if the arrearage is owed to both the state and the obligee, provided the obligor agrees to and complies with any other terms required by the Title IV-D Agency, and the provisions of R6-7-405(B).
- B. The Title IV-D Agency shall also notify OCSE to withdraw certification for passport denial for an obligor if all of the following apply:

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1. The obligee agrees to accept partial payment of the total arrearages owed by the obligor to the obligee, even though the payment does not comply with the requirements of R6-7-405(A)(2) to pay arrearages down to zero or an amount less than that which qualifies for certification under federal statute;
 2. The obligor and obligee agree to the amount of the partial payment in writing, and the document is signed by both parties and submitted to the Title IV-D Agency;
 3. The Title IV-D Agency advises the obligee that the Title IV-D Agency may not have the opportunity to request passport denial for another 10 years;
 4. The obligee provides the Title IV-D Agency with a signed, notarized statement acknowledging receipt of the advisement in subsection (3) before the notification to OCSE to withdraw certification for passport denial;
 5. The obligor enters into a payment agreement with the Title IV-D Agency for the remainder of the arrearages owed; and
 6. The Title IV-D Agency consents to the agreement between the obligor and the obligee.
- C. The Title IV-D Agency shall notify OCSE by facsimile, computer, or other electronic or non-electronic means to withdraw certification for passport denial, in accordance with OCSE requirements.
- D. If an obligor fails to comply with the terms of any payment agreement with the Title IV-D Agency, and the arrearage qualifies for certification under federal statute, the Title IV-D Agency shall re-certify the obligor to OCSE for passport denial.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4540, effective December 17, 2005 (Supp. 05-4).

R6-7-406. Appeal from Administrative Review

A Title IV-D Agency determination made under this Article is subject to judicial review under A.R.S. Title 12, Chapter 7, Article 6 (Judicial Review of Administrative Decisions), or other applicable law.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4540, effective December 17, 2005 (Supp. 05-4).

ARTICLE 5. RESERVED

ARTICLE 6. TITLE IV-D DISTRIBUTION

R6-7-601. Distribution

- A. The Title IV-D Agency shall distribute monies collected in a Title IV-D case in accordance with state and federal law and the provisions of this Article in the following sequence to:
1. Current child support;
 2. Current spousal maintenance;
 3. Current cash medical support;
 4. Child support judgments for arrearage or past support, and the applicable corresponding interest;
 5. Spousal maintenance judgments for arrearage or past support and the applicable corresponding interest;
 6. Pregnancy and childbirth judgments and the corresponding interest;
 7. Cash medical support judgments and the corresponding interest;
 8. Judgments for uncovered medical costs and the corresponding interest;
 9. Child support arrearages not reduced to a written judgment and the corresponding interest;
 10. Spousal maintenance arrearages not reduced to a written judgment and the corresponding interest;
 11. Cash medical support arrearages not reduced to a written judgment, and the corresponding interest;
 12. Current month's handling fee;
 13. Handling fees owed to the Support Payment Clearinghouse;
 14. IRS tax reversals;
 15. Other fees or costs; and
 16. Futures.
- B. Arrearage payments distributed in a Title IV-D case are applied first to the principal and then to the interest that accrued on that principal in the following order:
1. The oldest written judgment's principal and interest and then to each successive written judgment's principal and interest.
 2. Arrearages not reduced to a written judgment and the corresponding interest.
- C. The Title IV-D Agency shall credit amounts received as support from or on behalf of the obligor as the required support obligation for the month in which they are received unless they are submitted by an employer. Payments submitted by an employer as the result of an income withholding order are considered received in the month in which the income was withheld by the employer. The date of receipt for income withholding order payments is the last day of the pay period from which the payment is withheld.
- D. A voluntary payment received in a cash assistance case shall be retained by the Title IV-D Agency and shared with the federal government. Any monies received in excess of cash assistance owed to the state and federal government shall be paid to the obligee.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4). Amended by final rulemaking at 15 A.A.R. 1250, effective September 5, 2009 (Supp. 09-3).

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R6-7-602. Receipt and Use of Foreign Currency or Other Foreign Payment

- A. An obligor acting under an order for support issued by a court or an administrative entity in the U.S. shall pay support and other obligations in U.S. dollars. If the obligor or payor pays in a foreign currency, check, draft, or other negotiable form of payment, the Title IV-D Agency shall give the obligor credit for the U.S. dollar equivalent of the foreign currency, check, draft, or other negotiable form of payment tendered. The U.S. dollar equivalent is based on the conversion rate used by the state's bank on the date the payment is received.
- B. If an obligor or payor tenders payment in a foreign currency, draft, check, or other negotiable form of payment under a U.S. support order and the equivalent value in U.S. dollars is less than the ordered amount, the difference between the ordered amount and the amount tendered constitutes an unpaid amount owed.
- C. If an obligor or payor tenders payment in a foreign currency, draft, check, or other negotiable form of payment under a U.S. support order, and the equivalent value in U.S. dollars is more than the ordered amount, the Title IV-D Agency shall distribute the excess amount according to R6-7-601(A).
- D. If an obligor or payor tenders payment in a foreign currency, draft, check, or other negotiable form of payment as required under a foreign support order, the Title IV-D Agency shall give the obligor credit for the amount tendered regardless of the conversion value in U.S. dollars.
- E. The Clearinghouse shall disburse support and related payments it receives in U.S. dollars.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-603. Allocation of Monies Received from Federal Income Tax Refund Offset to Arrearages

If monies received from a federal income tax refund offset do not satisfy the total arrearages for all cases submitted by the Title IV-D Agency to OCSE for payment owed by an obligor to multiple obligees, the Title IV-D Agency shall make a proportionate allocation to each obligee whose case was submitted for federal income tax refund offset. The Title IV-D Agency shall determine the proportionate share by dividing the total arrearages owed to each obligee by the total arrearages owed by the obligor and multiplying the resulting percentage by the amount of the federal income tax refund offset.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-604. Allocation of Other Than Internal Revenue Service Payments to Multiple Obligees

- A. If the Title IV-D Agency receives a support payment not paid by an income withholding order that is undesignated as to case or obligee and it does not satisfy the total current support owed by one obligor to multiple obligees, the Title IV-D Agency shall use the following procedure to determine the amount of support allocated to each obligee:
 1. Determine the total current support owed by the obligor to all obligees,
 2. Divide the current support that the obligor owes to each obligee by the total current support that the obligor owes to all obligees, and
 3. Multiply the resulting percentage by the payment.
- B. If the Title IV-D Agency receives a support payment not paid by an income withholding order that is undesignated as to case or obligee and it does not satisfy the total arrearages or past support owed by one obligor to multiple obligees, the Title IV-D Agency shall use the following procedure to determine the amount of support allocated to each obligee:
 1. Determine the total arrearages owed by the obligor to all obligees,
 2. Divide the arrearages that the obligor owes to each obligee by the total arrearages that the obligor owes to all obligees, and
 3. Multiply the resulting percentage by the arrearage or past support payment.
- C. The Title IV-D Agency shall not use this procedure if:
 1. The payment source is an income withholding order and the employer or payor has allocated under A.R.S. §§ 25-504 or 25-505.01;
 2. The case is governed by R6-7-715; or
 3. The support owed to an obligee was not submitted for the enforcement action that resulted in the collection.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-605. Distribution of Monies Received from Federal Income Tax Refund Offset to Arrearages

If the federal income tax refund offset received from the Internal Revenue Service on behalf of an obligor is greater than the total arrearages owed for all cases submitted for federal income tax refund offset, the Title IV-D Agency shall refund any excess monies to the obligor, unless the obligor agrees in writing that the monies may be applied to other obligations owed.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-606. Distribution of Futures

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The Title IV-D Agency shall apply futures as provided in 45 CFR 302.51(b) (Office of the Federal Register, National Archives and Records Administration, October 1, 2004), which is incorporated by reference and on file with the Department. This incorporation by reference does not include any later amendments or editions. The Title IV-D Agency shall also follow the same regulation in never assistance and former assistance cases.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-607. Distribution of Prepaid Support

- A. The Title IV-D Agency shall treat payments as prepaid support only if there is no alternative that would allow for prompt payment of support owed to an obligee in a future month.
- B. The Title IV-D Agency shall release any prepaid support in the applicable future month for distribution in accordance with R6-7-601(A).

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-608. Distribution in Title IV-E Cases

- A. The Department shall retain monies collected in a Title IV-E case for reimbursement of Title IV-E expenditures under A.R.S. § 8-243.02.
- B. While a case is current Title IV-E, all support collected shall be disbursed in accordance with 45 CFR 302.52 (Office of the Federal Register, National Archives and Records Administration, October 1, 2004), which is incorporated by reference and on file with the Department. This incorporation by reference does not include any later amendments or editions. If the collection is more than the current monthly support and exceeds the total Title IV-E expenditures, then the Department shall use the collection to pay any arrearages assigned to the state under A.R.S. § 46-407. If arrearages have been paid, the Department shall pay any excess in a current Title IV-E case to the Title IV-E Agency for the benefit of the Title IV-E child.
- C. When a case is former Title IV-E and former assistance with arrearages assigned to the state under A.R.S. § 46-407 and A.R.S. § 8-243.02, the Department shall first apply arrearage collections to the arrearages assigned under A.R.S. § 46-407.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-609. Distribution in Current Assistance Cases with a Child Exempt from Assignment

- A. In a current assistance case, when a child is determined to be a Child Not on Grant, the Title IV-D Agency shall distribute current support collected for a Child Not on Grant on or after the end of the month in which the current support is collected. Arrearages that accrue and are collected while the assistance unit is receiving cash assistance shall be distributed on or after the end of the month in which the arrearages are collected.
- B. If a child support order for a Child Not on Grant covers children who are not subject to A.R.S. § 46-407(B), the Title IV-D agency shall divide the ordered child support amount by the number of children in the order. The Title IV-D Agency shall distribute the prorated share of the child support collected for the benefit of the Child Not on Grant.
- C. Beginning July 1, 2003, for current child support and any child support arrearages that accrue during the period of assistance, the Title IV-D Agency shall distribute the prorated share of child support collected for the benefit of a child who is subject to A.R.S. § 46-292(G) on or after the end of the month in which it is collected.
- D. If a child support order for a child subject to A.R.S. § 46-292(G) also covers children who are not subject to A.R.S. § 46-292(G), the Title IV-D Agency shall divide the ordered child support amount by the number of children in the order. The Title IV-D Agency shall distribute the prorated share of the child support collected for the benefit of the child subject to A.R.S. § 46-292(G).

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-610. Distribution of Cash Medical Support in Title XIX Cases

- A. The Title IV-D Agency shall retain current cash medical support monies for a child receiving Title XIX services under A.R.S. § 46-407 where the recipient of services is an individual to whom court ordered medical support is owed.
- B. When a child is receiving Title XIX services, the Title IV-D Agency shall disburse all current cash medical support for that child to the Title XIX Agency in accordance with 45 CFR 302.51 on or after the end of the month in which the current cash medical support is collected. The Title IV-D Agency shall distribute arrearages that accrue and are collected while the child is receiving Title XIX services on or after the end of the month in which the arrearages are collected.
- C. When a child is no longer receiving Title XIX services, the Title IV-D Agency shall disburse current cash medical support in accordance with R6-7-701. The Title IV-D Agency shall distribute collections of cash medical support arrears that accrued while the child was receiving Title XIX services in accordance with R6-7-601 to the Title XIX Agency.
- D. If a cash medical support order covers children who are not receiving Title XIX services and children who are receiving Title XIX services, the Title IV-D Agency shall divide the ordered cash medical support amount by the number of children in the order. The Title IV-D Agency shall distribute the prorated share of cash medical support for the benefit of the children receiving Title XIX services

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to the Title XIX Agency and the prorated share of cash medical support for the benefit of the children not receiving Title XIX services to the obligee.

- E. When a case is former Title XIX and former assistance with arrearages assigned to the state under A.R.S. § 46-407, the Title IV-D Agency shall first apply arrearage collections to the child and spousal support arrearages assigned under A.R.S. § 46-407.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 1250, effective September 5, 2009 (Supp. 09-3).

R6-7-611. Expired**Historical Note**

New Section made by final rulemaking at 15 A.A.R. 1250, effective September 5, 2009 (Supp. 09-3). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 466, effective January 11, 2017 (Supp. 17-1).

ARTICLE 7. TITLE IV-D DISBURSEMENT**R6-7-701. Disbursement**

- A. The Title IV-D Agency shall disburse support and related payments that the Title IV-D Agency receives in a Title IV-D case to one or more of the following recipients:
 - 1. An obligee or an agent authorized in writing by an obligee or as determined by law;
 - 2. A Title IV-D agency of another state if the agency submits a request for support establishment or enforcement services and is authorized to receive support under U.I.F.S.A.;
 - 3. The federal government, if Arizona is providing or has provided cash assistance to the assistance unit, or a member of the assistance unit, or if Arizona is providing or has provided Title IV-E foster care maintenance payments, or if the annual \$25.00 fee is owed, pursuant to R6-7-611;
 - 4. A state, if the state is providing or has provided cash assistance to the assistance unit that does not exceed the total amount of unreimbursed cash assistance;
 - 5. An obligor, if a refund is due;
 - 6. A bankruptcy trustee;
 - 7. A state or federal agency as authorized by law;
 - 8. A caretaker under Arizona statute and R6-7-712.
- B. The Title IV-D Agency shall issue payments due to an obligee at the last known address filed with the Child Support Case Registry or the last address known to F.A.A.
- C. If a payment to an obligee is returned to the Title IV-D Agency because it was undeliverable, the Title IV-D Agency shall make a reasonable effort to locate the obligee for the period authorized in A.R.S. § 25-503.
- D. If the Title IV-D Agency is unable to locate the obligee by the end of the period authorized in A.R.S. § 25-503, the Title IV-D Agency shall contact the obligor to request oral or written approval to apply the funds to arrearages and any other unpaid obligations owed to the state. If the Title IV-D Agency is unable after a reasonable effort to locate the obligee or obligor, and an arrearage is still owed to the state, the Title IV-D Agency shall apply the payments to the arrearage. Any remaining amounts shall be handled consistent with applicable law.
- E. If an obligee requests that the Title IV-D Agency directly deposit support in a financial institution and the financial institution returns those monies because the obligee's account is closed, or the financial institution will not accept the deposit, the Title IV-D Agency shall make a reasonable effort to locate the obligee for the period authorized in A.R.S. § 25-503, after receiving notice that the account is closed or that the financial institution will not accept the deposit.
- F. Neither the return of monies to an obligor due to an inability to locate the obligee, nor the application of monies to arrearages or other support-related debts terminates an obligor's obligation ordered by a court or administrative entity.
- G. The Title IV-D Agency shall disburse support that the Title IV-D Agency receives for a current assistance case within two business days of the last day of the month in which the Clearinghouse receives the payment.
- H. Except as provided in subsections (G), (I), (J), (K), (L), and (M), the Title IV-D Agency shall disburse support within two business days of receipt by the Clearinghouse unless the Clearinghouse is unable to disburse the support for one or more of the following reasons:
 - 1. The Title IV-D Agency does not have the obligee's current address;
 - 2. The Title IV-D Agency or its payment posting contractor lacks sufficient information to identify the case to which the payment must be applied;
 - 3. An action is pending before the Title IV-D Agency to determine whether:
 - a. An administrative income withholding order is enforceable under A.R.S. § 25-505.01, or
 - b. A limited income withholding order is enforceable under A.R.S. § 25-505;
 - 4. The payment is for futures that federal law requires the Title IV-D Agency to hold for disbursement in a future month, or for prepaid support;
 - 5. A court or administrative order, bankruptcy stay, or state or federal law requires the Title IV-D Agency to retain support or to use a different disbursement method or time-frame;

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6. The Title IV-D Agency lacks information regarding a support order, an agreement, or any other obligation owed to the Department;
 7. Support is returned to the Title IV-D Agency or the Clearinghouse due to the obligee's incarceration or because the obligee or only child still covered by the order is deceased;
 8. A check received from an obligor or other payor has previously been dishonored, precluding the acceptance of a personal check under A.R.S. § 25-503; or
 9. Other circumstances exist that prevent proper and timely disbursement of support through no fault or lack of diligence on the part of the Title IV-D Agency.
- I. If a federal income tax refund offset is based on a joint federal income tax return, the Title IV-D Agency shall retain the offset for 180 days after receipt of the refund monies unless the Internal Revenue Service notifies the Title IV-D Agency of the resolution of an injured spouse claim, or until the spouse signs a waiver of any right to claim a portion of the refund. The Title IV-D Agency shall distribute and disburse a federal income tax refund offset that is based on a joint tax return in accordance with R6-7-709, R6-7-710 and R6-7-711. The offset collections do not accrue interest and the Title IV-D Agency shall not pay interest on these monies.
- J. *If a [state income] tax refund is based on a joint income tax return and the department of economic security receives a written claim from the nonobligated spouse within forty-five days after the notice of a setoff for overdue child support, the setoff only applies to that portion of the refund due to the obligor. The nonobligated spouse shall provide to the department of economic security copies of both the obligated and nonobligated spouse's federal W-2 forms and evidence of estimated tax payments supporting the proportionate share of each spouse's payment of tax. The department of economic security shall retain the amount of the set off refund due to the obligated spouse determined by a proration based on the tax payments of each spouse by estimated tax payment or tax withheld from wages. A.R.S. § 42-1122(S).*
- K. The Title IV-D Agency shall distribute and disburse an Arizona income tax refund setoff that is based on a joint income tax return in accordance with R6-7-601. The Title IV-D Agency shall not pay interest on these monies except as provided in A.R.S. §§ 42-1122 and 42-1123.
- L. The Title IV-D Agency shall retain a state lottery prize that has been set off under A.R.S. § 5-525 for 30 days after the date on the notice of setoff and right to appeal as prescribed in A.R.S. § 5-525. The Title IV-D Agency shall not pay interest on these monies except as provided in A.R.S. § 5-525.
- M. In addition to the reasons for retaining support already stated in this rule, the Title IV-D Agency may retain support for more than two business days if:
1. The amount received exceeds the amount due or owing, but is neither futures nor prepaid support;
 2. The obligee's and obligor's financial accounts maintained by the Title IV-D Agency are out of balance;
 3. An obligor has multiple cases and, in at least one case, has no known obligation to support a child, or a child covered by the support order is receiving Social Security benefits and A.R.S. § 46-407 applies;
 4. A personal or business check received for support in one case exceeds \$2,500 and there is no history of checks that exceed \$2,500 clearing in that case. In no event shall the Title IV-D Agency retain these monies for more than 10 business days;
 5. The Title IV-D Agency has received a notice of a stop payment order on a payment; or
 6. The amount to be disbursed in a check is less than \$3.00. When the amount held reaches \$3.00 or more, the Title IV-D Agency shall disburse the amount.
- N. If a support payment received by the Title IV-D Agency exceeds the amount due or owing and is neither futures nor prepaid support, the Title IV-D Agency shall refund the excess to the obligor at the last known address provided to the Child Support Case Registry.
- O. If an obligee cannot be located before a case is closed, the Title IV-D Agency shall send any undisbursed amounts owed to the obligee back to the obligor.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4). Amended by final rulemaking at 15 A.A.R. 1250, effective September 5, 2009 (Supp. 09-3).

R6-7-702. Disbursement in Never Assistance Cases through December 31, 2002

Except as provided in R6-7-710 and R6-7-711 for federal income tax refund offsets, the Title IV-D Agency shall disburse support and related payments collected for an Arizona never assistance case to a recipient of services under Title IV-D or Title XIX of the Social Security Act as follows:

1. First, to current support;
2. Second, to the handling fee for the month in which the Title IV-D Agency receives the support;
3. Third, to never assigned arrearages;
4. Fourth, to fees and costs and unpaid handling fees;
5. Fifth, to futures.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-703. Disbursement in Never Assistance Cases on and after January 1, 2003

Except as provided in R6-7-710 and R6-7-711 for federal income tax refund offsets, and R6-7-611 for the mandatory annual fee effective on and after October 1, 2009, the Title IV-D Agency shall disburse support and related payments collected for an Arizona never assistance case to a recipient of services under Title IV-D or Title XIX of the Social Security Act as follows:

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1. First, to current support;
2. Second, to never assigned arrearages;
3. Third, to the handling fee for the month in which the Title IV-D Agency receives the support and unpaid handling fees;
4. Fourth, to fees and costs;
5. Fifth, to futures.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4). Amended by final rulemaking at 15 A.A.R. 1250, effective September 5, 2009 (Supp. 09-3). Historical note year corrected from 2010 to 2009 for amendment in Supp. 09-3 (Supp. 14-3).

R6-7-704. Disbursement in Current Assistance Cases through December 31, 2002

Except as provided in R6-7-710 and R6-7-711 for federal income tax refund offsets, the Title IV-D Agency shall disburse support and related payments collected for an Arizona Title IV-D current assistance case as follows:

1. First to current support assigned to the state of Arizona, not to exceed the total amount of unreimbursed cash assistance;
2. Second, to the handling fee for the month in which the Title IV-D Agency receives the support;
3. Third, to temporarily assigned arrearages;
4. Fourth, to permanently assigned arrearages;
5. Fifth, to unassigned arrearages;
6. Sixth, to fees and costs;
7. Seventh, to futures.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-705. Disbursement in Current Assistance Cases on and after January 1, 2003

- A. For all recipients who applied for current assistance prior to October 1, 2009 and therefore assigned their rights to support to the state, the Title IV-D Agency shall disburse support and related payments, except as provided in R6-7-710 and R6-7-711 for federal income tax refund offsets, collected for an Arizona Title IV-D current assistance case as follows:
 1. First, to current support assigned to the state of Arizona, not to exceed the total amount of unreimbursed cash assistance;
 2. Second, to temporarily assigned arrearages;
 3. Third, to permanently assigned arrearages;
 4. Fourth, to unassigned arrearages;
 5. Fifth, to the handling fee for the month in which the Title IV-D Agency receives the support and other unpaid handling fees;
 6. Sixth, to fees and costs;
 7. Seventh, to futures.
- B. For all recipients who applied for current assistance on and after October 1, 2009, the Title IV-D Agency shall disburse support and related payments, except as provided in R6-7-710 and R6-7-711 for federal income tax refund offsets, collected for an Arizona Title IV-D current assistance case as follows:
 1. First, to current support assigned to the state of Arizona, not to exceed the total amount of unreimbursed cash assistance;
 2. Second, to temporarily assigned arrearages which were assigned prior to October 1, 2009;
 3. Third, to permanently assigned arrearages;
 4. Fourth, to never assigned arrearages;
 5. Fifth, to conditionally assigned arrearages based on assignments entered prior to October 1, 2009;
 6. Sixth, to unassigned pre-assistance arrearages;
 7. Seventh, to unassigned during-assistance arrearages;
 8. Eighth, to the handling fee for the month in which the Title IV-D Agency receives the support and other unpaid handling fees;
 9. Ninth, to fees and costs;
 10. Tenth, to futures.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4). Amended by final rulemaking at 15 A.A.R. 1250, effective September 5, 2009 (Supp. 09-3). Historical note year corrected from 2010 to 2009 for amendment in Supp. 09-3 (Supp. 14-3).

R6-7-706. Disbursement in Current Assistance Cases with a Child Exempt from Assignment

- A. The Title IV-D Agency shall disburse the prorated share of support received for a Child Not on Grant to the obligee after the end of the month in which it is received.
- B. If the Title IV-D Agency determines that a child is a Child Not on Grant, the unpaid share of support accrues as never assigned arrearages.
- C. If a Child Not on Grant is no longer subject to A.R.S. § 46-407(B), and instead is subject to the remaining provisions of A.R.S. §§ 46-407 and 46-408, all previously unpaid arrearages are assigned to the state.

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- D. While an assistance unit is receiving cash assistance, the Title IV-D Agency shall disburse the prorated share of support received for a child subject to the provisions of A.R.S. § 46-292(G) to the obligee after the end of the month of current assistance.
- E. If the Title IV-D Agency determines that a child in an assistance unit is subject to the provisions of A.R.S. § 46-292(G), the unpaid prorated share of support accrues as never assigned arrearages.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-707. Disbursement Under Federal Law from October 1, 1997 through September 30, 2000 for Former Assistance Cases

Except as provided in R6-7-710 and R6-7-711 for federal income tax refund offsets, the Title IV-D Agency shall disburse support and related payments for a former cash assistance case as follows:

1. First, to current support;
2. Second, to the handling fee for the month in which the Title IV-D Agency receives the support;
3. Third, to never assigned arrearages;
4. Fourth, to temporarily assigned arrearages;
5. Fifth, to the permanently assigned arrearages;
6. Sixth, to unassigned arrearages;
7. Seventh, to unpaid handling fees;
8. Eighth, to fees and costs;
9. Ninth, to futures as provided in R6-7-606.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-708. Disbursement Under Federal Law from October 1, 2000 through December 31, 2002 for Former Assistance Cases

Except as provided in R6-7-710 and R6-7-711 for federal income tax refund offsets, the Title IV-D Agency shall disburse support and related payments for a former cash assistance case as follows:

1. First, to current support;
2. Second, to the handling fee for the month in which the Title IV-D Agency receives the support;
3. Third, to never assigned arrearages;
4. Fourth, to unassigned pre-assistance arrearages;
5. Fifth, to conditionally assigned arrearages;
6. Sixth, to permanently assigned arrearages;
7. Seventh, to unassigned during-assistance arrearages;
8. Eighth, to fees and costs;
9. Ninth, to futures.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-709. Disbursement Under Federal Law on and after January 1, 2003 for Former Assistance Cases

Except as provided in R6-7-710 and R6-7-711 for federal income tax refund offsets, the Title IV-D Agency shall disburse support and related payments collected for a former assistance case, as follows:

1. First, to current support;
2. Second, to never assigned arrearages;
3. Third, to unassigned pre-assistance arrearages;
4. Fourth, to conditionally assigned arrearages;
5. Fifth, to permanently assigned arrearages;
6. Sixth, to unassigned during-assistance arrearages;
7. Seventh, to the handling fee for the month in which the Title IV-D Agency receives the support and other unpaid handling fees;
8. Eighth, to fees and costs;
9. Ninth, to futures.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-710. Disbursement of Federal Income Tax Refund Offsets Under Federal Law from October 1, 1997 through September 30, 2000

The Title IV-D Agency shall disburse support collected through federal income tax refund offset in accordance with 26 U.S.C. 6402 and 42 U.S.C. 664, as follows:

1. First, to temporarily assigned arrearages;
2. Second, to permanently assigned arrearages; and
3. Third, to never assigned and unassigned arrearages.

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Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-711. Disbursement of Federal Income Tax Refund Offsets Under Federal Law on and after October 1, 2000

- A. The Title IV-D Agency shall disburse arrearages collected through federal income tax refund offset in accordance with 26 U.S.C. 6402 and 42 U.S.C. 664, as follows:
 - 1. First, to temporarily or conditionally assigned arrearages owed to the state of Arizona;
 - 2. Second, to permanently assigned arrearages; and
 - 3. Third, to never assigned and unassigned arrearages.
- B. The Title IV-D Agency shall retain conditionally assigned arrearages collected through the federal income tax refund offset to reimburse the state and federal governments for unreimbursed cash assistance paid to the assistance unit. The Title IV-D Agency shall pay conditionally assigned arrearages, collected from any source other than a federal income tax refund offset, to the obligee.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-712. Caretaker Disbursement

If an obligee with a child support case becomes the caretaker of a child who is not the obligee's child, the Title IV-D Agency shall disburse support and related payments owed to the obligee in accordance with R6-7-703, R6-7-704, R6-7-707, and R6-7-708, as applicable. The support and related payments for the assistance unit shall be disbursed in accordance with R6-7-705.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-713. Past Support Judgments

If a court or an administrative entity orders past support that covers a period in which the obligee was on cash assistance, the amount for that period is assigned to the state and the Title IV-D Agency shall distribute collections in accordance with A.R.S. § 46-408 and disburse support in accordance with this Article. If a child covered by the order was receiving Title IV-E foster care maintenance payments for any of the period covered by the judgment, the amount for that period is assigned to the state and collections shall be distributed in accordance with R6-7-608. A past support judgment ordered on and after September 26, 2008 does not accrue interest.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4). Amended by final rulemaking at 15 A.A.R. 1250, effective September 5, 2009 (Supp. 09-3). Historical note year corrected from 2010 to 2009 for amendment in Supp. 09-3 (Supp. 14-3).

R6-7-714. Interest on Arrearages

- A. The Title IV-D Agency shall retain interest paid on arrearages assigned to the state of Arizona that do not exceed the total amount of unreimbursed cash assistance.
- B. From October 1, 1997 through September 31, 2000, the Title IV-D Agency shall allocate the amount of interest on permanently assigned, temporarily assigned, never assigned, and unassigned arrearages based on a proportionate share of the total amount of arrearages owed. The Title IV-D Agency shall determine the percentage allocated to each arrearage type by dividing each arrearage type by the total arrearages and multiplying the resulting percentages by the total amount of interest accrued.
- C. On and after October 1, 2000, the Title IV-D Agency shall allocate the amount of interest on permanently assigned, temporarily assigned, conditionally assigned, never assigned, and unassigned arrearages based on a proportionate share of the total amount of arrearages owed. The Title IV-D Agency shall determine the percentage allocated to each arrearage type by dividing each arrearage type by the total arrearages and multiplying the resulting percentages by the total amount of interest accrued.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-715. Unassigned Arrearages

- A. If a family stops receiving cash assistance, the Title IV-D Agency shall compare unreimbursed cash assistance and assigned arrearages as of the last day of the month when the family leaves assistance. If the total amount of assigned arrearages and accrued interest exceeds unreimbursed cash assistance, the Title IV-D Agency shall unassign the excess amount. These amounts are unassigned arrearages. The Title IV-D Agency shall unassign arrearages as follows:
 - 1. First, from the interest owed on temporarily assigned arrearages;
 - 2. Second, from the corresponding principal of the temporarily assigned arrearages;
 - 3. Third, from the interest owed on permanently assigned arrearages; and
 - 4. Fourth, from the corresponding principal on the permanently assigned arrearages.
- B. On and after October 1, 2000, if the Title IV-D Agency unassigns arrearages from temporarily assigned amounts, these amounts are unassigned pre-assistance arrearages. The Title IV-D Agency shall first unassign the interest on arrearages and second unassign the corresponding principal on arrearages.

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- C. On and after October 1, 2000, if the Title IV-D Agency unassigns arrearages from permanently assigned amounts, these amounts are unassigned during-assistance arrearages. The Title IV-D Agency shall first unassign the interest on arrearages and second unassign the corresponding principal on arrearages.
- D. For arrearages assigned before the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the federal government did not require states to track periods of assignment. If the Title IV-D Agency cannot determine whether the unassigned arrearages were from a pre-assistance period or a during-assistance period, the Title IV-D Agency shall treat those unassigned arrearages as unassigned pre-assistance arrearages.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-716. Expired

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 466, effective January 11, 2017 (Supp. 17-1).

ARTICLE 8. EXPIRED

R6-7-801. Expired

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1973, effective April 23, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 466, effective January 11, 2017 (Supp. 17-1).

41-1954. Powers and duties

A. In addition to the powers and duties of the agencies listed in section 41-1953, subsection E, the department shall:

1. Administer the following services:

- (a) Employment services, including manpower programs and work training, field operations, technical services, unemployment compensation, community work and training and other related functions in furtherance of programs under the social security act, as amended, the Wagner-Peyser act, as amended, the federal unemployment tax act, as amended, 33 United States Code, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.
- (b) Individual and family services, which shall include a section on aging, services to children, youth and adults and other related functions in furtherance of social service programs under the social security act, as amended, title IV, except parts B and E, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services, the older Americans act, as amended, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.
- (c) Income maintenance services, including categorical assistance programs, special services unit, child support collection services, establishment of paternity services, maintenance and operation of a state case registry of child support orders, a state directory of new hires, a support payment clearinghouse and other related functions in furtherance of programs under the social security act, title IV, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services, as amended, and other related federal acts and titles.
- (d) Rehabilitation services, including vocational rehabilitation services and sections for the blind and visually impaired, communication disorders, correctional rehabilitation and other related functions in furtherance of programs under the vocational rehabilitation act, as amended, the Randolph-Sheppard act, as amended, and other related federal acts and titles.
- (e) Administrative services, including the coordination of program evaluation and research, interagency program coordination and in-service training, planning, grants, development and management, information, legislative liaison, budget, licensing and other related functions.
- (f) Manpower planning, including a state manpower planning council for the purposes of the federal-state-local cooperative manpower planning system and other related functions in furtherance of programs under the comprehensive employment and training act of 1973, as amended, and other related federal acts and titles.
- (g) Economic opportunity services, including the furtherance of programs prescribed under the economic opportunity act of 1967, as amended, and other related federal acts and titles.

(h) Intellectual disability and other developmental disability programs, with emphasis on referral and purchase of services. The program shall include educational, rehabilitation, treatment and training services and other related functions in furtherance of programs under the developmental disabilities services and facilities construction act, Public Law 91-517, and other related federal acts and titles.

(i) Nonmedical home and community based services and functions, including department designated case management, housekeeping services, chore services, home health aid, personal care, visiting nurse services, adult day care or adult day health, respite sitter care, attendant care, home delivered meals and other related services and functions.

2. Provide a coordinated system of initial intake, screening, evaluation and referral of persons served by the department.

3. Adopt rules it deems necessary or desirable to further the objectives and programs of the department.

4. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

5. Employ and determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons subject to chapter 4, article 4 and, as applicable, article 5 of this title as may be necessary in the performance of its duties, contract for the services of outside advisors, consultants and aides as may be reasonably necessary and reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business.

6. Make contracts and incur obligations within the general scope of its activities and operations subject to the availability of funds.

7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of its purposes, objectives and programs.

8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.

9. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.

10. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of its duties subject to the departmental rules on the confidentiality of information.

11. Establish and maintain separate financial accounts as required by federal law or regulations.

12. Advise and make recommendations to the governor and the legislature on all matters concerning its objectives.

13. Have an official seal that shall be judicially noticed.

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

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

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

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

18. Establish a focal point for addressing the issue of hunger in Arizona and provide coordination and assistance to public and private nonprofit organizations that aid hungry persons and families throughout this state. Specifically such activities shall include:

(a) Collecting and disseminating information regarding the location and availability of surplus food for distribution to needy persons, the availability of surplus food for donation to charity food bank organizations, and the needs of charity food bank organizations for surplus food.

(b) Coordinating the activities of federal, state, local and private nonprofit organizations that provide food assistance to the hungry.

(c) Accepting and disbursing federal monies, and any state monies appropriated by the legislature, to private nonprofit organizations in support of the collection, receipt, handling, storage and distribution of donated or surplus food items.

(d) Providing technical assistance to private nonprofit organizations that provide or intend to provide services to the hungry.

(e) Developing a state plan on hunger that, at a minimum, identifies the magnitude of the hunger problem in this state, the characteristics of the population in need, the availability and location of charity food banks and the potential sources of surplus food, assesses the effectiveness of the donated food collection and distribution network and other efforts to alleviate the hunger problem, and recommends goals and strategies to improve the status of the hungry. The state plan on hunger shall be incorporated into the department's state comprehensive plan prepared pursuant to section 41-1956.

(f) Establishing a special purpose advisory council on hunger pursuant to section 41-1981.

19. Establish an office to address the issue of homelessness and to provide coordination and assistance to public and private nonprofit organizations that prevent homelessness or aid homeless individuals and families throughout this state. These activities shall include:

(a) Promoting and participating in planning for the prevention of homelessness and the development of services to homeless persons.

(b) Identifying and developing strategies for resolving barriers in state agency service delivery systems that inhibit the provision and coordination of appropriate services to homeless persons and persons in danger of being homeless.

(c) Assisting in the coordination of the activities of federal, state and local governments and the private sector that prevent homelessness or provide assistance to homeless people.

(d) Assisting in obtaining and increasing funding from all appropriate sources to prevent homelessness or assist in alleviating homelessness.

(e) Serving as a clearinghouse on information regarding funding and services available to assist homeless persons and persons in danger of being homeless.

(f) Developing an annual state comprehensive homeless assistance plan to prevent and alleviate homelessness.

(g) Submitting an annual report to the governor, the president of the senate and the speaker of the house of representatives on the status of homelessness and efforts to prevent and alleviate homelessness.

20. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

21. Exchange information, including case specific information, and cooperate with the department of child safety for the administration of the department of child safety's programs.

B. If the department of economic security has responsibility for the care, custody or control of a child or is paying the cost of care for a child, it may serve as representative payee to receive and administer social security and United States department of veterans affairs benefits and other benefits payable to such child. Notwithstanding any law to the contrary, the department of economic security:

1. Shall deposit, pursuant to sections 35-146 and 35-147, such monies as it receives to be retained separate and apart from the state general fund on the books of the department of administration.
2. May use such monies to defray the cost of care and services expended by the department of economic security for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.
3. Shall maintain separate records to account for the receipt, investment and disposition of funds received for each child.
4. On termination of the department of economic security's responsibility for the child, shall release any funds remaining to the child's credit in accordance with the requirements of the funding source or in the absence of such requirements shall release the remaining funds to:
 - (a) The child, if the child is at least eighteen years of age or is emancipated.
 - (b) The person responsible for the child if the child is a minor and not emancipated.

C. Subsection B of this section does not pertain to benefits payable to or for the benefit of a child receiving services under title 36.

D. Volunteers reimbursed for expenses pursuant to subsection A, paragraph 5 of this section are not eligible for workers' compensation under title 23, chapter 6.

E. In implementing the temporary assistance for needy families program pursuant to Public Law 104-193, the department shall provide for cash assistance to two parent families if both parents are able to work only on documented participation by both parents in work activities described in title 46, chapter 2, article 5, except that payments may be made to families who do not meet the participation requirements if:

1. It is determined on an individual case basis that they have emergency needs.
2. The family is determined to be eligible for diversion from long-term cash assistance pursuant to title 46, chapter 2, article 5.

F. The department shall provide for cash assistance under temporary assistance for needy families pursuant to Public Law 104-193 to two parent families for no longer than six months if both parents are able to work, except that additional assistance may be provided on an individual case basis to

families with extraordinary circumstances. The department shall establish by rule the criteria to be used to determine eligibility for additional cash assistance.

G. The department shall adopt the following discount medical payment system for persons who the department determines are eligible and who are receiving rehabilitation services pursuant to subsection A, paragraph 1, subdivision (c) of this section:

1. For inpatient hospital admissions and outpatient hospital services the department shall reimburse a hospital according to the rates established by the Arizona health care cost containment system administration pursuant to section 36-2903.01, subsection G.

2. The department's liability for a hospital claim under this subsection is subject to availability of funds.

3. A hospital bill is considered received for purposes of paragraph 5 of this subsection on initial receipt of the legible, error-free claim form by the department if the claim includes the following error-free documentation in legible form:

(a) An admission face sheet.

(b) An itemized statement.

(c) An admission history and physical.

(d) A discharge summary or an interim summary if the claim is split.

(e) An emergency record, if admission was through the emergency room.

(f) Operative reports, if applicable.

(g) A labor and delivery room report, if applicable.

4. The department shall require that the hospital pursue other third-party payors before submitting a claim to the department. Payment received by a hospital from the department pursuant to this subsection is considered payment by the department of the department's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third party payors or in situations covered by title 33, chapter 7, article 3.

5. For inpatient hospital admissions and outpatient hospital services rendered on and after October 1, 1997, if the department receives the claim directly from the hospital, the department shall pay a hospital's rate established according to this section subject to the following:

(a) If the hospital's bill is paid within thirty days of the date the bill was received, the department shall pay ninety-nine per cent of the rate.

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

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

6. For medical services other than those for which a rate has been established pursuant to section 36-2903.01, subsection G, the department shall pay according to the Arizona health care cost containment system capped fee-for-service schedule adopted pursuant to section 36-2904, subsection K or any other established fee schedule the department determines reasonable.

H. The department shall not pay claims for services pursuant to this section that are submitted more than nine months after the date of service for which the payment is claimed.

I. To assist in the location of persons or assets for the purpose of establishing paternity, establishing, modifying or enforcing child support obligations and other related functions, the department has access, including automated access if the records are maintained in an automated database, to records of state and local government agencies, including:

1. Vital statistics, including records of marriage, birth and divorce.
2. State and local tax and revenue records, including information on residence address, employer, income and assets.
3. Records concerning real and titled personal property.
4. Records of occupational and professional licenses.
5. Records concerning the ownership and control of corporations, partnerships and other business entities.
6. Employment security records.
7. Records of agencies administering public assistance programs.
8. Records of the motor vehicle division of the department of transportation.
9. Records of the state department of corrections.
10. Any system used by a state agency to locate a person for motor vehicle or law enforcement purposes, including access to information contained in the Arizona criminal justice information system.

J. Notwithstanding subsection I of this section, the department or its agents shall not seek or obtain information on the assets of an individual unless paternity is presumed pursuant to section 25-814 or established.

K. Access to records of the department of revenue pursuant to subsection I of this section shall be provided in accordance with section 42-2003.

L. The department also has access to certain records held by private entities with respect to child support obligors or obligees, or individuals against whom such an obligation is sought. The information shall be obtained as follows:

1. In response to a child support subpoena issued by the department pursuant to section 25-520, the names and addresses of these persons and the names and addresses of the employers of these persons, as appearing in customer records of public utilities and cable television companies.

2. Information on these persons held by financial institutions.

M. Pursuant to department rules, the department may compromise or settle any support debt owed to the department if the director or an authorized agent determines that it is in the best interest of the state and after considering each of the following factors:

1. The obligor's financial resources.

2. The cost of further enforcement action.

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

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

46-134. Powers and duties; expenditure; limitation

The state department shall:

1. Administer all forms of public relief and assistance except those that by law are administered by other departments, agencies or boards.

2. Develop a section of rehabilitation for the visually impaired that shall include a sight conservation section, a vocational rehabilitation section in accordance with the federal vocational rehabilitation act, a vending stand section in accordance with the federal Randolph-Sheppard act and an adjustment service section that shall include rehabilitation teaching and other social services deemed

necessary, and shall cooperate with similar agencies already established. The administrative officer and staff of the section for the blind and visually impaired shall be employed only in the work of that section.

3. Assist other departments, agencies and institutions of the state and federal governments, when requested, by performing services in conformity with the purposes of this title.
4. Act as agent of the federal government in furtherance of any functions of the state department.
5. Carry on research and compile statistics relating to the entire public welfare program throughout this state, including all phases of dependency and defectiveness.
6. Cooperate with the superior court in cases of delinquency and related problems.
7. Develop plans in cooperation with other public and private agencies for the prevention and treatment of conditions giving rise to public welfare and social security problems.
8. Make necessary expenditures in connection with the duties specified in paragraphs 5, 6, 7, 13 and 14 of this subsection.
9. Have the power to apply for, accept, receive and expend public and private gifts or grants of money or property on the terms and conditions as may be imposed by the donor and for any purpose provided for by this chapter.
10. Make rules, and take action necessary or desirable to carry out the provisions of this title, that are not inconsistent with this title.
11. Administer any additional welfare functions required by law.
12. If a tribal government elects to operate a cash assistance program in compliance with the requirements of the United States department of health and human services, with the review of the joint legislative budget committee, provide matching monies at a rate that is consistent with the applicable fiscal year budget and that is not more than the state matching rate for the aid to families with dependent children program as it existed on July 1, 1994.
13. Furnish a federal, state or local law enforcement officer, at the request of the officer, with the current address of any recipient if the officer furnishes the agency with the name of the recipient and notifies the agency that the recipient is a fugitive felon or a probation, parole or community supervision violator or has information that is necessary for the officer to conduct the official duties of the officer and the location or apprehension of the recipient is within these official duties.
14. In conjunction with Indian tribal governments, request a federal waiver from the United States department of agriculture that will allow tribal governments that perform eligibility determinations for temporary assistance for needy families programs to perform the food stamp eligibility determinations for persons who apply for services pursuant to section 36-2901, paragraph 6,

subdivision (a). If the waiver is approved, the state shall provide the state matching monies for the administrative costs associated with the food stamp eligibility based on federal guidelines. As part of the waiver, the department shall recoup from a tribal government all federal fiscal sanctions that result from inaccurate eligibility determinations.

8-243. Liability of parents to bear expense; exception

A. The supreme court shall administer the activities, including providing the cost of services, for children who are referred to the juvenile court as incorrigible or delinquent and who are placed in foster care other than in a state institution or who require shelter care or treatment. If the juvenile court places a referred child in foster care or orders a referred child to participate in treatment or an education program or if a probation officer requires a child to comply with a program pursuant to section 8-321, subsection F, the juvenile court shall inquire into the ability of the child or the child's parent to bear the charge or expense of the foster care, treatment, education program or program required pursuant to section 8-321, subsection F. If the court is satisfied that the child or the child's parent can bear the charge or expense or any portion of the charge or expense, the juvenile court may fix the amount of the payment and shall direct the child or parent to pay the amount monthly to the clerk of the court until the child is discharged from foster care, treatment, an education program or a program required pursuant to section 8-321, subsection F. The clerk of the court shall transmit monies collected monthly to the supreme court for deposit in the juvenile probation services fund to reimburse the cost of services incurred under sections 8-321 and 8-322. Monies collected for this purpose are exempt from section 41-2421, subsection C.

B. If the juvenile court awards or commits a child to the department of juvenile corrections or other state department or institution, the juvenile court shall inquire into the ability of the child, the child's estate, parent or guardian or the person who has custody of the child to bear the charge, expense and maintenance including the medical, dental and mental health care of the child while the child is committed to the custody of the department of juvenile corrections or other public or private institution or agency, or private person or persons. If the court is satisfied that the child, the child's estate, parent or guardian or the person who has custody of the child can bear the charges, expense and maintenance or any portion of them, the juvenile court shall fix the amount thereof and direct that the child, the child's estate, parent or guardian or the person who has custody of the child pay the amount monthly to the department of juvenile corrections or other public or private institution or agency, or private person or persons to which the child is awarded or committed. The department of juvenile corrections or other public or private institution or agency or private person or persons shall acknowledge the receipt of the monies. The department of juvenile corrections shall retain and utilize the money it receives to fund work restitution programs for juveniles. Except as provided in section 8-243.01, other state institutions or agencies shall deposit, pursuant to sections 35-146 and 35-147, the money in the state general fund. The juvenile court shall transmit a copy of its orders concerning payment along with its order of commitment.

C. If the juvenile court awards or commits a child to a juvenile detention facility, the juvenile court shall inquire into the ability of the child, the child's estate, parent or guardian or the person who has custody of the child to bear the charge, expense and maintenance including food, clothing, shelter and supervision of the child while the child is detained in a juvenile detention facility. If the juvenile court is satisfied that the child, the child's estate, parent or guardian or the person who has custody of the child can bear the charges, expense and maintenance or any portion of them, the juvenile court may fix the amount of the payment and direct that the child, the child's estate, parent or guardian or the person who has custody of the child pay the amount monthly to the juvenile court. The assessment is collectible as a civil judgment. The juvenile court shall acknowledge the receipt of the monies and shall transmit the monies monthly to the county treasurer for deposit in the county general fund. The juvenile court shall transmit a copy of its orders concerning payment along with its order of commitment.

D. Subsection C of this section does not apply to foster parents and group homes.

E. If the juvenile was adopted or placed in permanent guardianship after the juvenile was determined by the court to be a dependent child, the juvenile court shall consider the totality of the child's circumstances and the nature of the dependency. The juvenile court may waive all or part of the charges, expense and maintenance prescribed by this section if the juvenile court determines extenuating circumstances exist.

25-319. Maintenance; computation factors

A. In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of the marriage by a court that lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse for any of the following reasons if it finds that the spouse seeking maintenance:

1. Lacks sufficient property, including property apportioned to the spouse, to provide for that spouse's reasonable needs.
2. Is unable to be self-sufficient through appropriate employment or is the custodian of a child whose age or condition is such that the custodian should not be required to seek employment outside the home or lacks earning ability in the labor market adequate to be self-sufficient.
3. Has made a significant financial or other contribution to the education, training, vocational skills, career or earning ability of the other spouse.
4. Had a marriage of long duration and is of an age that may preclude the possibility of gaining employment adequate to be self-sufficient.

5. Has significantly reduced that spouse's income or career opportunities for the benefit of the other spouse.

B. The maintenance order shall be in an amount and for a period of time as the court deems just, without regard to marital misconduct, and after considering all relevant factors, including:

1. The standard of living established during the marriage.

2. The duration of the marriage.

3. The age, employment history, earning ability and physical and emotional condition of the spouse seeking maintenance.

4. The ability of the spouse from whom maintenance is sought to meet that spouse's needs while meeting those of the spouse seeking maintenance.

5. The comparative financial resources of the spouses, including their comparative earning abilities in the labor market.

6. The contribution of the spouse seeking maintenance to the earning ability of the other spouse.

7. The extent to which the spouse seeking maintenance has reduced that spouse's income or career opportunities for the benefit of the other spouse.

8. The ability of both parties after the dissolution to contribute to the future educational costs of their mutual children.

9. The financial resources of the party seeking maintenance, including marital property apportioned to that spouse, and that spouse's ability to meet that spouse's own needs independently.

10. The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment and whether such education or training is readily available.

11. Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.

12. The cost for the spouse who is seeking maintenance to obtain health insurance and the reduction in the cost of health insurance for the spouse from whom maintenance is sought if the spouse from whom maintenance is sought is able to convert family health insurance to employee health insurance after the marriage is dissolved.

13. All actual damages and judgments from conduct that resulted in criminal conviction of either spouse in which the other spouse or a child was the victim.

C. If both parties agree, the maintenance order and a decree of dissolution of marriage or of legal separation may state that its maintenance terms shall not be modified.

D. Except as provided in subsection C of this section or section 25-317, subsection G, the court shall maintain continuing jurisdiction over the issue of maintenance for the period of time maintenance is awarded.

25-320. Child support; factors; methods of payment; additional enforcement provisions; definitions

A. In a proceeding for dissolution of marriage, legal separation, maintenance or child support, the court may order either or both parents owing a duty of support to a child, born to or adopted by the parents, to pay an amount reasonable and necessary for support of the child, without regard to marital misconduct.

B. If child support has not been ordered by a child support order and if the court deems child support appropriate, the court shall direct, using a retroactive application of the child support guidelines to the date of filing a dissolution of marriage, legal separation, maintenance or child support proceeding, the amount that the parents shall pay for the past support of the child and the manner in which payment shall be paid, taking into account any amount of temporary or voluntary support that has been paid. Retroactive child support is enforceable in any manner provided by law.

C. If the parties lived apart before the date of the filing for dissolution of marriage, legal separation, maintenance or child support and if child support has not been ordered by a child support order, the court may order child support retroactively to the date of separation, but not more than three years before the date of the filing for dissolution of marriage, legal separation, maintenance or child support. The court must first consider all relevant circumstances, including the conduct or motivation of the parties in that filing and the diligence with which service of process was attempted on the obligor spouse or was frustrated by the obligor spouse. If the court determines that child support is appropriate, the court shall direct, using a retroactive application of the child support guidelines, the amount that the parents must pay for the past support of the child and the manner in which payments must be paid, taking into account any amount of temporary or voluntary support that has been paid.

D. The supreme court shall establish guidelines for determining the amount of child support. The amount resulting from the application of these guidelines is the amount of child support ordered unless a written finding is made, based on criteria approved by the supreme court, that application of the guidelines would be inappropriate or unjust in a particular case. The supreme court shall review the guidelines at least once every four years to ensure that their application results in the determination of appropriate child support amounts. The supreme court shall base the guidelines and criteria for deviation from them on all relevant factors, considered together and weighed in conjunction with each other, including:

1. The financial resources and needs of the child.

2. The financial resources and needs of the custodial parent.
 3. The standard of living the child would have enjoyed if the child lived in an intact home with both parents to the extent it is economically feasible considering the resources of each parent and each parent's need to maintain a home and to provide support for the child when the child is with that parent.
 4. The physical and emotional condition of the child, and the child's educational needs.
 5. The financial resources and needs of the noncustodial parent.
 6. The medical support plan for the child. The plan should include the child's medical support needs, the availability of medical insurance or services provided by the Arizona health care cost containment system and whether a cash medical support order is necessary.
 7. Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.
 8. The duration of parenting time and related expenses.
- E. Even if a child is over the age of majority when a petition is filed or at the time of the final decree, the court may order support to continue past the age of majority if all of the following are true:
1. The court has considered the factors prescribed in subsection D of this section.
 2. The child has severe mental or physical disabilities as demonstrated by the fact that the child is unable to live independently and be self-supporting.
 3. The child's disability began before the child reached the age of majority.
- F. If a child reaches the age of majority while the child is attending high school or a certified high school equivalency program, support shall continue to be provided during the period in which the child is actually attending high school or the equivalency program but only until the child reaches nineteen years of age unless the court enters an order pursuant to subsection E of this section. Notwithstanding any other law, a parent paying support for a child over the age of majority pursuant to this section is entitled to obtain all records related to the attendance of the child in the high school or equivalency program.
- G. If a personal check for support payments and handling fees is rightfully dishonored by the payor bank or other drawee, the person obligated to pay support shall make any subsequent support payments and handling fees only by cash, money order, cashier's check, traveler's check or certified check. If a person required to pay support other than by personal check demonstrates full and timely payment for twenty-four consecutive months, that person may pay support by personal check if these payments are for the full amount, are timely tendered and are not rightfully dishonored by the payor bank or other drawee.

H. Subsection G of this section does not apply to payments made by means of an assignment.

I. If after reasonable efforts to locate the obligee the clerk or support payment clearinghouse is unable to deliver payments for the period prescribed in section 25-503 due to the failure of the person to whom the support has been ordered to be paid to notify the clerk or support payment clearinghouse of a change in address, the clerk or support payment clearinghouse shall not deliver further payments and shall return the payments to the obligor consistent with the requirements of section 25-503.

J. An order for child support shall assign responsibility for providing medical insurance for the child who is the subject of the support order to one of the parents and shall assign responsibility for the payment of any medical costs of the child that are not covered by insurance according to the child support guidelines. Each parent shall provide information to the court regarding the availability of medical insurance for the child that is accessible and available at a reasonable cost. In title IV-D cases, the parent responsible pursuant to court order for providing medical insurance for the child shall notify the child support enforcement agency in the department of economic security if medical insurance has been obtained or if the child is no longer covered under an insurance plan.

K. If the court finds that neither parent has the ability to obtain medical insurance for the child that is accessible and available at a reasonable cost, the court shall:

1. In a title IV-D case, in accordance with established title IV-D criteria, establish a reasonable monthly cash medical support order to be paid by the obligor. If medical assistance is being provided to a child under title XIX of the social security act, cash medical support is assigned to the state pursuant to section 46-407. On verification that the obligor has obtained private insurance, the cash medical support order terminates by operation of law on the first day of the month after the policy's effective date or on the date the court, or the department in a title IV-D case, is notified that insurance has been obtained, whichever is later. If the private insurance terminates, the cash medical support order automatically resumes by operation of law on the first day of the month following the termination date of the policy.

2. Order one parent to provide medical insurance when it becomes accessible and available at a reasonable cost.

3. Order that medical costs in excess of the cash medical support amount shall be paid by each parent according to the percentage assigned for payment of uninsured costs.

L. In a title IV-D case, if the court orders the noncustodial parent to obtain medical insurance the court shall also set an alternative cash medical support order to be paid by that parent if the child is not covered under an insurance plan within ninety days after entry of the order or if the child is no longer covered by insurance. The court shall not order the custodial parent to pay cash medical support.

M. In title IV-D cases the superior court shall accept for filing any documents that are received through electronic transmission if the electronically reproduced document states that the copy used for the electronic transmission was certified before it was electronically transmitted.

N. The court shall presume, in the absence of contrary testimony, that a parent is capable of full-time employment at least at the applicable state or federal adult minimum wage, whichever is higher. This presumption does not apply to noncustodial parents who are under eighteen years of age and who are attending high school.

O. An order for support shall provide for an assignment pursuant to sections 25-504 and 25-323.

P. Each licensing board or agency that issues professional, recreational or occupational licenses or certificates shall record on the application the social security number of the applicant and shall enter this information in its database in order to aid the department of economic security in locating parents or their assets or to enforce child support orders. This subsection does not apply to a license that is issued pursuant to title 17 and that is not issued by an automated drawing system. If a licensing board or agency allows an applicant to use a number other than the social security number on the face of the license or certificate while the licensing board or agency keeps the social security number on file, the licensing board or agency shall advise an applicant of this fact.

Q. The factors prescribed pursuant to subsection D of this section are stated for direction to the supreme court. Except pursuant to subsection E of this section and sections 25-501 and 25-809, the superior court shall not consider the factors when making child support orders, independent of the child support guidelines.

R. For the purposes of this section:

1. "Accessible" means that insurance is available in the geographic region where the child resides.
2. "Child support guidelines" means the child support guidelines that are adopted by the state supreme court pursuant to 42 United States Code sections 651 through 669B.
3. "Date of separation" means the date the married parents ceased to cohabit.
4. "Reasonable cost" means an amount that does not exceed the higher of five per cent of the gross income of the obligated parent or an income-based numeric standard that is prescribed in the child support guidelines.
5. "Support" has the same meaning prescribed in section 25-500.
6. "Support payments" means the amount of money ordered by the court to be paid for the support of the minor child or children.

25-500. Definitions

In this chapter, unless the context otherwise requires:

1. "Arrearage" means the total unpaid support owed, including child support, past support, spousal maintenance and interest.
2. "Business day" means a day when state offices are open for regular business.
3. "Child support guidelines" means the child support guidelines that are adopted by the state supreme court.
4. "Child support subpoena" means a subpoena issued pursuant to section 25-520.
5. "Department" means the department of economic security.
6. "Income" means any form of payment owed to an individual, regardless of source, including wages, salaries, commissions, bonuses, workers' compensation, disability payments, payments pursuant to a pension or retirement program and interest.
7. "Obligee" means a person or agency entitled to receive support.
8. "Obligor" means a person obligated to pay support.
9. "Support" means the provision of maintenance or subsistence and includes medical insurance coverage, or cash medical support, and uncovered medical costs for the child, arrearages, interest on arrearages, past support, interest on past support and reimbursement for expended public assistance. In a title IV-D case, support includes spousal maintenance that is included in the same order that directs child support.
10. "Support payment clearinghouse" means the clearinghouse established pursuant to section 46-441.
11. "Title IV-D" means title IV-D of the social security act.

25-503. Order for support; methods of payment; modification; termination; statute of limitations; judgment on arrearages; notice; security

- A. In any proceeding in which there is at issue the support of a child, the court may order either or both parents to pay any amount necessary for the support of the child. If the court order does not specify the date when current support begins, the support obligation begins to accrue on the first day of the month following the entry of the order. If a personal check for support payments and handling fees is rightfully dishonored by the payor bank or other drawee, any subsequent support

payments and handling fees shall be paid only by cash, money order, cashier's check, traveler's check or certified check. The department may collect from the drawer of a dishonored check or draft an amount allowed pursuant to section 44-6852. Pursuant to sections 35-146 and 35-147, the department shall deposit monies collected pursuant to this subsection in a child support enforcement administration fund. If a party required to pay support other than by personal check demonstrates full and timely payment for twenty-four consecutive months, that party may pay support by personal check if these payments are for the full amount, are timely tendered and are not rightfully dishonored by the payor bank or other drawee. On a showing of good cause, the court may order that the party or parties required to pay support give reasonable security for these payments. If the court sets an appearance bond and the obligor fails to appear, the bond is forfeited and credited against any support owed by the party required to pay support. This subsection does not apply to payments that are made by means of a wage assignment.

B. On a showing that an income withholding order has been ineffective to secure the timely payment of support and that an amount equal to six months of current support has accrued, the court shall require the obligor to give security, post bond or give some other guarantee to secure overdue support.

C. In title IV-D cases, and in all other cases subject to an income withholding order issued on or after January 1, 1994, after notice to the party entitled to receive support, the department or its agent may direct the party obligated to pay support or other payor to make payment to the support payment clearinghouse. The department or its agent shall provide notice by first class mail.

D. The obligation for current child support shall be fully met before any payments under an order of assignment may be applied to the payment of arrearages. If a party is obligated to pay support for more than one family and the amount available is not sufficient to meet the total combined current support obligation, any monies shall be allocated to each family as follows:

1. The amount of current support ordered in each case shall be added to obtain the total support obligation.
2. The ordered amount in each case shall be divided by the total support obligation to obtain a percentage of the total amount due.
3. The amount available from the obligor's income shall be multiplied by the percentage under paragraph 2 of this subsection to obtain the amount to be allocated to each family.

E. Any order for child support may be modified or terminated on a showing of changed circumstance that is substantial and continuing, except as to any amount that may have accrued as an arrearage before the date of notice of the motion or order to show cause to modify or terminate. The addition of health insurance coverage as defined in section 25-531 or a change in the availability of health insurance coverage may constitute a continuing and substantial change in circumstance. Modification and termination are effective on the first day of the month following notice of the petition for modification or termination unless the court, for good cause shown, orders the change to become effective at a different date but not earlier than the date of filing the petition for

modification or termination. The order of modification or termination may include an award of attorney fees and court costs to the prevailing party.

F. On petition of a person who has been ordered to pay child support pursuant to a presumption of paternity established pursuant to section 25-814, the court may order the petitioner's support to terminate if the court finds based on clear and convincing evidence that paternity was established by fraud, duress or material mistake of fact. Except for good cause shown, the petitioner's support obligations continue in effect until the court has ruled in favor of the petitioner. The court shall order the petitioner, each child who is the subject of the petition and the child's mother to submit to genetic testing and shall order the appropriate testing procedures to determine the child's inherited characteristics, including blood and tissue type. If the court finds that the petitioner is not the child's biological father, the court shall vacate the determination of paternity and terminate the support obligation. Unless otherwise ordered by the court, an order vacating a support obligation is prospective and does not alter the petitioner's obligation to pay child support arrearages or any other amount previously ordered by the court. If the court finds that it is in the child's best interests, the court may order the biological father to pay restitution to the petitioner for any child support paid before the court ruled in favor of the petitioner pursuant to this subsection.

G. Notwithstanding subsection E of this section, in a title IV-D case a party, or the department or its agent if there is an assignment of rights under section 46-407, may request every three years that an order for child support be reviewed and, if appropriate, adjusted. The request may be made without a specific showing of a changed circumstance that is substantial and continuing. The department or its agent shall conduct the review in accordance with the child support guidelines of this state. If appropriate, the department shall file a petition in the superior court to adjust the support amount. Every three years the department or its agent shall notify the parties of their right to request a review of the order for support. The department or its agent shall notify the parties by first class mail at their last known address or by including the notice in an order.

H. If a party in a title IV-D case requests a review and adjustment sooner than three years, the party shall demonstrate a changed circumstance that is substantial and continuing.

I. The right of a party entitled to receive support or the department to receive child support payments as provided in the court order vests as each installment falls due. Each vested child support installment is enforceable as a final judgment by operation of law. The department or its agent or a party entitled to receive support may also file a request for written judgment for support arrearages.

J. Voluntary relinquishment of physical custody of a child to the obligor from the obligee is an affirmative defense in whole or in part to a petition for enforcement of child support arrears. In determining whether the relinquishment was voluntary, the court shall consider whether there is any evidence or history of any of the following:

1. Domestic violence.
2. Parental kidnapping.

3. Custodial interference.

K. The relinquishment pursuant to subsection J of this section must have been for a time period in excess of any court-ordered period of parenting time and the obligor must have supplied actual support for the child.

L. If the obligee, the department or their agents make efforts to collect a child support debt more than ten years after the emancipation of the youngest child subject to the order, the obligor may assert as a defense, and has the burden to prove, that the obligee or the department unreasonably delayed in attempting to collect the child support debt. On a finding of unreasonable delay a tribunal, as defined in section 25-1202, may determine that some or all of the child support debt is no longer collectible after the date of the finding.

M. Notwithstanding any other law, any judgment for support and for associated costs and attorney fees is exempt from renewal and is enforceable until paid in full.

N. If a party entitled to receive child support or spousal maintenance or the department or its agent enforcing an order of support has not received court ordered payments, the party entitled to receive support or spousal maintenance or the department or its agent may file with the clerk of the superior court a request for judgment of arrearages and an affidavit indicating the name of the party obligated to pay support and the amount of the arrearages. The request must include notice of the requirements of this section and the right to request a hearing within twenty days after service in this state or within thirty days after service outside this state. The request, affidavit and notice must be served pursuant to the Arizona rules of family law procedure on all parties including the department or its agents in title IV-D cases. In a title IV-D case, the department or its agent may serve all parties by certified mail, return receipt requested. Within twenty days after service in this state or within thirty days after service outside this state, a party may file a request for a hearing if the arrearage amount or the identity of the person is in dispute. If a hearing is not requested within the time provided, or if the court finds that the objection is unfounded, the court must review the affidavit and grant an appropriate judgment against the party obligated to pay support.

O. If after reasonable efforts to locate the obligee the clerk or support payment clearinghouse is unable to deliver payments for a period of one hundred twenty days after the date the first payment is returned as undeliverable due to the failure of a party to whom the support has been ordered to be paid to notify the clerk or support payment clearinghouse of a change in address, the clerk or support payment clearinghouse shall return that and all other unassigned payments to the obligor unless there is an agreement of the obligor to pay assigned arrears and other debts owed to the state.

P. If the obligee of a child support order marries the obligor of the child support order, that order automatically terminates on the last day of the month in which the marriage takes place and arrearages do not accrue after that date. However, the obligee or the state may collect child support arrearages that accrued before that date. The obligee, the obligor or the department or its agent in a title IV-D case may file a request or stipulation to terminate or adjust any existing order of assignment pursuant to section 25-504 or 25-505.01.

Q. For the purposes of this chapter, a child is emancipated:

1. On the date of the child's marriage.
2. On the child's eighteenth birthday.
3. When the child is adopted.
4. When the child dies.
5. On the termination of the support obligation if support is extended beyond the age of majority pursuant to section 25-501, subsection A or section 25-320, subsections E and F.

25-504. Order of assignment; ex parte order of assignment; responsibilities; violation; termination

A. In a proceeding in which the court orders a person to pay support the court shall, and in a proceeding in which the court orders a person to pay spousal maintenance the court may, assign to the person or agency entitled to receive the support or spousal maintenance that portion of the person's income necessary to pay the amount ordered by the court. In a proceeding in which spousal maintenance is ordered to be paid the court shall order the assignment on either party's request.

B. A person who is obligated by an order to pay support or spousal maintenance, the person to whom support or spousal maintenance is ordered to be paid or the department or its agent in a title IV-D case may file a verified request with the clerk of the superior court requesting the clerk to issue an ex parte order of assignment for support or spousal maintenance. The ex parte order of assignment may include a payment for current support and any other support, current spousal maintenance, spousal maintenance arrearages and interest on spousal maintenance arrearages. A request filed by the department or its agent need not be verified. The request shall state:

1. The name of the person or agency entitled to receive support or spousal maintenance.
2. The monthly amount of any current support and the monthly amount of any spousal maintenance ordered by the court.
3. The specific amount requested for any support arrearages, spousal maintenance arrearages or interest.
4. The name and address of the payor to whom it is requested the order of assignment be directed and the name of the person obligated to pay support or spousal maintenance.

C. After receipt of a request for an ex parte order of assignment the clerk of the superior court, without a hearing or notice to the person obligated to pay support or spousal maintenance, shall issue an order of assignment of that portion of the person's income as is sufficient to pay the

amount requested to the person or agency entitled to receive the support or spousal maintenance. The order of assignment shall include the social security number of the obligated person. On issuance of an ex parte order of assignment, the clerk shall issue a notice directed to the obligor in substantially the following form, which shall also be in Spanish:

Notice

To: The obligor (the person ordered to pay support or spousal maintenance)

This is to notify you that part of your income or other monies is being taken away by the enclosed order of assignment that was issued on a request for an order of assignment that also is enclosed. The order of assignment has been issued for currently accruing child support or spousal maintenance, or both, based on the requesting party's claim that you are obligated to pay this. In addition, the requesting party may be claiming a right to collect other support, as defined in section 25-500, Arizona Revised Statutes, arrearages on spousal maintenance or interest on a judgment for unpaid spousal maintenance.

If you believe the enclosed order of assignment is improper or unlawful, that your property is exempt by law or that your employer or other payor is withholding more than is permitted by law, you may request a hearing before the superior court. You must file a request to terminate or adjust the order of assignment on forms provided by the clerk of the court within seven days after your receipt of the order for assignment, request for an order of assignment and this notice. If you request a hearing, it will be held no more than ten days after you file your request with the court.

Here are some other important things you should know:

The order of assignment is effective immediately on service of the order on your employer or another payor. The first employer or payor served shall not withhold or deduct amounts specified in the ex parte order of assignment for fourteen calendar days from the date of service to allow you, the obligor, an opportunity to contest the order of assignment as provided in section 25-504, Arizona Revised Statutes. A future employer or payor may begin deductions sooner than the fourteen day period after the order of assignment is received.

If you request a hearing, the court, after considering the financial resources of both parties and the reasonableness of the positions each party has taken, may order a party to pay a reasonable amount to the other for the attorney fees and costs of filing or defending the request.

Under state law (section 33-1131, Arizona Revised Statutes) no more than one-half of your disposable earnings for any pay period may be taken to satisfy an order issued for support or spousal maintenance. The amount of disposable earnings exempt from the order of assignment must be paid to you when due. Disposable income means the remaining portion of your wages, salary or compensation for personal services, including bonuses and commissions, or otherwise, and includes payments pursuant to a pension or retirement program or a deferred compensation plan, after deducting from such earnings the amounts required by law to be withheld.

An employer or other payor who receives the order of assignment may deduct from amounts due to you one dollar for each pay period, but not more than four dollars per month, for costs. The employer or payor also must deduct a monthly amount for the support payment handling fee required by state law (section 25-510, Arizona Revised Statutes).

The employer or other payor on whom the order of assignment is served will continue to withhold the amount set in the order and will forward the payment to the support payment clearinghouse until you file with the clerk one of the following:

1. A verified request to adjust the order of assignment, and the court adjusts the order of assignment because there has been a change of circumstances since the time of the issuance of the order or there is other good cause to do so.
2. A verified request for a hearing to terminate the order of assignment and, after a hearing, the court terminates the order of assignment if all obligations have been satisfied or will be satisfied within ninety days.
3. A notarized stipulation stating that the obligation to pay support or spousal maintenance has ended and that all arrearages either have been satisfied or have been waived, and the clerk terminates the order of assignment.

An employer may not refuse to hire, may not discharge or may not otherwise discipline you as a result of the order of assignment. If you are wrongfully refused employment, discharged or otherwise disciplined you may recover damages suffered, plus reinstatement if appropriate, plus reasonable attorney fees and costs incurred against the employer.

Unless a court has expressly ordered otherwise, you must notify the clerk of the court or the support payment clearinghouse in writing of the address of your residence and of your employment and, within ten days, of a change in either one. Your failure to do so may subject you to sanctions for contempt of court, including reasonable attorney fees and costs pursuant to state law (section 25-504, subsection R, Arizona Revised Statutes). Official notices will be delivered to you at the most recent addresses you have provided to the clerk or support payment clearinghouse.

D. Any order of assignment shall be issued only for support, spousal maintenance, spousal maintenance arrearages, interest on spousal maintenance arrearages and handling fees. The order of assignment shall state the total amount that the payor shall withhold. The order of assignment also shall specify the monthly amount of current support and any other payment ordered for support, the monthly amount of any current spousal maintenance, the monthly amount of any spousal maintenance arrearages and any monthly interest payment. If the obligor's disposable earnings from the primary employer or other payor do not meet the support obligation, the court shall issue an order of assignment to a secondary employer or other payor of the obligor in order to meet the full support obligation.

E. An order of assignment shall be served on any employer or other payor by first class mail, electronic transmission or personal delivery or pursuant to the Arizona rules of family law procedure.

The order of assignment is effective immediately on receipt by any employer or other payor and any future employer or future payor. Any employer or other payor of monies shall begin withholding no later than fourteen days after receipt of an order of assignment. The employer or other payor, if feasible, may begin withholding sooner than the fourteen day period if a payment to the obligor is due sooner.

F. Two copies of an ex parte order of assignment and of the request for an order of assignment, together with a copy of the notice required by this section, shall be served on any employer or other payor in the same manner as other orders of assignment under this section. Within five days after receipt, the employer or payor shall serve by personal delivery or by registered mail one copy of the ex parte order of assignment and of the request and the notice on the employee or other payee. The ex parte order of assignment is effective on any employer or other payor, and as an assignment by operation of law is effective on any future employers or other future payors, immediately on receipt. The first employer or other payor served shall not withhold or deduct amounts specified in the ex parte order of assignment for fourteen calendar days to allow the obligor an opportunity to contest the order of assignment as provided in this section. Any future employers or future payors shall begin withholding not later than fourteen days after receipt of an ex parte order of assignment but, if feasible, may begin withholding sooner than fourteen days if a payment to the obligor is due sooner.

G. After service of an ex parte order of assignment on the employer or payor that initially receives the order of assignment, an obligor may request a hearing to contest the ex parte order of assignment. The request shall be made in writing, and the obligor shall state under oath the specific reason for the request. The request shall be filed with the court together with a notice of hearing form. The court shall hold a hearing within ten days after the request and notice of hearing form is filed. Immediately on the scheduling of the hearing, the obligor shall serve a copy of the request for and notice of hearing on the person entitled to receive support, and in a title IV-D case to the department. If the obligor files a request for hearing within seven days after receipt of the order of assignment, the court may order the support payment clearinghouse not to disburse any monies received pursuant to the order of assignment until further order of the court. The obligor may contest the withholding for any of the following reasons:

1. There is an error in the identity of the obligor.
2. There is an error in the amount of support or spousal maintenance.
3. Invalidity of the order for support or spousal maintenance.
4. Current support or spousal maintenance is no longer owed, if the order of assignment includes a payment for current support or spousal maintenance.
5. Arrearages are not owed if the order of assignment includes a payment for arrearages.

H. Any employer or other payor who has received any order of assignment shall withhold the amount specified in the order of assignment, together with the handling fee as provided in section 25-510, from the income of the person obligated to pay support or spousal maintenance and shall

transmit the withheld monies to the support payment clearinghouse within two business days after the obligor is paid or after the payment to the obligor is due. The handling fee shall be deducted and transmitted monthly. For the cost of compliance the employer or payor may also withhold and retain an additional one dollar per payment but not more than four dollars per month for each obligor. An employer or payor may combine in a single payment withheld monies for more than one obligor, shall separately identify the portion of the remittance that is attributable to each obligor and shall include each obligor's social security number. An employer or payor shall notify the clerk or support payment clearinghouse in writing when the obligor is no longer employed or the right to receive income or other monies has been terminated. The employer or payor shall also notify the clerk or support payment clearinghouse in writing of the obligor's social security number and last known address and the name and address of the obligor's new employer, if known, within ten days. In a non-title IV-D case, within ten days after receiving this information the support payment clearinghouse shall notify the clerk of the superior court in the county where the support or maintenance order was issued. If within ninety days of the last payment, the employer or other payor reemploys the obligor or becomes obligated to pay the obligor, the employer or payor is again bound by the order of assignment and is required to perform as required by this section. In a title IV-D case the order of assignment may be reinstated pursuant to section 25-505.01. An employer or payor who fails without good cause to comply with the terms of an order of assignment is liable for amounts not paid to the clerk or support payment clearinghouse pursuant to the order of assignment and reasonable attorney fees, costs and other expenses incurred in procuring compliance and may be subject to contempt.

I. If a person is obligated to pay child support for more than one family and the amount available for withholding is not sufficient to meet the total combined current child support obligation, any monies withheld from the obligor's income shall be allocated to each family by the employer or payor as follows:

1. The amount of current child support ordered in each case shall be added together to obtain the total current child support obligation.
2. The amount of current child support ordered in each case shall be divided by the total current child support obligation to obtain the percentage of the total current child support obligation to be allocated to each case.
3. The amount withheld from the obligor shall be multiplied by the percentage for each case to obtain the amount to be allocated to each case.

J. The person or agency entitled to receive support or spousal maintenance shall notify the clerk of the superior court or support payment clearinghouse in writing of any change of residential address and of any other information required pursuant to section 46-443, within ten days of any change. If after reasonable efforts to locate the obligee the clerk or support payment clearinghouse is unable to deliver payments under an order of assignment for the period prescribed in section 25-503 due to the failure of an obligee to comply with the notice requirement of this subsection, the clerk or support payment clearinghouse shall not make further payment under the order of assignment and shall return payments to the obligor as prescribed in section 25-503. Under these circumstances the court, clerk or department or its agent shall order the release of the employer or payor from the

order of assignment on request of the employer, the payor, the department or its agent or on the clerk's own initiative. Any order of assignment from which an employer or payor has been released may be reinstated by following the procedures for obtaining an ex parte order of assignment pursuant to this section or, in a title IV-D case, an administrative income withholding order pursuant to section 25-505.01.

K. Unless a court has ordered otherwise, the person ordered to pay support or spousal maintenance shall notify the clerk of the superior court or the support payment clearinghouse in writing of the obligor's residential address and the name and address of any employer, and within ten days of any change. Failure to do so may subject the person to sanctions for contempt of court, including reasonable attorney fees and costs.

L. Any order of assignment may be adjusted if there has been a change of circumstances since the date the order of assignment was issued or for good cause. The department or its agent or a person obligated to pay or entitled to receive support or spousal maintenance shall file with the clerk of the superior court a request to adjust the order of assignment and a proposed order of assignment. The request shall specify the adjustment sought and the reason for the request. A copy of the request shall be served pursuant to the Arizona rules of family law procedure, or by the department or its agent in a title IV-D case by first class mail, on all other parties and on the state if the department is providing title IV-D support services or has a claim for arrearages. The party receiving the request and proposed order may request a hearing within twenty days or within thirty days if service is made outside this state. On proof of service and if a hearing has not been requested within the time allowed, the clerk shall issue the order of assignment as appropriate. Within two business days after the date the order of assignment is issued, the clerk shall transmit a copy of the order of assignment to the employer or payor, the department or its agent and all parties. Unless ordered otherwise by the court, in a title IV-D case any order of assignment may be adjusted pursuant to section 25-505.01.

M. The department or its agent or a person obligated to pay or entitled to receive support or spousal maintenance may file a request to terminate any order of assignment if the obligation to pay support or spousal maintenance has ended or will end within ninety days after the filing of the request and if all arrearages either have been paid or will be paid within the period or have been waived. The request shall state the reason why termination is requested and shall contain the name and address of the employer or payor of the person obligated to pay support. A copy of the request shall be served pursuant to the Arizona rules of family law procedure, or by the department or its agent in a title IV-D case by first class mail, on all other parties and on the state if the department is providing title IV-D support services or has a claim for arrearages. A party receiving this notice may request a hearing within twenty days or within thirty days if service is made outside this state. On proof of service and if a hearing has not been requested within the time allowed, the clerk shall issue an order terminating the order of assignment as appropriate. Within two business days after the date the order is issued, the clerk shall transmit a copy of the order terminating the order of assignment to the employer or payor and to the department or its agent. If a hearing is requested, the court shall set the hearing within twenty days after receiving the request and shall issue an appropriate order. A person who is ordered to pay support may request the court to terminate an order of assignment at any time if an employer is making deductions on multiple assignments for an obligation for the same minor children. Notwithstanding any law to the contrary, the clerk shall not charge a fee to a person

who files a request to terminate an order of assignment if an employer is making deductions on multiple assignments for an obligation for the same minor children.

N. If a request to adjust or terminate an order of assignment is filed, the court in its discretion may order that the clerk of the superior court or support payment clearinghouse not disburse any monies in dispute until further order of the court.

O. The clerk of the superior court shall issue an order terminating the order of assignment if the parties, including the department or its agent in a title IV-D case, file a notarized stipulation with the clerk that all obligations of support or spousal maintenance have been satisfied and that the obligor is no longer obligated to pay support or spousal maintenance. The stipulation shall state that the current obligation of support or spousal maintenance no longer exists and that all arrearages either have been satisfied or waived. The stipulation shall also contain the name and address of the employer or payor of the person obligated to pay support or spousal maintenance. Within five business days after the date the stipulation is filed, the clerk shall transmit a copy of the order terminating the order of assignment to the employer or payor and to the department or its agent. Notwithstanding any law to the contrary, the clerk shall not charge a fee to a party who files a stipulation pursuant to this subsection.

P. An assignment ordered pursuant to this section has priority over all other executions, attachments or garnishments. An obligation for current child support shall be fully met before any payments pursuant to an order of assignment may be applied to any other support obligation. An assignment ordered under this section does not apply to amounts made exempt under section 33-1131 or any other applicable exemption law.

Q. Any employer or other payor shall not refuse to hire a person and shall not discharge or otherwise discipline an obligor because of service of an order of assignment authorized by this section. An employer or payor who refuses to hire a person or who discharges or otherwise disciplines an employee or obligor because of service of an order of assignment is subject to contempt and sanctions as may be ordered by the court. A person who is wrongfully refused employment, wrongfully discharged or otherwise disciplined is entitled to recover damages sustained by the prohibited conduct, reinstatement, if appropriate, and attorney fees and costs incurred.

R. In any proceeding under this section the court, after considering the financial resources of the parties and the reasonableness of the positions each party has taken, may order a party to pay a reasonable amount to another party for the costs and expenses, including attorney fees, of maintaining or defending the proceeding.

25-505. Limited income withholding orders; definition

A. The department or its agent may issue a limited income withholding order to any employer, payor or other holder of a nonperiodic or lump sum payment that is owed or held for the benefit of an obligor. The department or its agent shall serve the order in the same manner as prescribed in

section 25-505.01 for service of income withholding orders. The employer, payor or holder shall deliver or mail by first class mail a copy of the order to the obligor within ten days after service on the employer, payor or holder.

B. The limited income withholding order shall state the amount of current support and any arrearages owed by an obligor and shall direct the employer, payor or holder to withhold and pay to the support payment clearinghouse the amount specified in the order and not otherwise exempt by law.

C. The limited income withholding order shall include a notice to the obligor of the right to an administrative review pursuant to section 25-522. The obligor, employer, payor or holder may contest the limited income withholding order in the same manner prescribed in section 25-505.01 to contest an income withholding order.

D. Notwithstanding sections 23-351 through 23-355, the employer, payor or holder who receives an income withholding order pursuant to section 25-505.01 or an order of assignment pursuant to section 25-504 shall withhold the amount specified and transmit that amount to the support payment clearinghouse immediately.

E. For the purposes of this section, "lump sum payment" includes:

1. Severance pay.
2. Sick pay.
3. Vacation pay.
4. Bonuses.
5. Insurance settlements.
6. Commissions.
7. Stock options.
8. Excess proceeds.
9. Retroactive disability proceeds.
10. Personal injury awards.

A. The support payment clearinghouse established pursuant to section 46-441 shall receive and disburse all monies, including fees and costs, applicable to support and maintenance unless the court has ordered that support or maintenance be paid directly to the party entitled to receive the support or maintenance. Within two business days the clerk of the superior court shall transmit to the support payment clearinghouse any maintenance and support payments received by the clerk. Monies received by the support payment clearinghouse in cases not enforced by the state pursuant to title IV-D of the social security act shall be distributed in the following priority:

1. Current child support or current court ordered payments for the support of a family when combined with the child support obligation.
2. Current spousal maintenance.
3. The current monthly fee prescribed in subsection D of this section for handling support or spousal maintenance payments.
4. Past due support reduced to judgment and then to associated interest.
5. Past due spousal maintenance reduced to judgment and then to associated interest.
6. Past due support not reduced to judgment and then to associated interest.
7. Past due spousal maintenance not reduced to judgment and then to associated interest.
8. Past due amounts of the fee prescribed in subsection D of this section for handling support or spousal maintenance payments.

B. In any proceeding under this chapter regarding a duty of support, the records of payments maintained by the clerk or the support payment clearinghouse are *prima facie* evidence of all payments made and disbursed to the person or agency to whom the support payment is to be made and are rebuttable only by a specific evidentiary showing to the contrary.

C. At no cost to the clerk of the superior court, the department shall provide electronic access to all records of payments maintained by the support payment clearinghouse, and the clerk shall use this information to provide payment histories to all litigants, attorneys and interested persons and the court. For all non-title IV-D support cases, the clerk shall load new orders, modify order amounts, respond to payment inquiries, research payment related issues, release payments pursuant to orders of the court and update demographic and new employer information. The clerk shall forward orders of assignment to employers for non-title IV-D support orders. Within five business days the clerk shall provide to the department any new address, order of assignment or employment information the clerk receives regarding any support order. The information shall be provided as prescribed by the department of economic security in consultation with the administrative office of the courts.

D. The support payment clearinghouse shall receive a monthly fee for handling support and maintenance payments. The director, by rule, may establish this fee. The court shall order payment

of the handling fee as part of the order for support or maintenance. The handling fee shall not be deducted from the support or maintenance portion of the payment.

E. In calculating support arrearages not reduced to a final written money judgment, interest accrues at the rate of ten per cent per annum beginning at the end of the month following the month in which the support payment is due, and interest accrues only on the principal and not on interest. A support arrearage reduced to a final written money judgment accrues interest at the rate of ten per cent per annum and accrues interest only on the principal and not on interest.

F. Past support reduced to a final written money judgment before September 26, 2008 and pursuant to section 25-320, subsection C or section 25-809, subsection B accrues interest at the rate of ten per cent per annum beginning on entry of the judgment by the court and accrues interest only on the principal and not on interest. Past support reduced to a final written money judgment beginning on September 26, 2008 and pursuant to section 25-320, subsection C or section 25-809, subsection B does not accrue interest for any time period.

G. Any direct payments not paid through the clearinghouse or any equitable credits of principal or interest permitted by law and allowed by the court after a hearing shall be applied to support arrearages as directed in the court order. The court shall make specific findings in support of any payments or credits allowed. If the court order does not expressly state the dates the payments or credits are to be applied, the payments or credits shall be applied on the date of the entry of the order that allows the payments or credits. In a title IV-D case, if a court order does not indicate on its face that the state was either represented at or had notice of the hearing or proceeding where the payments or credits were determined, the court order shall not reduce any sum owed to the department or its agent without written approval of the department or its agent.

H. Any credit against support arrearages, other than by court order, shall be made only by written affidavit of direct payment or waiver of support arrearages signed by the person entitled to receive the support or by that person and the person ordered to make the support payment. The affidavit of direct payment or waiver of support arrearages shall be filed directly with the clerk of the court, who shall enter the information into the statewide case registry. Any credits against support arrearages shall be applied as of the dates contained in the affidavit or the date of the affidavit if no other date is specified in the affidavit. In a title IV-D case, the affidavit of direct payment or waiver of support arrearages shall not reduce any sum owed to the department or its agent without written approval of the department or its agent.

I. An arrearage calculator may be developed by a government agency using an automated transfer of data from the clearinghouse and the child support registry. The arrearage figure produced by this calculator is presumed to be the correct amount of the arrearage.

A. An obligor may contest an enforcement action by the department or its agent by filing a request for administrative review. An obligee may contest the distribution or disbursement of support payments by the department or its agent by filing a request for administrative review. The obligor, the obligee or the caretaker may contest the disbursement of support to a noncustodial person other than the state by filing a request for administrative review pursuant to section 46-444. The request shall be in writing, shall be signed by the requesting party, shall include a residential and mailing address and may be transmitted electronically. The request shall state the basis for the dispute and shall include any relevant information to assist the department or its agent, including a copy of any order issued, documentation of support payments made and any notice sent by the department or its agent.

B. Within ten business days after receipt of the request for review, the department or its agent shall send a notice of acknowledgment of receipt of request for administrative review to the person filing the request and shall specify any additional information the department or its agent requires to complete the review. The department or its agent on its own initiative may also request any other additional information it deems necessary to make its determination. The department or its agent shall also notify the obligee of the obligor's request for review of enforcement actions.

C. Except for obligee complaints made under section 46-408 as to distribution of support, the department or its agent shall issue a written determination within forty-five business days after sending the notice of acknowledgment of receipt of request for administrative review, or if additional information is required, forty-five business days after receipt of this information. If additional information is not received from the requesting party or another person within thirty business days after the date of the department's or the agent's request for additional information, the department shall issue a final written determination within ten business days after the due date for receipt of the additional information based on the available information. The final determination shall be in writing, and a copy shall be served on all parties by first class mail or may be delivered electronically if electronic contact information is included in the request for administrative review.

D. Notwithstanding subsections B and C of this section, if the basis for the request for review is issuance of an income withholding order by the department pursuant to section 25-505.01 or a levy made pursuant to section 25-521, the department shall review the request and issue a final determination within ten business days after it receives the request for review. The department shall send a copy of the final determination by first class mail to all parties.

E. Notwithstanding subsections B, C and D of this section, if the basis for the request for review is a mistake in identity pursuant to section 25-521, the department shall issue a final determination by first class mail to all parties within two business days after the receipt of the request. The request shall include adequate documentation to affirm the mistake in identity.

F. A department determination made pursuant to this section is subject to judicial review under title 12, chapter 7, article 6, except that an appeal by an obligee of a department determination made pursuant to this section regarding the distribution of support payments shall be made pursuant to title 41, chapter 14, article 3.

G. For the purposes of this section:

1. "Business day" means a day on which state offices are open for regular business.
2. "Department" includes the department's agent.
3. "Enforcement action" means an action taken by the department to:
 - (a) Suspend or deny a license.
 - (b) Issue a notice of lien against real or personal property.
 - (c) Issue a notice of levy against assets held by or on behalf of an obligor.
 - (d) Issue an income withholding order or order to modify or terminate an income withholding order.
 - (e) Report an obligor to a consumer reporting agency.
 - (f) Issue a medical support notice of enrollment prescribed by the United States secretary of health and human services.
 - (g) Offset federal payments.
 - (h) Disburse support to a caretaker.

25-528. Title IV-D recipients; fee

A. If a recipient of title IV-D services receives at least five hundred dollars of support in a federal fiscal year and the recipient has never received assistance under a state or tribal title IV-A program, the department shall charge an annual fee of twenty-five dollars to the recipient of title IV-D services. The department shall retain the fee from future collections of support once the threshold of five hundred dollars has been met. If, after the threshold of five hundred dollars has been met, no further support collections are received or less than twenty-five dollars is received, the department may charge the fee to the recipient of services after notice advising the recipient of the deadline for payment of the fee. If the recipient does not pay the fee by the deadline, the department may retain the fee from future collections of support.

B. Notwithstanding subsection A of this section, if a foreign country has requested enforcement of a support order in any title IV-D case, the department shall charge the annual fee of twenty-five dollars to the obligor.

C. The department shall transmit to the federal government its portion of each fee withheld pursuant to subsections A and B of this section and shall deposit, pursuant to sections 35-146 and 35-147, the remainder in a child support enforcement administration fund.

25-809. Judgment

A. Except as provided in section 25-501, subsection F, if a respondent admits parentage or if the issue is decided in the affirmative in an action instituted during the child's minority, the court shall direct, subject to applicable equitable defenses and using a retroactive application of the current child support guidelines, the amount, if any, the parties shall pay for the past support of the child and the manner in which payment shall be made.

B. The court shall enter an order for support determined to be due for the period between the commencement of the proceeding and the date that current child support is ordered to begin. The court shall not order past support retroactive to more than three years before the commencement of the proceeding unless the court makes a written finding of good cause after considering all relevant circumstances, including:

1. The circumstances, conduct or motivation of the party who claims entitlement to past support in not seeking an earlier establishment of maternity or paternity.

2. The circumstances, conduct or motivation of the party from whom past support is sought in impeding the establishment of maternity or paternity.

3. The diligence with which service of process was attempted on the respondent.

C. The court shall also direct the amount either parent shall pay for the actual costs of the pregnancy, childbirth and any genetic testing and other related costs subject to production of billing statements or other documentation. This documentation is *prima facie* evidence of amounts incurred and is admissible in evidence without the need for foundation testimony or other proof of authenticity or accuracy.

D. In any proceeding under this article the court shall order either parent or both parents to pay any monies reasonable and necessary for the support of the minor unemancipated child until the child reaches the age of majority or is emancipated. In determining the amount of support for the child, the court shall apply the child support guidelines pursuant to section 25-320, subsection D. If a child reaches the age of majority while the child is attending high school or a certified high school equivalency program, support shall continue to be provided while the child is actually attending high school or the equivalency program but only until the child reaches nineteen years of age unless the court enters an order pursuant to subsection F of this section.

E. The court may modify an order of support pursuant to section 25-503.

F. Even if a child is over the age of majority when a petition is filed or at the time of the final decree, the court may order support to continue past the age of majority if all of the following are true:

1. The court has considered the factors prescribed in subsection D of this section.
2. The child has severe mental or physical disabilities as demonstrated by the fact that the child is unable to live independently and be self-supporting.
3. The child's disability began before the child reached the age of majority.

G. After considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings, the court may order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or defending any proceeding under this article. The court may order the party to pay these amounts directly to the attorney. The attorney may enforce the order in the attorney's name with the same force and effect and in the same manner as if the order had been made on behalf of any party to the action. For the purposes of this subsection, "costs and expenses" includes attorney fees, deposition costs, appellate costs and other reasonable expenses the court determines were necessary.

H. The court has contempt powers to enforce its orders.

I. The parties may terminate an action brought under this article by agreement and compromise only if the court has approved the terms of the agreement and compromise.

46-292. Eligibility for assistance

A. A family without a dependent child in the household may not receive cash assistance.

B. Cash assistance may be given under this title to any dependent child and member of a needy family:

1. Who has established residence in Arizona at the time of application and who is either:

(a) A citizen by birth or naturalization.

(b) A qualified alien who entered the United States on or before August 21, 1996.

(c) A qualified alien who entered the United States as a member of one of the exception groups under Public Law 104-193, section 412, in which case the person shall be determined eligible in accordance with Public Law 104-193.

(d) Defined as a qualified alien by the attorney general of the United States under the authority of Public Law 104-208, section 501.

For the purposes of subdivisions (b) and (c) of this paragraph, "qualified alien" means a person who is defined as a qualified alien under Public Law 104-193, section 431.

2. If the parent or parents of the dependent child or the nonparent relative head of household receiving assistance, if employable, does not refuse to accept available employment. The department shall assess the applicant's employability at the time of initial application for assistance to establish a self-sufficiency diversion option, if appropriate, before benefit issuance. The determination of employability and the conditions under which employment shall be required shall be determined by the state department, except that claimed unemployability because of physical or mental incapacity shall be determined by the state department in accordance with this title.

3. If the parent or parents of the dependent child or the nonparent head of household in a needy family has not, within one year before application, or while a recipient, transferred or assigned real or personal property with the intent to evade federal or state eligibility requirements. Transfer of property with retention of a life estate for the purpose of qualifying for assistance is prohibited. Where fair consideration for the property was received, no inquiry into motive is necessary. A person found ineligible under this section shall be ineligible for such time as the state department determines.

4. Who meets the requirements of this section and department rule to qualify as part of the assistance unit.

C. Qualified aliens entering the United States after August 21, 1996 are ineligible for benefits for a period of five years beginning on their date of entry, except for Cuban and Haitian entrants as defined in section 501(e)(2) of the refugee education assistance act of 1980 and exceptions provided under Public Law 104-193 (personal responsibility and work opportunity reconciliation act of 1996) and Public Law 105-32 (balanced budget act of 1997).

D. A parent or any other relative who applies for or who receives cash assistance under this title on behalf of a child shall cooperate with the department by taking the following actions:

1. Providing information regarding the identity of the child's father and mother and other pertinent information including their names, social security numbers and current addresses or a sworn statement that attests to the lack of this information and that is accompanied by facts supporting the asserted lack of information.

2. Appearing at interviews, hearings and legal proceedings.

3. Submitting and having the child submit to genetic testing.

4. Signing authorizations for third parties to release information concerning the applicant or the child, or both.

5. In cases in which parentage has not been established, providing a sworn statement alleging paternity and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties.

6. Supplying additional information the department requires.

E. The department shall sanction a recipient who, without good cause as prescribed in subsection F of this section, fails to cooperate with child support enforcement efforts according to the sanction provisions of section 46-300.

F. One or more of the following circumstances constitute good cause for failure to cooperate with child support enforcement efforts:

1. Cooperation may result in physical or emotional harm to the parent, child for whom support is sought or caretaker relative with whom the child is living.

2. Legal proceedings for adoption of the child for whom support is sought are pending before a court.

3. The participant has been working, for less than ninety days, with a public or licensed private social agency on the issue of whether to allow the child for whom support is sought to be adopted.

4. The child for whom support is sought was conceived as a result of sexual assault pursuant to section 13-1406 or incest.

G. A person claiming good cause has twenty days from the date the good cause claim is provided to the agency to supply evidence supporting the claim. When determining whether the parent or relative is cooperating with the agency as provided in subsection D of this section, the agency shall require:

1. If the good cause exception in subsection F, paragraph 1 of this section is claimed, law enforcement, court, medical, criminal, psychological, social service or governmental records or sworn statements from persons with personal knowledge of the circumstances that indicate that the alleged parent or obligor might inflict physical harm on the parent, child or caretaker relative.

2. If the good cause exception in subsection F, paragraph 2 of this section is claimed, court documents that indicate that legal proceedings for adoption are pending before a court of competent jurisdiction.

3. If the good cause exception in subsection F, paragraph 3 of this section is claimed, records from a public or licensed private social services agency showing that placing the child for whom support is sought is under consideration.

4. If the good cause exception in subsection F, paragraph 4 of this section is claimed, law enforcement, court, medical, criminal, psychological, social service or governmental records or sworn

statements from persons with personal knowledge of the circumstances surrounding the conception of the child that indicate the child was conceived as a result of sexual assault pursuant to section 13-1406 or incest.

H. Notwithstanding subsection B of this section and except as provided in subsection I of this section, a dependent child or children who are born during one of the following time periods are not eligible for assistance under this title:

1. The period in which the parent or other relative is receiving assistance benefits.
2. The temporary period in which the parent or other relative is ineligible pursuant to a penalty imposed by the department for failure to comply with benefit eligibility requirements, after which the parent or other relative is eligible for a continuation of benefits.
3. Any period after November 1, 1995 that is less than sixty months between a voluntary withdrawal from program benefits or a period of ineligibility for program benefits which immediately followed a period during which program benefits were received and a subsequent reapplication and eligibility approval for benefits.

I. The following exceptions apply to subsection H of this section:

1. The department shall allow an increase in cash assistance under the program for a dependent child or children born as a result of an act of sexual assault pursuant to section 13-1406 or incest. The department shall ensure that the proper law enforcement authorities are notified of allegations of sexual assault or incest made pursuant to this paragraph. For the purposes of this paragraph, "an act of sexual assault" includes sexual assault of a spouse if the offense was committed before August 12, 2005.
2. For those parents or other relatives who are currently authorized for cash assistance the department shall allow an increase in cash assistance under the program as a result of the birth of a child or children to the parent or other relative only if the birth occurred within ten months of the initial eligible month. The department may use only the additional child or children who are born from the pregnancies covered in this subsection in computing the additional benefit.
3. The department shall allow an increase in cash assistance for any dependent child born to a parent who has not received cash assistance under this title for at least twelve consecutive months if the child is born within the period beginning ten months after the twelve consecutive month period and ending ten months after the parent resumes receiving cash assistance.
4. A dependent child or children who were born during a period in which the custodial parent received cash assistance through the Arizona works program shall be eligible to receive assistance under this title.

5. A dependent child or children who were born within ten months after the custodial parent received cash assistance through the Arizona works program shall be eligible to receive assistance under this title.

6. The department of economic security shall allow cash assistance for an otherwise eligible dependent child during the period in which the dependent child is in the legal custody of the department of child safety, a tribal court or a tribal child welfare agency located in this state and is placed in unlicensed kinship foster care with a nonparent relative or unrelated adult.

7. The department shall allow cash assistance for an otherwise eligible child who meets one of the following:

(a) The court has placed the child with a nonparent relative.

(b) The child's parents are deceased and the child is living with a nonparent relative.

(c) A nonparent relative has custody of the child because the child is abandoned as defined in section 8-201.

J. The department shall calculate the sixty-month time period referenced in subsection H, paragraph 3 of this section in the following manner:

1. For persons who are receiving cash assistance on November 1, 1995, the sixty-month time period begins on November 1, 1995. A subsequent sixty-month time period begins immediately after the previous period ends if the person is receiving cash assistance through two sixty-month periods. If the individual is not receiving cash assistance at the end of the previous sixty-month period, any subsequent sixty-month time period begins on the date when cash assistance became effective again, regardless of when the person received an actual payment.

2. For persons who begin receiving cash assistance after November 1, 1995, the sixty-month time period begins on the date cash assistance becomes effective, regardless of when the person received an actual payment. A subsequent sixty-month period begins as provided in paragraph 1 of this subsection.

K. In calculating a parent's or any other relative's benefit increase that arises from any general increase that has been approved for all program recipients, the department shall not consider a child or children born under the time periods listed in subsection H of this section.

L. For the parents or other relatives who have additional children for whom they receive no cash assistance payment under subsection H of this section, the department shall make any necessary program amendments or request any necessary federal waivers to allow the parents or other relatives to earn income in an amount equal to the disallowed cash assistance payment without affecting their eligibility for assistance.

M. The director shall adopt rules:

1. To implement this section, including rules to define the investigatory steps that must be taken to confirm that an act of sexual assault pursuant to section 13-1406 or incest led to the birth of a dependent child or children.

2. That require the department to inform both verbally and in writing the parents and other relatives who are receiving assistance under this article of the specific family planning services that are available to them while they are enrolled as eligible persons in the Arizona health care cost containment system.

N. This section does not prevent an otherwise eligible child who is not included in the family's calculation of benefits under this article from being eligible for coverage under title 36, chapter 29 or for any services that are directly linked to eligibility for the temporary assistance for needy families program.

O. Assistance shall not be denied or terminated under this article because the principal wage earner works one hundred or more hours per month.

P. Except as provided in paragraph 2 of this subsection, all members of a needy family, including stepparents, must meet the same financial eligibility criteria established in this title, by department rule and as follows:

1. The department shall include all income from every source available to a needy family requesting cash assistance, except income that is required to be disregarded by this subsection and as determined by the department in rules. For the amount of income that is received from employment, each month every employed person is entitled to receive an earned income disregard of ninety dollars plus an additional thirty percent of the remaining earned income. A needy family that includes an employed person is entitled to an earned income disregard equal to the actual amount billed to the household for the care of an adult or child dependent household member, up to two hundred dollars a month for a child under two years of age and up to one hundred seventy-five dollars a month for each other dependent. This dependent care disregard is allowed only if the expense is necessary to allow the household member to become or remain employed or to attend postsecondary training or education that is preparatory to employment.

2. The total gross countable income of a needy family that includes a nonparent relative head of household who is not applying for or receiving cash assistance and who is requesting cash assistance only for a dependent child shall not exceed one hundred thirty percent of the federal poverty guidelines.

Q. If the total gross countable income in subsection P, paragraph 2 of this section does not exceed one hundred thirty percent of the federal poverty guidelines, in determining benefit amount, the department shall exclude the income of all members of the needy family except for the income of the eligible dependent child for whom cash assistance is requested.

R. For the purposes of eligibility and benefit amount, only the income of the dependent child is considered for a child only case.

S. Any parent or other relative who applies for or receives cash assistance under this article on behalf of a dependent child who is between six and sixteen years of age shall ensure that the child is enrolled in and attending school. An initial applicant is ineligible for benefits until the applicant's dependent children are verified to be enrolled in and attending an educational program. The department of education shall assist the department of economic security in obtaining verification of school enrollment and attendance. The director of the department of economic security may adopt rules for granting good cause exceptions from this subsection. The department of economic security shall sanction a recipient who fails, without good cause, to ensure school enrollment and attendance according to section 46-300.

T. Any parent or other relative who applies for or receives cash assistance under this section on behalf of a dependent child shall ensure that the child is immunized in accordance with the schedule of immunizations pursuant to section 36-672. The director of the department of economic security may adopt rules for granting good cause exceptions from this subsection. The department of economic security shall sanction a recipient, in accordance with section 46-300, who fails, without good cause, to obtain the required immunizations for a dependent child unless the recipient submits to the department of economic security the documentation described in section 15-873.

46-407. Assignment of rights to support; definition

A. The right to support of a child and spouse who receive temporary assistance for needy families pursuant to Public Law 104-193 and chapter 2, article 5 of this title and the right to medical support of a child who receives medical assistance under title XIX of the social security act is assigned to this state by operation of law. The support rights are assigned to the state regardless of whether the applicant for assistance has any right to receive the support. The department shall take all steps necessary to enforce the assigned rights to support.

B. The support rights assigned to the state apply to all children of the household for whom temporary assistance for needy families is granted. If a child is denied temporary assistance for needy families due to the receipt of social security income for the child or the child is subject to section 46-292, subsection H, the department shall divide the court ordered child support amount by the number of children in the court order. The prorated amount is exempt from assignment for the child who is receiving social security income or subject to section 46-292, subsection H.

C. The right to support of a child on whose behalf foster care maintenance payments are made is assigned pursuant to section 8-243.02. If the child support order covers more than one child, the department shall determine the amount to be distributed to the state by dividing the court ordered support amount by the number of the children in the court order.

D. For the purposes of this section, "support" has the same meaning prescribed in section 25-500.

46-408. Assignment of support rights; priority; definitions

A. The assignment under section 46-407 is subject to all of the following:

1. Terminates with respect to current support when the person entitled to receive support is no longer receiving temporary assistance for needy families.
2. While receiving temporary assistance for needy families the assignment applies to any rights to support from any other person. Before October 1, 2009, the assignment applies to any support that accrued before receiving temporary assistance for needy families. On or after October 1, 2009, the assignment does not apply to any support that accrued before receiving temporary assistance for needy families.
3. Does not preclude enforcement of support in the name of the person entitled to receive support.
4. Does not bind any person who lawfully pays support to the person entitled to receive support.
5. Does not assign amounts that exceed the amount of temporary assistance for needy families paid to the person entitled to receive support to which the state is entitled to be reimbursed.
6. When the person entitled to receive support is not receiving temporary assistance for needy families, amounts paid for support shall be credited first to that month's current court ordered support up to an amount equal to the amount of the court order in effect at the time of payment and the excess, if any, shall be subject to the assignment.
7. The assignment applies to arrearages provided in the court order subject to the following priorities:

(a) If the person entitled to receive support is currently receiving temporary assistance for needy families, the state's claim for arrearages shall have priority over all other support claims except for current support.

(b) If the person entitled to receive support is not currently receiving temporary assistance for needy families, the state and the person entitled to receive support shall have a proportionate claim for any arrearages owed to the state and the custodial parent under a child support order. The arrearage payment shall be distributed on the total outstanding arrearage amount and the percentage of the total outstanding arrearage owed to the state and the person entitled to receive support.

B. Notwithstanding subsection A, paragraph 7 of this section, for distributions that occur or should have occurred beginning October 1, 1997, the department shall distribute support payments as prescribed in title IV-D of the social security act and its implementing regulations as follows:

1. Distribute to the family amounts not subject to the assignment.
2. Pay the federal government the federal share of the amount collected.

3. Retain the state share of the amount collected.
 4. Retain payments collected through the federal income tax refund intercept program to the extent past due support has been assigned to the state. Any amount collected in excess of the past due support assigned to the state shall be distributed to the past due support owed to the family.
- C. An obligee who disagrees with the distribution or disbursement of support payments pursuant to subsection B of this section may request an administrative review pursuant to section 25-522 within thirty business days after the date of the department's notice to the obligee of the distribution and disbursement of support received for the prior period.
- D. In title IV-D cases, the department shall send written notice to the obligee regarding distribution and disbursement of support for the most recent quarter of the year. The obligee has thirty business days after the date of that notice to submit a written request for an administrative review. The department or its agent shall send a written notice of acknowledgment of receipt of request for administrative review to the obligee within ten business days after it receives a timely request for review. If the department or its agent needs additional information from the obligee to respond to the request for review, the department shall indicate this fact in writing. The department or its agent may also request information from other sources. The department or its agent shall issue a written determination not later than thirty business days after the date of the notice of acknowledgment of receipt of request for administrative review or, if additional information is required, not later than thirty business days after it receives this information. If additional information requested by the department or its agent is not received within thirty business days after the request for more information, the department or its agent shall issue a written determination within ten business days after the due date based on the information available. The department or its agent shall send a copy of the written determination to the obligee by first class mail.
- E. The obligee shall make any appeal of the department's or its agent's determination in writing pursuant to title 41, chapter 14, article 3 and shall file it in the department's office of appeals within thirty business days after the date of the written determination. An obligee may appeal the department's final determination pursuant to section 41-1993.
- F. A payment that is credited against past due support shall be applied first to principal and then to interest.
- G. The department may adopt rules addressing interest and distribution of all monies received by the department in child support cases.
- H. For the purposes of this section:
1. "Arrearage" has the same meaning prescribed in section 25-500.
 2. "Business day" means a day on which state offices are open for regular business.
 3. "Support" has the same meaning prescribed in section 25-500.

46-441. Support payment clearinghouse; records transfer; payment; definition

- A. The department shall establish a central support payment clearinghouse to receive, disburse and monitor support payments pursuant to title IV-D of the social security act.
- B. Unless the court orders that support or maintenance be paid directly to the party entitled to receive it, all orders for support shall direct payment of support or maintenance through the support payment clearinghouse. All orders that specify payments through the clerk of the superior court shall be deemed to require payment to the support payment clearinghouse after a notice to the obligor is issued.
- C. The clerk of the superior court shall provide copies of all payment histories and relevant legal documents pertaining to the issue of support.
- D. On request the support payment clearinghouse shall promptly furnish to the person entitled to receive support or maintenance information on the current status of payments received and processed through the support payment clearinghouse.
- E. Support payments and handling fees in an amount prescribed in section 25-510 for the monthly support handling fee shall be paid to the support payment clearinghouse. The director shall deposit, pursuant to sections 35-146 and 35-147, the handling fees received by the department in a child support enforcement administration fund.
- F. If after reasonable efforts to locate the obligee the support payment clearinghouse is unable to deliver payments for the period prescribed in section 25-503 due to the failure of the person to whom the support has been ordered to be paid to notify the clerk or support payment clearinghouse of a change in address, the clerk or support payment clearinghouse shall not make further payment and shall return the payments to the obligor as prescribed in section 25-503.
- G. The support payment clearinghouse shall have an accounting system for monitoring child support payments. The records of the support payment clearinghouse are *prima facie* evidence of payment or nonpayment of support.
- H. Payment of any money directly to an obligee or to a person other than the support payment clearinghouse shall not be credited against the support obligation unless the direct payments were ordered by the court, or made pursuant to a written support agreement by the parties.
- I. The support payment clearinghouse shall issue copies of payment histories for payments received and processed through the support payment clearinghouse on request and may charge a fee for these services.
- J. For the purposes of this section "support" has the same meaning prescribed in section 25-500.

DEPARTMENT OF AGRICULTURE(F19-1106)

Title 3, Chapter 1, Articles 1-3, Department of Agriculture Administration



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: December 3, 2019

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

FROM: Council Staff

DATE: November 4, 2019

SUBJECT: DEPARTMENT OF AGRICULTURE (F19-1106)

Title 3, Chapter 1, Articles 1-3, Department of Agriculture - Administration

Summary:

This Five Year Review Report (5YRR) from the Department of Agriculture (Department) relates to rules in Title 3, Chapter 1, Articles 1-3. The rules cover the following:

- **Article 1 (General Provisions);**
 - Definitions; Computation of Time; Licensing and Testing
- **Article 2 (Practice and Procedure - Contested Cases and Appealable Agency Actions); and**
 - Adjudicative proceedings before the Department; Rehearing or Review of Decision; Basis
- **Article 3 (Public Participation in Rulemaking).**

The Department did not propose to take any action regarding the rules in Articles 1 and 3 in the last 5YRR. However, for Article 2, the Department indicates that it once proposed to supplement R3-1-218 (Rehearing or Review of Decision; Basis) to match Rule 59(a) of the Arizona Rules of Civil Procedure. The Department states that it mistakenly believed that Rule 59(a) applied to its administrative actions through A.R.S. § 41-1062(B) (Hearings; evidence; official notice; power to require testimony and records; rehearing), but pursuant to A.R.S. § 41-1067 (Applicability of article), A.R.S. § 41-1062(B) only applies to agencies that are exempt

under A.R.S. § 41-1092.02 (Appealable agency actions; application of procedural rules; exemption from article). The Department is not exempt under A.R.S. 41-1092.02. Thus, the Department did not amend R3-1-218.

Proposed Action:

The Department intends to maintain the rules as currently written.

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

Yes. The Agency cites to applicable general and specific statutory authority for these rules.

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

The Department adopted the rules in Title 3, Chapter 1 to establish administrative procedures for the Department's rulemaking proceedings. The Department indicates that the economic impact of the rules has not changed since their initial adoption.

Stakeholders include: the Department, agricultural producers, 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?

Yes. The Department states that these rules impose the least burden and costs necessary to achieve their underlying regulatory objectives. The rules establish basic administrative procedures and principles that provide the public with notice of agency actions. The rules are intended to benefit, rather than burden the public. The Department intends to maintain the rules as written.

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

No. The Department 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 indicates that the rules are clear, concise, understandable, effective, and consistent with other rules and statutes. The Department clearly states the objective of each rule in this Chapter.

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

Yes. The Department indicates that all rules in this Chapter are enforced as written.

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

No. The rules in this Chapter are not more stringent than corresponding federal law.

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

The rules in this Chapter were not adopted after July 29, 2010 and thus do not require a permit.

9. Conclusion

Council staff finds that the rules in this Chapter are clear, concise, understandable, effective, and consistent with other rules and statutes. The Department does not intend to take any action on these rules. 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

September 23, 2019

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 1

Dear Ms. Sornsin:

Attached, please find the Arizona Department of Agriculture's five-year review report for A.A.C. Title 3, Chapter 1.

The Department 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 Chris McCormack at 602-542-7186 or cmccormack@azda.gov with any questions about this report.

Sincerely,

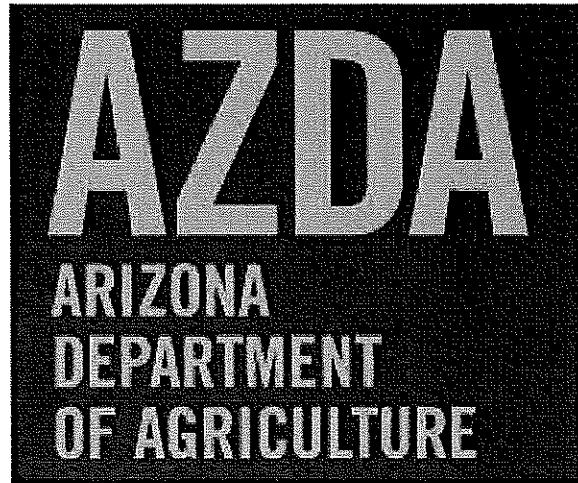
A handwritten signature in black ink, appearing to read "MK".

Mark Killian, Director
Arizona Department of Agriculture

MK/cm

ARIZONA DEPARTMENT OF AGRICULTURE

2019 FIVE-YEAR REVIEW REPORT



TITLE 3. AGRICULTURE CHAPTER 1. DEPARTMENT OF AGRICULTURE ADMINISTRATION

- ARTICLE 1. GENERAL PROVISIONS**
- ARTICLE 2. PRACTICE AND PROCEDURE - CONTESTED CASES AND APPEALABLE AGENCY ACTIONS**
- ARTICLE 3. PUBLIC PARTICIPATION IN RULEMAKING**

**Arizona Department of Agriculture
2019 Five-Year Review Report
Title 3. Agriculture
Chapter 1. Department of Agriculture Administration**

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**Arizona Department of Agriculture
2019 Five-Year Review Report
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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 rules listed under A.A.C. Title 3, Chapter 1, Administration, are scheduled to be submitted to GRRC by August 31, 2019. Section II of this document contains the Department's report on these rules.

**Arizona Department of Agriculture
2019 Five-Year Review Report
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**II. FIVE-YEAR REVIEW REPORT
ARTICLE 1. GENERAL PROVISIONS**

1. Statutory authority

General: A.R.S. § 3-107(A)(1)

2. Objective

R3-1-101: The objective is to establish definition of terms for the Chapter.

R3-1-102: The objective is to explain the computation of a time period required by a rule or order.

R3-1-103: The objective is to set out standards for determining the time applicants will have to complete a licensing exam and to provide for requests for disability accommodations.

3. Analysis of effectiveness in achieving the objective

The rules are effective in achieving their objectives. R1-1-101 defines all necessary terms in the chapter. R3-1-102 adequately defines how time under Arizona Department of Agriculture (the “Department”) rules and orders should be computed, when time begins to run, when time ends, and when weekends and holidays should be included. R3-1-103 provides three criteria that are the basis for an examination time-frame and requires persons seeking an accommodation to submit a written request at the time an exam is scheduled.

4. Consistency

The rules in this article are consistent with all state and federal statutes and rules, including A.R.S. § 41-1092(1), Rule 6(a), Arizona Rules of Civil Procedure, and 28 C.F.R. § 35.130(b)(6).

5. Agency enforcement policy

All the rules in this Article are enforced as written.

6. Clarity, conciseness, and understandability

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

7. Written criticisms

The Department has not received any written criticisms of the rules within the last 5 years.

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8. Economic, small business, and consumer impact comparison

The economic impact of the rules has not changed since adoption of the rules that are in place. These general rules do not adversely impact regulated individuals or the agency.

9. Analysis submitted by another person

None.

10. Completion of course of action from prior review

The Department did not propose any action regarding these rules and has taken none.

11. Determination that rule imposes least burden and costs

The Department believes the rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective. The rules establish basic administrative procedures and principles that provide the public with notice and consistency regarding agency actions. The rules benefit rather than burden the public.

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

The rules are not more stringent than corresponding federal law.

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

The rules in this Article were not adopted after July 29, 2010, and do not require a permit.

14. Proposed course of action

The Department intends to maintain the rules as currently written.

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**ARTICLE 2. PRACTICE AND PROCEDURE - CONTESTED CASES AND
APPEALABLE AGENCY ACTIONS**

1. Statutory authority

A.R.S. §§ 3-107(A)(1) and 41-1003

2. Objective

R3-1-201: The objective is to establish that the Department will use the appeals procedures in A.R.S. Title 41, Chapter 6, Article 10 to govern the initiation and conduct of formal adjudicative proceedings before the Department.

R3-1-218: The objective is to lay out grounds upon which the Director may grant a rehearing of an administrative law judge's decision.

3. Analysis of effectiveness in achieving the objective

The rules are effective in achieving their objectives.

4. Consistency

R1-1-201 and R3-1-218 are consistent with all state and federal statutes and rules.

5. Agency enforcement policy

All the rules in this Article are enforced as written.

6. Clarity, conciseness, and understandability

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

7. Written criticisms

The Department has not received any written criticisms of the rule within the last 5 years.

8. Economic, small business, and consumer impact comparison

The economic impact of the rules has not changed since adoption of the rules that are in place. These general rules do not adversely impact regulated individuals or the agency.

9. Analysis submitted by another person

None.

10. Completion of course of action from prior review

At one time, the Department proposed to supplement R3-1-218 to match Rule 59(a) of the Arizona Rules of Civil Procedure. However, the Department was under the mistaken belief

**Arizona Department of Agriculture
2019 Five-Year Review Report
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that Rule 59(a) of the Arizona Rules of Civil Procedure applies to its administrative actions through A.R.S. § 41-1062(B), when, in fact, per A.R.S. § 41-1067, A.R.S. § 41-1062(B) only applies to agencies that are exempt under A.R.S. § 41-1092.02. The Department is not exempt under A.R.S. § 41-1092.02.

11. Determination that rule imposes least burden and costs

The Department believes the rules impose the least burden and costs to persons regulated by the rule necessary to achieve the underlying regulatory objective. The rules establish basic administrative procedures that provide the public with notice and consistency regarding agency adjudicative proceedings. The rules benefit rather than burden the public.

12. Determination that rule is not more stringent than corresponding federal law

The rules are 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 in this Article were not adopted after July 29, 2010, and do not require a permit.

14. Proposed course of action

The Department intends to maintain the rules as currently written.

**Arizona Department of Agriculture
2019 Five-Year Review Report
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ARTICLE 3. PUBLIC PARTICIPATION IN RULEMAKING

1. Statutory authority

- | | | |
|-----------|-----------|---|
| R3-1-301: | General: | A.R.S. § 3-107(A)(1) |
| | Specific: | A.R.S. §§ 41-1003; 41-1029; 39-121 |
| R3-1-302: | General: | A.R.S. §§ 3-107(A)(1); 41-1001.01(6) |
| | Specific: | A.R.S. § 41-1033 |
| R3-1-303: | General: | A.R.S. § 3-107(A)(1) |
| | Specific: | A.R.S. §§ 41-1001.01(6); 41-1023; 41-1052(D)(6) |
| R3-1-304: | General: | A.R.S. § 3-107(A)(1) |
| | Specific: | A.R.S. §§ 41-1001.01(6); 41-1023; 41-1052(D)(6) |
| R3-1-306: | General: | A.R.S. §§ 3-107(A)(1) |
| | Specific: | A.R.S. §§ 41-1001.01(6); 41-1023; 41-1052(D)(6);
41-1056 |
| R3-1-307: | General: | A.R.S. § 3-107(A)(1) |
| | Specific: | A.R.S. §§ 41-1001.01(6); § 41-1033 |

2. Objective

- | | |
|-----------|---|
| R1-1-301: | The objective is to state when the public may access rulemaking records. |
| R3-1-302: | The objective is to set out the procedure for the public to formally request the Department to make, amend, or repeal a rule. |
| R3-1-303: | The objective is to inform the public who to contact with written comment on proposed rulemakings. |
| R3-1-304: | The objective is to set out the procedure for conducting oral proceedings on proposed rulemakings. |
| R3-1-306: | The objective is to set out a procedure for written criticisms of a rule that are not formal petitions for amendment or repeal. |
| R3-1-307: | The objective is to establish the procedure for the public to request the Department to review a practice or substantive policy statement that may constitute a rule. |

Arizona Department of Agriculture
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3. Analysis of effectiveness in achieving the objective

The rules are effective in achieving their objectives. R3-1-301 states that official rulemaking records are available in the Department's main office during normal business hours. R3-1-302 establishes the six main components of a petition to request a rule change and the three types of additional information that may be included. R3-1-303 requires a person commenting on a rulemaking to direct their correspondence to the person designated in the rulemaking. R3-1-304 prescribes nine procedures that the Department representative must follow at a rulemaking proceeding. R3-1-306 allows a person to file written criticism of a rule at any time, requires the criticism to identify the rule and the concern, requires the Department to respond within 20 days, and states that criticism is not the same as a R3-1-302 petition. R3-1-307 establishes the five components of a petition for review of a practice or policy.

4. Consistency

The rules of this article are consistent with all state and federal statutes and rules.

5. Agency enforcement policy

All the rules in this Article are enforced as written.

6. Clarity, conciseness, and understandability

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

7. Written criticisms

The Department has not received any written criticisms of the rule within the last 5 years.

8. Economic, small business, and consumer impact comparison

The economic impact of the rules has not changed since adoption of the rules that are in place. The Department works with agricultural industry representatives in formulating rules, therefore, the Department seldom receives written criticisms or negative comments concerning its rules.

9. Analysis submitted by another person

None.

**Arizona Department of Agriculture
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10. Completion of course of action from prior review

The Department did not propose any action regarding these rules and has taken none.

11. Determination that rule imposes least burden and costs

The Department believes the rules impose the least burden and costs to persons regulated by the rule necessary to achieve the underlying regulatory objective. The rules establish basic procedures that enable the public to participate in the rulemaking process. The rules benefit rather than burden the public.

12. Determination that rule is not more stringent than corresponding federal law

The rules are not more stringent than corresponding federal law.

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

The rules in this Article were not adopted after July 29, 2010, and do not require a permit.

14. Proposed course of action

The Department intends to maintain the rules as currently written.

TITLE 3, AGRICULTURE**CHAPTER 1. DEPARTMENT OF AGRICULTURE
ADMINISTRATION**

Authority: A.R.S. §§ 3-107, 41-1023, 41-1024, 41-1029, 41-1032, 41-1033, 41-1061, 41-1062, and 41-1064

Chapter 1, consisting of Articles 1, 2, and 3, adopted effective April 11, 1994 (Supp. 94-2).

Former Title 3, Chapter 1, Article 1, Sections R3-1-01 through R3-1-09 renumbered to Title 3, Chapter 4, Article 1, Sections R3-4-101 through R3-4-109; Former Title 3, Chapter 1, Article 2, Sections R3-1-50 through R3-1-77 renumbered to Title 3, Chapter 4, Article 2, Sections R3-4-201 through R3-4-248; Title 3, Chapter 1, Article 3, Sections R3-1-301 through R3-1-307 renumbered to Title 3, Chapter 4, Article 3, Sections R3-4-301 through R3-4-307; Title 3, Chapter 1, Article 4, Sections R3-1-401 through R3-1-408 renumbered to Title 3, Chapter 4, Article 4, Sections R3-4-401 through R3-4-408; Title 3, Chapter 1, Article 5, Sections R3-1-501 through R3-1-504 renumbered to Title 3, Chapter 4, Article 5, Sections R3-4-501 through R3-4-504; Title 3, Chapter 1, Article 6, Sections R3-1-601 through R3-1-633 and Appendix 1, renumbered to Title 3, Chapter 4, Article 6, Sections R3-4-601 through R3-4-633 and Appendix 1; Title 3, Chapter 1, Article 7, Sections R3-1-701 through R3-1-710 renumbered to Title 3, Chapter 5, Article 1, Sections R3-5-101 through R3-5-110 (Supp. 91-4).

ARTICLE 1. GENERAL PROVISIONS

Section	
R3-1-101.	Definitions
R3-1-102.	Computation of Time
R3-1-103.	Licensing; Testing

ARTICLE 2. PRACTICE AND PROCEDURE - CONTESTED CASES AND APPEALABLE AGENCY ACTIONS

Section	
R3-1-201.	Adjudicative Proceedings Before the Department
R3-1-202.	Repealed
R3-1-203.	Repealed
R3-1-204.	Repealed
R3-1-205.	Repealed
R3-1-206.	Repealed
R3-1-207.	Repealed
R3-1-208.	Repealed
R3-1-209.	Repealed
R3-1-210.	Repealed
R3-1-211.	Repealed
R3-1-212.	Repealed
R3-1-213.	Repealed
R3-1-214.	Repealed
R3-1-215.	Repealed
R3-1-216.	Repealed
R3-1-217.	Repealed
R3-1-218.	Rehearing or Review of Decision; Basis
R3-1-219.	Repealed

ARTICLE 3. PUBLIC PARTICIPATION IN RULEMAKING

Section	
R3-1-301.	Rulemaking Record
R3-1-302.	Petition for Adoption, Amendment, or Repeal of a Rule
R3-1-303.	Written Comment; Proposed Rulemaking
R3-1-304.	Oral Proceeding; Proposed Rulemaking
R3-1-305.	Repealed
R3-1-306.	Written Criticism of a Current Rule
R3-1-307.	Petition for Review of a Practice or Policy

ARTICLE 1. GENERAL PROVISIONS**R3-1-101. Definitions**

In addition to the definitions in A.R.S. § 41-1001, the following terms apply to this Chapter:

“Administrative Law Judge” means an individual, or the Director of the Department, who sits as an administrative law judge, conducts an administrative hearing in a contested case or an appealable agency action, and makes decisions regarding the contested case or appealable agency action.

“Department” means the Arizona Department of Agriculture.

“Director” means the Director of the Arizona Department of Agriculture.

“License” includes the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but does not include a license required solely for revenue purposes. A.R.S. § 41-1001.

“Licensing” includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license. A.R.S. § 41-1001.

“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. A.R.S. § 41-1001.

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Section amended by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 10 A.A.R. 2657, effective August 7, 2004 (Supp. 04-2).

R3-1-102. Computation of Time

The Department shall compute a period of time for action required in a Department rule or order, as follows:

1. The day of the act, event, or default from which the designated period of time begins to run shall not be included;
2. The last day of the period shall be included unless it is a Saturday, Sunday, or Arizona legal holiday in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Arizona legal holiday; and
3. If the period of time allowed is 10 days or less, intermediate Saturdays, Sundays, and Arizona legal holidays are not included.

Historical Note

Adopted effective October 14, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 2657, effective August 7, 2004 (Supp. 04-2).

R3-1-103. Licensing; Testing

- A. For a license for which an applicant is required to pass an examination, the Department may limit the amount of time the applicant is allowed to complete the licensing examination. In determining whether and to what extent the time-frame for an examination will be limited, the Department shall consider the following:

1. The number of questions on the examination;
2. The difficulty and content of the questions;
3. And if available, historical data on the average amount of time taken to complete the examination.

- B. An applicant seeking an accommodation under the American's with Disabilities Act to the manner in which an examination is

administered shall make a written request to the Department at the time the applicant schedules the examination. The Department may require the applicant to provide medical documentation to confirm the need for the requested accommodation.

C. The Department shall review the request for accommodation and decide this request on a case-by-case basis.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2657, effective August 7, 2004 (Supp. 04-2).

ARTICLE 2. PRACTICE AND PROCEDURE - CONTESTED CASES AND APPEALABLE AGENCY ACTIONS

R3-1-201. Adjudicative Proceedings Before the Department
The Department shall use the uniform administrative appeals procedures of A.R.S. Title 41, Chapter 6, Article 10 to govern the initiation and conduct of formal adjudicative proceedings before the Department.

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-202. Repealed**Historical Note**

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-203. Repealed**Historical Note**

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-204. Repealed**Historical Note**

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-205. Repealed**Historical Note**

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-206. Repealed**Historical Note**

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-207. Repealed**Historical Note**

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-208. Repealed**Historical Note**

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-209. Repealed**Historical Note**

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-210. Repealed**Historical Note**

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-211. Repealed**Historical Note**

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-212. Repealed**Historical Note**

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-213. Repealed**Historical Note**

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-214. Repealed**Historical Note**

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-215. Repealed**Historical Note**

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-216. Repealed**Historical Note**

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-217. Repealed**Historical Note**

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-218. Rehearing or Review of Decision; Basis

- A. A party may file a motion for rehearing or review under A.R.S. § 41-1092.09.
- B. The Director shall grant a rehearing or review of an administrative law judge's decision for any of the following causes materially affecting the moving party's rights:
 1. The decision is not justified by the evidence or is contrary to law.
 2. There is newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original proceeding.

- 3. One or more of the following has deprived the party of a fair hearing:
 - a. Irregularity or abuse of discretion in the conduct of the proceeding;
 - b. Misconduct of the Department, the administrative law judge, or the prevailing party; or
 - c. Accident or surprise which could not have been prevented by ordinary prudence.
 - 4. Excessive or insufficient sanction.
- C. The Director may grant a rehearing or review to any or all of the parties. The rehearing or review may cover all or part of the issues for any of the reasons stated in subsection (B). An order granting a rehearing or review shall particularly state the grounds for granting the rehearing or review, and the rehearing or review shall cover only the grounds stated.

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Amended by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-219. Repealed**Historical Note**

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

ARTICLE 3. PUBLIC PARTICIPATION IN RULEMAKING**R3-1-301. Rulemaking Record**

A person may review an official rulemaking record at the Department's main office, Monday through Friday, except an Arizona legal holiday, during the hours of 8:00 a.m. to 5:00 p.m. The Department shall provide a copy of a record according to the provisions of A.R.S. § 39-121 et seq.

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Amended by final rulemaking at 10 A.A.R. 2657, effective August 7, 2004 (Supp. 04-2).

R3-1-302. Petition to Make, Amend, or Repeal a Rule

A. A person requesting the Department to adopt, amend, or repeal a rule, as prescribed in A.R.S. § 41-1033, shall file a petition with the Director. A petition shall contain:

1. The name, address, and signature of the person submitting the petition;
2. For the making of a new rule, the specific language of the proposed rule;
3. For the amendment of a current rule, the Section number, title, and language of the current rule with changes identified by drawing a line through language to be deleted and underlining proposed language;
4. For the repeal of a current rule, the Section number and title of the rule;
5. A statement describing why the rule should be made, amended, or repealed; and
6. The date the petition is signed.

B. A person may submit additional information in support of a petition, including:

1. Statistical data or other study, clearly referencing any attached exhibit;
2. Identification of a person that would be affected and how the person would be affected; and
3. If the petitioner is a public agency, a summary of relevant issues raised in any public hearing, or any written comments received from the public.

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Amended by final rulemaking at 10 A.A.R. 2657, effective August 7, 2004 (Supp. 04-2).

R3-1-303. Written Comment; Proposed Rulemaking

A person shall direct written comment on a proposed rule to the person identified by the Department in a rulemaking notice published in the Arizona Administrative Register as responsible for accepting written comment.

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Amended by final rulemaking at 10 A.A.R. 2657, effective August 7, 2004 (Supp. 04-2).

R3-1-304. Oral Proceeding; Proposed Rulemaking

A presiding officer shall perform the following acts on behalf of the Department when conducting an oral proceeding as prescribed under A.R.S. § 41-1023:

1. Request that each attendee register by name and representative capacity, if applicable, on a form provided by the Department;
2. Require that an attendee intending to speak provide the following information on a form obtained from the Department:
 - a. Name and representative capacity, if applicable;
 - b. Position with regard to the proposed rule; and
 - c. Approximate length of time needed to present comment;
3. Open the oral proceeding by identifying the rule to be considered, the purpose of the proceeding, and the agenda for the proceeding;
4. Allow a statement by a Department representative to explain the background and general content of the proposed rule;
5. Allow public comment limited to a reasonable amount of time for each speaker, without permitting undue repetition, or extensive reading of written comments or exhibits into the record;
6. Allow the Department to present additional information after public comments are received;
7. Allow a person to respond to the Department's supplemental presentation;
8. Accept written comments and exhibits on behalf of the Department; and
9. Make closing remarks that include the location where written comments are received by the Department and the date and time the rulemaking record will close.

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Amended by final rulemaking at 10 A.A.R. 2657, effective August 7, 2004 (Supp. 04-2).

R3-1-305. Repealed**Historical Note**

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 10 A.A.R. 2657, effective August 7, 2004 (Supp. 04-2).

R3-1-306. Written Criticism of a Current Rule

- A. A person may file a written criticism of a current rule with the Department at any time.
- B. A criticism shall clearly identify the rule addressed and describe with specificity the person's concern regarding the rule.

- C. The Department shall acknowledge receipt of a criticism within 20 days and shall retain the criticism in the Department's files for review under A.R.S. § 41-1056.
- D. A criticism is not a petition as prescribed in R3-1-302.

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Amended by final rulemaking at 10 A.A.R. 2657, effective August 7, 2004 (Supp. 04-2).

R3-1-307. Petition for Review of a Practice or Policy

A person may petition the Director to review a practice or substantive policy statement, as prescribed in A.R.S. § 41-1033, that the petitioner alleges to constitute a rule. The petition shall contain:

- 1. The name, address, and signature of the petitioner;

- 2. The representative capacity of the petitioner, if applicable;
- 3. The practice or substantive policy statement at issue, identified by Department division, number, title, date, or concise description;
- 4. A statement describing with specificity why the petitioner alleges the practice or substantive policy statement constitutes a rule; and
- 5. The date the petition is signed.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2657, effective August 7, 2004 (Supp. 04-2).

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.

39-121. Inspection of public records

Public records and other matters in the custody of any officer shall be open to inspection by any person at all times during office hours.

41-1001.01. Regulatory bill of rights; small businesses

A. To ensure fair and open regulation by state agencies, a person:

1. Is eligible for reimbursement of fees and other expenses if the person prevails by adjudication on the merits against an agency in a court proceeding regarding an agency decision as provided in section 12-348.
2. Is eligible for reimbursement of the person's costs and fees if the person prevails against any agency in an administrative hearing as provided in section 41-1007.
3. Is entitled to have an agency not charge the person a fee unless the fee for the specific activity is expressly authorized as provided in section 41-1008.
4. Is entitled to receive the information and notice regarding inspections and audits prescribed in section 41-1009.
5. May review the full text or summary of all rulemaking activity, the summary of substantive policy statements and the full text of executive orders in the register as provided in article 2 of this chapter.
6. May participate in the rulemaking process as provided in articles 3, 4, 4.1 and 5 of this chapter, including:
 - (a) Providing written comments or testimony on proposed rules to an agency as provided in section 41-1023 and having the agency adequately address those comments as provided in section 41-1052, subsection D, including comments or testimony concerning the information contained in the economic, small business and consumer impact statement.
 - (b) Filing an early review petition with the governor's regulatory review council as provided in article 5 of this chapter.
 - (c) Providing written comments or testimony on rules to the governor's regulatory review council during the mandatory sixty-day comment period as provided in article 5 of this chapter.
7. Is entitled to have an agency not base a licensing decision in whole or in part on licensing conditions or requirements that are not specifically authorized by statute, rule or state tribal gaming compact as provided in section 41-1030, subsection B.
8. Is entitled to have an agency not make a rule under a specific grant of rulemaking authority that exceeds the subject matter areas listed in the specific statute or not make a rule under a general grant of rulemaking authority to supplement a more specific grant of rulemaking authority as provided in section 41-1030, subsection C.
9. May allege that an existing agency practice or substantive policy statement constitutes a rule and have that agency practice or substantive policy statement declared void because the practice or substantive policy statement constitutes a rule as provided in section 41-1033.
10. May file a complaint with the administrative rules oversight committee concerning:
 - (a) A rule's, practice's or substantive policy statement's lack of conformity with statute or legislative intent as provided in section 41-1047.

(b) An existing statute, rule, practice alleged to constitute a rule or substantive policy statement that is alleged to be duplicative or onerous as provided in section 41-1048.

11. May have the person's administrative hearing on contested cases and appealable agency actions heard by an independent administrative law judge as provided in articles 6 and 10 of this chapter.

12. May have administrative hearings governed by uniform administrative appeal procedures as provided in articles 6 and 10 of this chapter and may appeal a final administrative decision by filing a notice of appeal pursuant to title 12, chapter 7, article 6.

13. May have an agency approve or deny the person's license application within a predetermined period of time as provided in article 7.1 of this chapter.

14. Is entitled to receive written notice from an agency on denial of a license application:

(a) That justifies the denial with references to the statutes or rules on which the denial is based as provided in section 41-1076.

(b) That explains the applicant's right to appeal the denial as provided in section 41-1076.

15. Is entitled to receive information regarding the license application process before or at the time the person obtains an application for a license as provided in sections 41-1001.02 and 41-1079.

16. May receive public notice and participate in the adoption or amendment of agreements to delegate agency functions, powers or duties to political subdivisions as provided in section 41-1026.01 and article 8 of this chapter.

17. May inspect all rules and substantive policy statements of an agency, including a directory of documents, in the office of the agency director as provided in section 41-1091.

18. May file a complaint with the office of the ombudsman-citizens aide to investigate administrative acts of agencies as provided in chapter 8, article 5 of this title.

19. Unless specifically authorized by statute, may expect state agencies to avoid duplication of other laws that do not enhance regulatory clarity and to avoid dual permitting to the extent practicable as prescribed in section 41-1002.

20. May have the person's administrative hearing on contested cases pursuant to title 23, chapter 2 or 4 heard by an independent administrative law judge as prescribed by title 23, chapter 2 or 4.

21. Pursuant to section 41-1009, subsection E, may correct deficiencies identified during an inspection unless otherwise provided by law.

B. The enumeration of the rights listed in subsection A of this section does not grant any additional rights that are not prescribed in the sections referenced in subsection A of this section.

C. Each state agency that conducts audits, inspections or other regulatory enforcement actions pursuant to section 41-1009 shall create and clearly post on the agency's website a small business bill of rights. The

agency shall create the small business bill of rights by selecting the applicable rights prescribed in this section and section 41-1009 and any other agency-specific statutes and rules. The agency shall provide a written document of the small business bill of rights to the authorized on-site representative of the regulated small business. In addition to the rights listed in this section and section 41-1009, the agency notice of the small business bill of rights shall include the process by which a small business may file a complaint with the agency employees who are designated to assist members of the public or regulated community pursuant to section 41-1006. The notice must provide the contact information of the agency's designated employees. The agency notice must also state that if the regulated person has already made a reasonable effort with the agency to resolve the problem and still has not been successful, the regulated person may contact the office of ombudsman-citizens aide.

41-1003. Required rule making

Each agency shall make rules of practice setting forth the nature and requirements of all formal procedures available to the public.

41-1023. Public participation; written statements; oral proceedings

A. After providing notice of docket openings, an agency may meet informally with any interested party for the purpose of discussing the proposed rule making action. The agency may solicit comments, suggested language or other input on the proposed rule. The agency may publish notice of these meetings in the register.

B. For at least thirty days after publication of the notice of the proposed rule making, an agency shall afford persons the opportunity to submit in writing statements, arguments, data and views on the proposed rule, with or without the opportunity to present them orally.

C. An agency shall schedule an oral proceeding on a proposed rule if, within thirty days after the published notice of proposed rule making, a written request for an oral proceeding is submitted to the agency personnel listed pursuant to section 41-1021, subsection B.

D. An oral proceeding on a proposed rule may not be held earlier than thirty days after notice of its location and time is published in the register. The agency shall determine a location and time for the oral proceeding which affords a reasonable opportunity to persons to participate. The oral proceeding shall be conducted in a manner that allows for adequate discussion of the substance and the form of the proposed rule, and persons may ask questions regarding the proposed rule and present oral argument, data and views on the proposed rule.

E. The agency, a member of the agency or another presiding officer designated by the agency shall preside at an oral proceeding on a proposed rule. If the agency does not preside, the presiding official shall prepare a memorandum for consideration by the agency summarizing the contents of the presentations made at the oral proceeding. Oral proceedings must be open to the public and recorded by stenographic or other means.

F. Each agency may make rules for the conduct of oral rule making proceedings. Those rules may include provisions calculated to prevent undue repetition in the oral proceedings.

41-1029. Agency rule making record

A. An agency shall maintain an official rule making record for each rule it proposes by publication in the register of a notice of proposed rule making and each final rule filed in the office of the secretary of state. The record and matter incorporated by reference must be available for public inspection.

B. The agency rule making record shall contain all of the following:

1. A copy of the notice initially filed in the office of the secretary of state.
2. Copies of all publications in the register with respect to the rule or the proceeding on which the rule is based.
3. Copies of any portions of the agency's rule making docket containing entries relating to the rule or the proceeding on which the rule is based.
4. All written petitions, requests, submissions and comments received by the agency and all other written materials considered or prepared by the agency in connection with the rule or the proceeding on which the rule is based.
5. Any official transcript of oral presentations made in the proceeding on which the rule is based, or if not transcribed, any tape recording or stenographic record of those presentations, and any memorandum prepared by a presiding official summarizing the contents of those presentations.
6. A copy of all materials submitted to the council, including the economic, small business and consumer impact statement and the minutes of the council meeting at which the rule was reviewed.
7. A copy of the final rule and preamble.
8. Information requested regarding the experience, technical competence, specialized knowledge and judgment of an agency if the agency relies on section 41-1024, subsection D in the making of a rule and a request is made.

C. On judicial review, the record required by this section constitutes the official agency rule making record with respect to a rule. Except as provided in section 41-1036 or otherwise required by a provision of law, the agency rule making record need not constitute the exclusive basis for agency action on that rule or for judicial review of that rule.

41-1033. Petition for a rule or review of an agency practice, substantive policy statement, final rule or unduly burdensome licensing requirement; notice

A. Any person may petition an agency to do either of the following:

1. Make, amend or repeal a final rule.
2. Review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule.

B. An agency shall prescribe the form of the petition and the procedures for the petition's submission, consideration and disposition. The person shall state on the petition the rulemaking to review or the agency practice or substantive policy statement to consider making into a rule.

C. Not later than sixty days after submission of the petition, the agency shall either:

1. Reject the petition and state its reasons in writing for denial to the petitioner.
2. Initiate rulemaking proceedings in accordance with this chapter.
3. If otherwise lawful, make a rule.

D. The agency's response to the petition is open to public inspection.

E. If an agency rejects a petition pursuant to subsection C of this section, the petitioner has thirty days to appeal to the council to review whether the existing agency practice or substantive policy statement constitutes a rule. The council chairperson shall place this appeal on the agenda of the council's next meeting if at least three council members make such a request of the council chairperson within two weeks after the filing of the appeal.

F. A person may petition the council to request a review of a final rule based on the person's belief that the final rule does not meet the requirements prescribed in section 41-1030.

G. A person may petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that is not specifically authorized by statute pursuant to title 32 based on the person's belief that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. If the council determines that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement applies to a profession for which the average wage in that profession in this state does not exceed two hundred percent of the federal poverty guidelines for a family of four, the council shall review the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement as prescribed by this section. This subsection does not apply to an individual or institution that is subject to title 36, chapter 4, article 10 or chapter 20.

H. If the council receives information that indicates an existing agency practice or substantive policy statement may constitute a rule, that a final rule does not meet the requirements prescribed in section 41-1030 or that an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement does not meet the guidelines prescribed in subsection G of this section and at least four council members request of the chairperson that the matter be heard in a public meeting:

1. Within ninety days after receipt of the fourth council member's request, the council shall determine whether the agency practice or substantive policy statement constitutes a rule, whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement meets the guidelines prescribed in subsection G of this section.

2. Within ten days after receipt of the fourth council member's request, the council shall notify the agency that the matter has been or will be placed on an agenda.

3. Not later than thirty days after receiving notice from the council, the agency shall submit a statement to the council that addresses whether the existing agency practice, substantive policy statement constitutes a rule or whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement meets the guidelines prescribed in subsection G of this section.

I. For the purposes of subsection H of this section, the council meeting shall not be scheduled until the expiration of the agency response period prescribed in subsection H, paragraph 3 of this section.

J. An agency practice, substantive policy statement, final rule or regulatory licensing requirement considered by the council pursuant to this section shall remain in effect while under consideration of the council. If the council ultimately decides the agency practice or substantive policy statement constitutes a rule or that the final rule does not meet the requirements prescribed in section 41-1030, the practice, policy statement or rule shall be considered void. If the council determines that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern and meets the requirements of subsection G of this section, the council may modify, revise or declare void any such existing agency practice, substantive policy statement, final rule or regulatory licensing requirement.

K. A council decision pursuant to this section shall include findings of fact and conclusions of law, separately stated. Conclusions of law shall specifically address the agency's authority to act consistent with section 41-1030.

L. A decision by the agency pursuant to this section is not subject to judicial review, except that, in addition to the procedure prescribed in this section or in lieu of the procedure prescribed in this section, a person may seek declaratory relief pursuant to section 41-1034.

M. Each agency and the secretary of state shall post prominently on their websites notice of an individual's right to petition the council for review pursuant to this section.

41-1052. Council review and approval

A. Before filing a final rule subject to this section with the secretary of state, an agency shall prepare, transmit to the council and the committee and obtain the council's approval of the rule and its preamble and economic, small business and consumer impact statement that meets the requirements of section 41-1055. The office of economic opportunity shall prepare the economic, small business and consumer impact statement.

B. The council shall accept an early review petition of a proposed rule, in whole or in part, if the proposed rule is alleged to violate any of the criteria prescribed in subsection D of this section and if the early petition is filed by a person who would be adversely impacted by the proposed rule. The council may determine whether the proposed rule, in whole or in part, violates any of the criteria prescribed in subsection D of this section.

C. Within one hundred twenty days after receipt of the rule, preamble and economic, small business and consumer impact statement, the council shall review and approve or return, in whole or in part, the rule, preamble or economic, small business and consumer impact statement. An agency may resubmit a rule, preamble or economic, small business and consumer impact statement if the council returns the rule, economic, small business and consumer impact statement or preamble, in whole or in part, to the agency.

D. The council shall not approve the rule unless:

1. The economic, small business and consumer impact statement contains information from the state, data and analysis prescribed by this article.

2. The economic, small business and consumer impact statement is generally accurate.

3. The probable benefits of the rule outweigh within this state the probable costs of the rule and the agency has demonstrated that it has selected the alternative that imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

4. The rule is written in a manner that is clear, concise and understandable to the general public.

5. The rule is not illegal, inconsistent with legislative intent or beyond the agency's statutory authority and meets the requirements prescribed in section 41-1030.

6. The agency adequately addressed, in writing, the comments on the proposed rule and any supplemental proposals.

7. The rule is not a substantial change, considered as a whole, from the proposed rule and any supplemental notices.

8. The preamble discloses a reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.

9. The rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

10. If a rule requires a permit, the permitting requirement complies with section 41-1037.

E. The council shall verify that a rule with new fees does not violate section 41-1008. The council shall not approve a rule that contains a fee increase unless two-thirds of the voting quorum present votes to approve the rule.

F. The council shall verify that a rule with an immediate effective date complies with section 41-1032. The council shall not approve a rule with an immediate effective date unless two-thirds of the voting quorum present votes to approve the rule.

G. If the rule relies on scientific principles or methods, including a study disclosed pursuant to subsection D, paragraph 8 of this section, and a person submits an analysis to the council questioning whether the rule is based on valid scientific or reliable principles or methods, the council shall not approve the rule unless the council determines that the rule is based on valid scientific or reliable principles or methods that are specific and not of a general nature. In making a determination of reliability or validity, the council shall consider the following factors as applicable to the rule:

1. The authors of the study, principle or method have subject matter knowledge, skill, experience, training and expertise.
2. The study, principle or method is based on sufficient facts or data.
3. The study is the product of reliable principles and methods.
4. The study and its conclusions, principles or methods have been tested or subjected to peer reviewed publications.
5. The known or potential error rate of the study, principle or method has been identified along with its basis.
6. The methodology and approach of the study, principle or method are generally accepted in the scientific community.

H. The council may require a representative of an agency whose rule is under examination to attend a council meeting and answer questions. The council may also communicate to the agency its comments on any rule, preamble or economic, small business and consumer impact statement and require the agency to respond to its comments in writing.

I. At any time during the thirty days immediately following receipt of the rule, a person may submit written comments to the council that are within the scope of subsection D, E, F or G of this section. The council may permit testimony at a council meeting within the scope of subsection D, E, F or G of this section.

J. If the agency makes a good faith effort to comply with the requirements prescribed in this article and has explained in writing the methodology used to produce the economic, small business and consumer impact statement, the rule may not be invalidated after it is finalized on the ground that the contents of the economic, small business and consumer impact statement are insufficient or inaccurate or on the ground that the council erroneously approved the rule, except as provided by section 41-1056.01.

K. The absence of comments pursuant to subsection D, E, F or G of this section or article 4.1 of this chapter does not prevent the council from acting pursuant to this section.

L. The council shall review and approve or reject a notice of proposed expedited rulemaking pursuant to section 41-1027.

41-1056. Review by agency

A. At least once every five years, each agency shall review all of its rules, including rules made pursuant to an exemption from this chapter or any part of this chapter, to determine whether any rule should be amended or repealed. The agency shall prepare and obtain council approval of a written report summarizing its findings, its supporting reasons and any proposed course of action. The report shall contain a certification that the agency is in compliance with section 41-1091. For each rule, the report shall include a concise analysis of all of the following:

1. The rule's effectiveness in achieving its objectives, including a summary of any available data supporting the conclusions reached.
 2. Written criticisms of the rule received during the previous five years, including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.
 3. Authorization of the rule by existing statutes.
 4. Whether the rule is consistent with statutes or other rules made by the agency and current agency enforcement policy.
 5. The clarity, conciseness and understandability of the rule.
 6. The estimated economic, small business and consumer impact of the rules as compared to the economic, small business and consumer impact statement prepared on the last making of the rules.
 7. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.
 8. If applicable, that the agency completed the previous five-year review process.
 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 persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.
 10. A determination 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.
 11. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license or agency authorization, whether the rule complies with section 41-1037.
- B. An agency may also include as part of the report the text of a proposed expedited rule pursuant to section 41-1027.
- C. The council shall schedule the periodic review of each agency's rules and shall approve or return, in whole or in part, the agency's report on its review. The council may grant an agency an extension from

filing an agency's report. If the council returns an agency's report, in whole or in part, the council shall inform the agency of the manner in which its report is inadequate and, in consultation with the agency, shall schedule submission of a revised report. The council shall not approve a report unless the report complies with subsection A of this section.

D. The council may review rules outside of the five-year review process if requested by at least four council members.

E. The council may require the agency to propose an amendment or repeal of the rule by a date no earlier than six months after the date of the meeting at which the council considers the agency's report on its rule if the council determines the agency's analysis under subsection A of this section demonstrates that the rule is materially flawed, including that the rule:

1. Is not authorized by statute.
2. Is inconsistent with other statutes, rules or agency enforcement policies and the inconsistency results in a significant burden on the regulated public.
3. Imposes probable costs, including costs to the regulated person, that significantly exceed the probable benefits of the rule within this state.
4. Is more stringent than a corresponding federal law and there is no statutory authority to exceed the requirements of federal law.
5. Is not clear, concise and understandable.
6. Does not use general permits if required under section 41-1037.
7. Does not impose the least burden to persons regulated by the rule as necessary to achieve the underlying regulatory objective of the rule.
8. Does not rely on valid scientific or reliable principles and methods, including a study, if the rule relies on scientific principles or methods, and a person has submitted an analysis under subsection A of this section questioning whether the rule is based on valid scientific or reliable principles or methods. In making a determination of validity or reliability, the council shall consider the factors listed in section 41-1052, subsection G.

F. An agency may request an extension of no longer than one year from the date specified by the council pursuant to subsection E of this section by sending a written request to the council that:

1. Identifies the reason for the extension request.
2. Demonstrates good cause for the extension.

G. The agency shall notify the council of an amendment or repeal of a rule for which the council has set an expiration date under subsection E of this section. If the agency does not amend or repeal the rule by the date specified by the council under subsection E of this section or the extended date under subsection

F of this section, the rule automatically expires. The council shall file a notice of rule expiration with the secretary of state and notify the agency of the expiration of the rule.

H. The council may reschedule a report or portion of a report for any rule that is scheduled for review and that was initially made or substantially revised within two years before the due date of the report as scheduled by the council.

I. If an agency finds that it cannot provide the written report to the council by the date it is due, the agency may file an extension with the council before the due date indicating the reason for the extension. The timely filing for an extension permits the agency to submit its report on or before the date prescribed by the council.

J. If an agency fails to submit its report, including a revised report, pursuant to subsection A or C of this section, or file an extension before the due date of the report or if it files an extension and does not submit its report within the extension period, the rules scheduled for review expire and the council shall:

1. Cause a notice to be published in the next register that states the rules have expired and are no longer enforceable.
2. Notify the secretary of state that the rules have expired and that the rules are to be removed from the code.
3. Notify the agency that the rules have expired and are no longer enforceable.

K. If a rule expires as provided in subsection J of this section and the agency wishes to reestablish the rule, the agency shall comply with the requirements of this chapter.

L. Not less than ninety days before the due date of a report, the council shall send a written notice to the head of the agency whose report is due. The notice shall list the rules to be reviewed and the date the report is due.

M. A person who is regulated or could be regulated by an obsolete rule may petition the council to require an agency that has the obsolete rule to consider including the rule in the five-year report with a recommendation for repeal of the rule.

N. A person who is required to obtain or could be required to obtain a license may petition the council to require an agency to consider including a recommendation for reducing a licensing time frame in the five-year report.

STATE VETERINARY MEDICAL EXAMINING BOARD (F19-1201)

Title 3, Chapter 11, Articles 1-10, Veterinary Medical Examining Board



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: December 3, 2019

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

FROM: Council Staff

DATE: November 8, 2019

SUBJECT: **STATE VETERINARY MEDICAL EXAMINING BOARD (F19-1201)**
Title 3, Chapter 11, Articles 1-10, Veterinary Medical Examining Board

Summary

This Five-Year Review Report (5YRR) from the State Veterinary Medical Examining Board (“Board”) relates to all Articles in Title 3, Chapter 11 related to the following:

- Article 1. General Provisions
- Article 2. Application and Examination for Licensure
- Article 3. Temporary Permittees
- Article 4. Continuing Education Requirements
- Article 5. Standards of Practice
- Article 6. Veterinary Technicians
- Article 7. Veterinary Medical Premises and Equipment
- Article 8. Drug Dispensing
- Article 9. Investigations and Hearings
- Article 10. Animal Crematory Minimum Standards

In its previous 5YRR, approved by this Council in December 2014, the Board indicated several Sections in Articles 2 through 4 needed to be amended to accommodate statutory changes related to issuing veterinary faculty licenses. The Board also indicated an intention to amend R3-11-107 to address an inability to enforce this rule given that the Board does not know when a

person moves or changes employment. The Board did not complete this proposed course of action as it indicated the impact of the statutory changes has been minimal and concluded it was a better use of state resources to address more pressing needs. The Board indicates it has not completed any rulemakings since its last 5YRR in December 2014.

Proposed Action

The Board indicates that the current rules are inconsistent with several statutory changes since the rules were last amended in 2013, as outlined below and in more detail in Section 4 of the Board's 5YRR, and must be updated accordingly. The Board hopes to have received an exemption to rulemaking from the Governor's office by mid-January 2020. Notification to stakeholders and time to seek rule input would begin in February for at least two months, followed by initiation of a Board sub-committee by April to analyze public input, draft rules, have several reviews by the entire Board, prepare for and hold an oral comment proceeding by October, and make final revisions to submit by early December 2020.

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

Yes. The Board cites to both general and specific authority for the rules.

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

The Board has completed no rulemaking since the Council approved the Board's last 5YRR on December 2, 2014, so there is no new economic, small business, and consumer impact estimate to assess. In the 5YRR approved on December 2, 2014, the Board indicated the economic impact of the rule was consistent with that projected when the rules were made. The Board has received no information causing it to change that conclusion.

The Board currently licenses 2,625 veterinarians, 935 veterinary medical premises, and 15 animal crematories. Also, 1,129 veterinary technicians (CVT) hold certificates. Last year, it received applications for licensure from 632 persons.

The stakeholders include: The Board, veterinarians, veterinary medical premises, animal crematories, veterinary technicians, 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 Board has determined that the rules under review provide the least intrusive and least costly method of achieving the regulatory objective. Many of the costs of these rules, including paperwork and other compliance costs, to persons regulated by the rules result from statutory directives provided by the legislature. Because the rules simply implement statutory requirements, it is presumed the legislature determined the benefits of the requirements outweighed the costs and the requirements were the minimum necessary to protect the public.

There are some rule provisions that impose a cost on persons regulated by the rules. In each of these cases, the Board established the provision because the Board determined that doing so was necessary to protect public health and safety. The Board believes each provision is the minimum necessary to achieve the underlying regulatory objective.

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

The Board indicates it has not received any written criticism of the rules within the last five years. However, the Board indicates it received a suggestion from the Arizona Veterinary Medical Association to modify continuing education requirements to include two (2) hours related to mental health concerns and solutions for the veterinary professional as veterinarians have one of the highest suicide rates among professionals in the U.S.

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

The Board indicates that the rules are mostly clear, concise, and understandable. However, the Board indicates that the following rules could be made more clear, concise, and understandable:

- R3-11-101(22)
- R3-11-405
- R3-11-501(1)
- R3-11-606(A)(1)(d)
- R3-11-707(2)
- R3-11-1001

The Board indicates that the rules are not consistent with other rules and statutes. Specifically, given several statutory changes since the Board's rules were last amended in 2013, the Board must make changes to several of its rules to comply.

Despite the issues outlined above, the Board indicates its rules are currently effective in achieving their objectives.

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

The Board indicates that it is currently unable to enforce R3-11-107 effectively. Specifically, the Board needs accurate information regarding a licensee's or certificate holder's residence and veterinary practice addresses in order to facilitate timely communication between the Board and the licensee or certificate holder. However, the Board indicates it has no way to prove when a person moves or changes employment and, thus, cannot know if notice is provided to the Board within 20 days of the change as required unless the licensee discloses the date the change occurred.

Additionally, the Board indicates that R3-11-403(6), which requires a licensee who obtains continuing education on the internet to obtain a copy of a document issued by the provider that states the number of hours of continuing education obtained, is unenforceable because it is not possible to upload documents to the Board's online renewal system.

The Board also indicated it is interested in developing rules related to CE audits as there are currently no rules in place to inform a licensee or certificate holder of the expectations to retain documentation that would be needed in an audit to verify whether CE indicated on the renewal application was actually completed.

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.

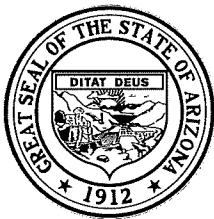
8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The Board's statutes require individualized licenses be issued, so a general permit is not applicable. *See* A.R.S. §§ 32-2213, 32-2215, 32-2272, and 32-2292. Given that an alternative type of license is specifically authorized by state statute, the Board is in compliance with A.R.S. § 41-1037.

9. Conclusion

The Board indicates that its rules are mostly clear, concise, and understandable, but are not consistent with state statute given recent statutory changes. The Board proposes to amend its rules to update them accordingly and intends to have a rulemaking package to the Council by December 2020. Council staff recommends approval of this report.

DOUGLAS A. DUCEY
GOVERNOR



VICTORIA WHITMORE
EXECUTIVE DIRECTOR

ARIZONA STATE VETERINARY MEDICAL EXAMINING BOARD

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VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Veterinary Medical Examining Board
3 A.A.C. 11, Articles 1 through 10
Five-year-review Report

Dear Ms. Sornsin:

The Five-year-review Report of the Veterinary Medical Examining Board for 3 A.A.C. 11, Articles 1 through 10, which is due under an extension at the end of October 2019, is enclosed.

The Veterinary Medical Examining Board certifies it is in compliance with A.R.S. § 41-1091.

For questions about this report, please contact Victoria Whitmore at 602-542-8150 or victoria.whitmore@vetboard.az.gov.

Sincerely,

A handwritten signature in black ink that reads "Victoria Whitmore".
Victoria Whitmore
Executive Director

Five-year-review Report
A.A.C. Title 3. Agriculture
Chapter 11. Veterinary Medical Examining Board
Articles 1 through 10
Submitted for December 3, 2019

INTRODUCTION

The primary responsibility of the Board is to protect the public from unlawful, incompetent, unqualified, impaired, or unprofessional practitioners of veterinary medicine through licensure and regulation of the profession.

The Board has 53 rules and one table. The Board has completed no rulemakings since its last five-year-review report was approved by Council on December 2, 2014. The Board currently licenses 2,674 veterinarians, 924 veterinary medical premises, and 15 animal crematories. Also, 1,191 veterinary technicians (CVT) hold certificates. Last year, it received applications for licensure from 632 persons. The Board received 96 complaints against licensees. The most frequently made complaint alleged negligence in care of an animal. Nineteen licensees were disciplined including one revocation. There was one motion for rehearing or review of a Board decision. The Board's current appropriation is \$600,000, which supports 4.5 FTEs.

Statute that generally authorizes the agency to make rules: A.R.S. § 32-2207(8)

1. Specific statute authorizing the rule:

- R3-11-101. Definitions: A.R.S. § 32-2207(8)
- R3-11-102. Board Meetings: A.R.S. § 32-2204
- R3-11-103. Evaluating Board Services: A.R.S. § 32-2207(8)(c)
- R3-11-104. Premise License: A.R.S. §§ 32-2271 and 32-2272
- R3-11-105. Fees: A.R.S. §§ 32-2207(9), 32-2215, 32-2217, 32-2218, 32-2219, 32-2242, 32-2247, 32-2248, 32-2250, 32-2272, and 32-2273
- R3-11-107. Residence and Veterinary Practice Addresses: A.R.S. §§ 32-2207(8) and 32-2233(B)(2)

R3-11-108.	Time-frames for Licensure, Certification, Permit, and Continuing Education Approvals: A.R.S. §§ 32-2207(3) and 41-1072 through 41-1079
Table 1.	Time-frames (in days): A.R.S. §§ 32-2207(3) and 41-1072 through 41-1079
R3-11-109.	Arizona Ombudsman-Citizens' Aide: A.R.S. § 32-2207(10)
R3-11-201.	Application for a Veterinary Medical License: A.R.S. §§ 32-2213, 32-2214, and 32-2215
R3-11-203.	Documents Required with a License Application: A.R.S. §§ 32-2213, 32-2214, 32-2215, and 41-1080
R3-11-204.	Renewal of Veterinary License: A.R.S. § 32-2218
R3-11-301.	Application for a Temporary Permit: A.R.S. § 32-2216
R3-11-304.	Extension of Temporary Permits: A.R.S. § 32-2216(B)
R3-11-305.	"Good and Sufficient Reason" for Failure to Take a State Examination: A.R.S. § 32-2216(B)
R3-11-401.	Continuing Education: A.R.S. § 32-2207(8)
R3-11-402.	Approval of Continuing Education: A.R.S. § 32-2207(8)
R3-11-403.	Documentation of Attendance: A.R.S. § 32-2207(8)
R3-11-405.	Waiver: A.R.S. § 32-2207(8)
R3-11-501.	Ethical Standards: A.R.S. § 32-2232(12)
R3-11-502.	Standards of Practice: A.R.S. §§ 32-2207(8)(a) and 32-2275
R3-11-603.	Examination Committee: A.R.S. § 32-2243
R3-11-604.	Examinations: A.R.S. § 32-2243
R3-11-605.	Certified Veterinary Technician Services: A.R.S. §§ 32-2241 and 32-2245
R3-11-606.	Application for Veterinary Technician Certification: A.R.S. § 32-2207(3) and 32-2242
R3-11-607.	Renewal of Veterinary Technician Certificate: A.R.S. §§ 32-2207(3) and 32-2246
R3-11-701.	General Veterinary Medical Premises Standards: A.R.S. §§ 32-2271 and 32-2275
R3-11-702.	Equipment and Supplies: A.R.S. § 32-2275
R3-11-703.	Maintenance Standards for a Veterinary Medical Premises: A.R.S. § 32-2275
R3-11-704.	Surgical Equipment: A.R.S. § 32-2275
R3-11-705.	Mobile Clinics: A.R.S. §§ 32-2271 and 32-2275

- R3-11-706. Mobile Units: A.R.S. §§ 32-2271 and 32-2275
- R3-11-707. Application for a Veterinary Medical Premises License: A.R.S. §§ 32-2272 and 32-2273
- R3-11-801. Notification that Prescription-only Drugs or Controlled Substances May be Available at a Pharmacy: A.R.S. § 32-2281(B)
- R3-11-802. Labeling Requirements: A.R.S. § 32-2281(D)
- R3-11-803. Packaging Requirements: A.R.S. § 32-2281(D)
- R3-11-805. Storage: A.R.S. § 32-2281(D)
- R3-11-807. Dispensing a Controlled Substance or Prescription-only Drug: A.R.S. § 32-2281
- R3-11-901. Investigations of Alleged Violations: A.R.S. §§ 32-2207(6) and 32-2237
- R3-11-902. Informal Interview: A.R.S. §§ 32-2207(2) and 32-2234
- R3-11-903. Formal Hearings: A.R.S. §§ 32-2207(2) and 32-2234
- R3-11-904. Rehearing or Review of Decisions: A.R.S. § 41-1092.09
- R3-11-905. Depositions, Issuance of Subpoenas, Service: A.R.S. § 32-2237(F)
- R3-11-1001. Definitions: A.R.S. §§ 32-2291 through 32-2295
- R3-11-1002. Obtaining an Animal Crematory License: A.R.S. §§ 32-2291 and 32-2292
- R3-11-1003. Renewing an Animal Crematory License: A.R.S. § 32-2292(E)
- R3-11-1004. Fees: A.R.S. § 32-2293
- R3-11-1005. Minimum Standards for an Animal Crematory: A.R.S. § 32-2295
- R3-11-1006. Minimum Operating Standards for an Animal Crematory: A.R.S. §§ 32-2297(A)(2) and 32-2295
- R3-11-1007. Written Procedures Required: A.R.S. § 32-2295
- R3-11-1008. Recordkeeping Requirements: A.R.S. §§ 32-2294(A)(3) and 32-2295
- R3-11-1009. Change in Responsible Owner: A.R.S. § 32-2294(A)(1)
- R3-11-1010. Change in Operator: A.R.S. § 32-2294(A)(1)

2. Objective of each rule:

R3-11-101. Definitions: The objective of the rule is to define terms used in the rules that are not adequately explained by dictionary definitions.

R3-11-102. Board Meetings: The objective of this rule is to specify the month in which the Board will hold its annual meeting, the amount of notice it will provide

regarding the date, time, and location of the annual meeting, and the location of notice of a special meeting.

R3-11-103. Evaluating Board Services: The objective of this rule is to inform individuals of the opportunity to evaluate the quality of services received from the Board.

R3-11-104. Premise License: The objective of this rule is to require that a medical premise license be maintained at the licensed premise.

R3-11-105. Fees: The objective of the rule is to specify the fees that the Board charges for its licensing activities.

R3-11-107. Residence and Veterinary Practice Addresses: The objective of this rule is to require a licensee or certificate holder to keep the Board informed of the licensee's or certificate holder's residential and practice addresses.

R3-11-108. Time-frames for Licensure, Certification, Permit, and Continuing Education Approvals: The objective of this rule is to specify the time frames within which the Board will act on a license, certificate, or permit application or application for approval of a continuing education (CE) course or conference.

Table 1. Time-frames (in days): The objective of this rule is to specify in table form the time frames within which the Board will act on a license, certificate, or permit application or application for approval of a continuing education course or conference.

R3-11-109. Arizona Ombudsman-Citizens' Aide: The objective of this rule is to specify the manner in which the Board will inform the public of the existence of the Arizona Ombudsman-Citizens' Aide.

R3-11-201. Application for a Veterinary Medical License: The objective of this rule is to specify the content of an application for a veterinary medical license and the time at which an application must be submitted.

R3-11-203. Documents Required with a License Application: The objective of this rule is to specify the documents that must accompany an application for licensure.

R3-11-204. Renewal of Veterinary License: The objective of this rule is to specify the requirements for renewal of a veterinary license, the manner in which renewal application is made, and consequences of failing to renew.

R3-11-301. Application for a Temporary Permit: The objective of this rule is to specify the requirements for applying for a temporary permit, which is available to an individual who has graduated from an accredited veterinary college but has not taken the state examination.

R3-11-304. Extension of Temporary Permits: The objective of this rule is to specify the circumstances under which the holder of a temporary permit may have the permit extended and to provide notice to holders of temporary permits that only one extension is permitted by law.

R3-11-305. "Good and Sufficient Reason" for Failure to Take a State Examination: The objective of this rule is to specify the circumstances the Board believes amount to "good and sufficient reason" for not taking the state examination.

R3-11-401. Continuing Education: The objective of this rule is to specify the number of hours of continuing education required for license and certificate renewal and to place limits on the number of hours by subject matter and instructional medium.

R3-11-402. Approval of Continuing Education: The objective of this rule is to identify continuing education the Board approves without application, the manner in which a continuing education provider may apply for Board approval, and the standards the Board uses to decide whether to approve a continuing education.

R3-11-403. Documentation of Attendance: The objective of this rule is to specify the documentation of continuing education that a licensee or certificate holder must submit with a renewal application.

R3-11-405. Waiver: The objective of this rule is to specify the manner in which a licensee or certificate holder may request a waiver of the continuing education requirement and the criteria the Board uses to determine whether to grant a waiver.

R3-11-501. Ethical Standards: The objective of this rule is to protect the public by establishing ethical standards with which a veterinarian practicing under a license or permit must comply and specifying the consequences of failing to comply.

R3-11-502. Standards of Practice: The objective of this rule is to establish minimum standards for a veterinary practice.

R3-11-603. Examination Committee: The objective of this rule is to provide notice the Board may seek input from a committee of licensees and certificate holders regarding examination of applicants for certification.

R3-11-604. Examinations: The objective of this rule is to provide information to certification applicants regarding the examinations that must be passed to obtain certification.

R3-11-605. Certified Veterinary Technician Services: The objective of this rule is to specify that a certified veterinary technician may perform delegated tasks while under the direction, supervision, and control of a licensed veterinary. The rule also specifies the tasks that may not be delegated to and performed by a certified veterinary technician.

R3-11-606. Application for Veterinary Technician Certification: The objective of this rule is to specify the application requirements for certification as a veterinary technician.

R3-11-607. Renewal of Veterinary Technician Certificate: The objective of this rule is to specify the requirements to renew a certificate as a veterinary technician and the consequences of failing to renew timely.

R3-11-701. General Veterinary Medical Premises Standards: The objective of this rule is to specify applicable minimum standards for operation of a veterinary medical premise.

R3-11-702. Equipment and Supplies: The objective of this rule is to require a responsible veterinarian to have at the veterinary medical premise the equipment and supplies necessary to provide the offered medical services.

R3-11-703. Maintenance Standards for a Veterinary Medical Premises: The objective of this rule is to establish minimum maintenance standards for a veterinary medical premise and require the responsible veterinarian to ensure compliance.

R3-11-704. Surgical Equipment: The objective of this rule is to specify the minimum surgical equipment required on a veterinary medical premise at which surgery is performed.

R3-11-705. Mobile Clinics: The objective of this rule is to specify the minimum standards applicable for operation of a mobile veterinary medical clinic and clarify that a mobile clinic is required to be licensed as a veterinary medical premise.

R3-11-706. Mobile Units: The objective of this rule is to specify minimum standards for storage and handling of drugs and surgical supplies and equipment in a mobile veterinary medical unit.

R3-11-707. Application for a Veterinary Medical Premises License: The objective of this rule is to specify the application requirements for a veterinary medical premise license and to provide notice that the Board will conduct an inspection of the veterinary medical premise.

R3-11-801. Notification that Prescription-only Drugs or Controlled Substances May be Available at a Pharmacy: The objective of this rule is to require a dispensing veterinarian to inform the owner or person responsible for an animal that a prescription-only drug may be available at a pharmacy rather than from the dispensing veterinarian, specifying the manner in which the information may be provided, and authorizing the dispensing veterinarian to provide a written prescription upon request.

R3-11-802. Labeling Requirements: The objective of this rule is to establish minimum labeling requirements for prescription-only drugs and controlled substances dispensed by a veterinarian.

R3-11-803. Packaging Requirements: The objective of this rule is to establish minimum packaging requirements for prescription-only drugs and controlled substances dispensed by a veterinarian.

R3-11-805. Storage: The objective of this rule is to establish minimum storage requirements for prescription-only drugs and controlled substances dispensed by a veterinarian.

R3-11-807. Dispensing a Controlled Substance or Prescription-only Drug: The objective of this rule is to clarify the dispensing activities that may be performed by a licensed veterinarian or an unlicensed individual.

R3-11-901. Investigations of Alleged Violations: The objective of this rule is to set forth the grounds on which an individual or the Board may complain of an alleged violation of statute or rule and to clarify the manner in which the Board initially responds to receipt of a complaint. The objective of the rule is to specify the Board's procedure for handling a complaint against a licensee and taking disciplinary action.

R3-11-902. Informal Interview: The objective of this rule is to specify the manner in which the Board conducts an informal interview.

R3-11-903. Formal Hearings: The objective of the rule is to specify the circumstances under which a complaint against a licensee leads to a formal hearing and the Board's procedure for conducting a formal hearing.

R3-11-904. Rehearing or Review of Decisions: The objective of this rule is to specify the procedures and standards for requesting a rehearing or review of a Board decision.

R3-11-905. Depositions, Issuance of Subpoenas, Service: The objective of this rule is to specify the process for requesting to take the deposition of an unavailable witness, issuing a subpoena, or making service of documents.

R3-11-1001. 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.

R3-11-1002. Obtaining an Animal Crematory License: The objective of this rule is to specify the application requirements for obtaining an animal crematory license.

R3-11-1003. Renewing an Animal Crematory License: The objective of this rule is to specify the requirements for renewing an animal crematory license and the consequences of failing to renew timely.

R3-11-1004. Fees: The objective of the rule is to specify the fees the Board charges for its crematory licensing activities.

R3-11-1005. Minimum Standards for an Animal Crematory: The objective of this rule is to establish minimum facility standards for an animal crematory.

R3-11-1006. Minimum Operating Standards for an Animal Crematory: The objective of this rule is to establish minimum operating standards for an animal crematory.

R3-11-1007. Written Procedures Required: The objective of this rule is to require the responsible owner of an animal crematory establish and maintain written procedures regarding operation of the crematory.

R3-11-1008. Recordkeeping Requirements: The objective of this rule is to establish minimum recordkeeping requirements for the responsible owner of an animal crematory.

R3-11-1009. Change in Responsible Owner: The objective of this rule is to provide notice that a change in responsible owner of an animal crematory automatically cancels the license and a new license must be obtained by the new responsible owner of the animal crematory.

R3-11-1010. Change in Operator: The objective of this rule is to ensure the Board has current information regarding the operator of an animal crematory.

3. Are the rules effective in achieving their objectives? Yes

4. Are the rules consistent with other rules and statutes? No

A veterinarian who dispenses or administers a controlled substance is required to comply with certain federal statutes. However, there are no federal statutes or regulations uniquely applicable to the rules.

Because of statutory changes since the Board's rules were last amended in 2013, there are issues that need to be addressed in rule:

- Under Laws 2014, Chapter 51, the legislature amended A.R.S. §§ 32-2212 and 32-2213 to create a new faculty member license. Statute indicates that an individual wishing to be licensed as a faculty member shall apply to the Board. When this legislative change was made, it was anticipated faculty members at the new Midwestern University, which includes a college of veterinary medicine, would seek licensure as faculty members. However, because obtaining a regular license provides greater employment flexibility, faculty members have generally chosen to obtain a regular license. Without rules, the Board has been able to issue faculty member licenses. There are currently only seven licensed faculty members.
- Also under Laws 2014, Chapter 51, the legislature amended A.R.S. § 32-2216 to allow issuance of emergency temporary permits. The statute, which requires

application for an emergency temporary permit and the Board to verify whether a veterinarian is licensed and in good standing in another state, applies only during the time of an emergency declared by the governor or county board of supervisors. The Board has not made rules to implement this statute because the Board determined the statute provides needed information regarding application for and issuance of an emergency temporary permit. To date, there have been no declared emergencies triggering the need for emergency veterinary services.

- Under Laws 2018, Chapter 1, the legislature added A.R.S. § 32-3248.2 requiring health professionals, including veterinarians, authorized to prescribe or dispense schedule II controlled substances to complete three hours of opioid-related, substance use disorder-related, or addiction-related continuing medical education during each license renewal cycle. The Board needs to add this requirement to its rules.
- Under Laws 2019, Chapter 55, the legislature amended A.R.S. § 32-4302 regarding licensure of out-of-state applicants who establish residence in this state and military spouses who accompany the military member to this state. The Board needs to add rules related to application for and issuance of a licensure by universal recognition.
- Under Laws 2019, Chapter 299, the legislature added A.R.S. § 32-3226 requiring health profession regulatory boards to have for each licensee an address of record the Board can disclose to the public and a telephone number and e-mail address the Board can disclose to those seeking patient medical records. The statute also requires the Board to designate associations of licensed health professionals to which the Board will disclose the contact information and address of record for licensees. This statutory change will require the Board to amend rules regarding application for initial and renewal veterinary license, veterinary technician certificate, and animal crematory license.
- Under Laws 2019, Chapter 195, the legislature added A.R.S. § 32-3124 regarding a temporary license for health professionals. The Board already has the statutory authority under A.R.S. § 32-2216 to issue a temporary permit that allows an

applicant to work before being licensed. However, A.R.S. § 32-3124 seems to anticipate a temporary permit could be used by an individual who wishes to practice on a short-term basis but has no need to be licensed in Arizona. The Board has expressed interest in creating rules for this purpose.

- Laws 2019, Chapter 195, also adds A.R.S. § 32-3123 authorizing a health profession regulatory board to delegate certain licensing functions to the Board's executive director. The Board will need to assess whether to make this delegation and if so, establish rules establishing the parameters of the executive director's responsibility.
- Under Laws 2019, Chapter 166, the legislature amended A.R.S. § 13-904 regarding suspension of civil rights and occupational disabilities. The amendment prohibits an agency from denying, except in certain circumstances, a license to an individual who has a criminal conviction that occurred more than seven years ago, excluding any time of incarceration. The Board's applications for licensure require disclosure of criminal convictions. These may need to be modified.
- The Board determined R3-11-807, relating to dispensing prescription-only drugs, may not be consistent with the USDA Pasteurized Milk Ordinance and Arizona Board of Pharmacy rules. R3-11-807 is not congruent with current and historical practices of using pharmaceutical distributors to label large-animal drugs prescribed by a veterinarian and who distribute the prescribed drugs to end users. Clarifying the rule will ensure the food-supply chain in the state is not disrupted.
- The language describing the time period to submit or pay for a license or certificate renewal is not consistent throughout the rules and is not accurately consistent with statutes. The statutes point to renewal applications and fees being paid before February 1st (i.e., January 31st).
 - R3-11-204(C) regarding veterinarians states a licensee shall submit a license renewal "no later than February 1." R3-11-204(D) refers to submitting renewal applications "by February 1." In comparison, A.R.S. § 32-2218(B)

states failure to pay the license fee "before February 1" shall be a forfeiture of the license.

- R3-11-607(A) regarding certified veterinary technicians states a certificate holder shall submit a certificate renewal "no later than February 1." R3-11-607(B) states failure to submit the renewal fee and required information "before February 1" results in stated consequences. A.R.S. § 32-2247 states that a delinquency fee is due if certificate is renewed "more than 30 days after expiration."
- A.R.S. § 32-2272(E) regarding veterinary premises states that the renewal fee must be paid "before February 1." There are no rules that discuss the renewal process for veterinary premises.

The Board has notified licensees in the past that renewal applications must be received by January 31st; however, the agency has accepted them on February 1st, due to the inconsistent language and possible confusion by licensees. Consistent language will be proposed in a future rules package.

- R3-11-105(A)(6) related to veterinarian renewal license late fees is not consistent with other rules in R3-11-105 pertaining to technicians and premises. The term used in the rule, "reinstatement penalty," is inconsistent with A.R.S. § 32-2218(B), which describes it as a "penalty fee." R3-11-105(B)(5) and R3-11-105(C)(5) correctly cite the applicable statute; R3-11-105(A)(6) does not have such a citation. The Board intends to correct the inconsistency via a future rule change.
- R3-11-101(18) defines a "mobile unit" as a "vehicle from which out-patient veterinary medical services are delivered to temporary sites." The Board's interpretation of a mobile unit is the medical practice that provides services at temporary sites, not the vehicle. The vehicle itself is not mentioned in statute and is not important to the licensing standards. Some practices utilize several vehicles for their mobile work and interchange supplies and medication for use in the mobile practice. This definition need modification via a future rule change.
- R3-11-101(29) incorrectly defines "veterinary medical premise" as meaning "a physical plant licensed by the Board on which veterinary medical services will be

performed." A.R.S. § 32-2271 allows for veterinary medical services to be provided at temporary sites (i.e. "mobile clinics" and "mobile units" – R3-11-101(17) and (18)); therefore, a correction of this definition is needed.

- R3-11-101(30) states an incorrect citation to statute. "Veterinary medical services" are related to A.R.S. § 32-2201(29), not A.R.S. § 32-2201(27). This rule needs to be corrected.
- R3-11-104 "Premise License" – The rule title and related text uses the word "premise" instead of "premises," which is used in statutes and other rules. This rule needs to be corrected.
- R3-11-705(A) related to mobile clinics cites R3-11-701(6) as a rule that is not applicable to mobile clinics (i.e., there is no need for storage space on the premises for biohazardous medical waste pending disposal pick-up). However, R3-11-705(B)(2) states that type of storage space must be available. These two rules conflict. R3-11-705(A) needs to be corrected.
- R3-11-1004 related to fees for an animal crematory does not state the type of payment accepted by the agency, as do all other types of applications. Veterinary, certified technician, and premises applications require payment by certified check or money order. The Board plans a future rule change to make these payment types consistent.
- Unlike other rules pertaining to the renewal of veterinary licenses, certified technician certificates, and animal crematory licenses, Article 7. Veterinary Medical Premises and Equipment provides no description of the premises license renewal requirements. The Board plans a future rule change to correct this inconsistency.
- R3-11-607(B)(2) related to a certified veterinary technician's certificate expiring without proper renewal, states the individual "shall immediately cease performing veterinary technician services.." until one complies with requirements for renewal. However, there is no definition of "veterinary technician services" in rule or statute. The only reference is R3-11-605(B) which lists medical services that a certified

veterinary technician “shall not” provide, not what they are allowed to do. This rule will need to be modified or removed.

- R3-11-201(A)(1), R3-11-606(A)(1), and R3-11-707(1)(a): These subsections require an application be notarized. This is inconsistent with the governmental emphasis on allowing electronic submission of applications. The Board intends to incorporate use of verified electronic documents from primary sources throughout the rules.

5. Are the rules enforced as written?

Mostly yes

- R3-11-107: The Board is unable to enforce R3-11-107 effectively. The Board needs accurate information regarding a licensee's or certificate holder's residence and veterinary practice addresses. This is important to both the Board and the licensee or certificate holder because it enables timely communication from the Board to the licensee or certificate holder. However, the Board has no way to prove when a person moves or changes employment, thus cannot know if notice is provided to the Board within 20 days of the change unless the licensee discloses the date the change occurred. The rule needs to be amended so it does not contain an unenforceable provision. In the interim, the Board is asking licensees to provide the date any change occurred. Having a rule in place to require that information would allow the Board to hold the licensee responsible if the report of the change did not occur within 20 days.
- R3-11-403(6): This subsection requires a licensee who obtains CE on the internet to submit a copy of a document issued by the provider that states the number of hours of CE obtained. Because it is not possible to upload documents in the Board's online renewal system, this provision is unenforceable.
- The Board is interested in developing rules related to CE audits, as there are none. While review of most renewal applications occurs to check for the proper number of hours completed within the appropriate time frames, there are no rules in place to inform a licensee or certificate holder of the expectations to retain documentation that would be needed in an audit to verify whether CE indicated on the renewal was actually completed.

6. Are the rules clear, concise, and understandable?

Mostly yes

- R3-11-101(22), the definition for "personnel," means any individual, licensed by the Board or unlicensed, who "works on a veterinary medical premises." The term "personnel" is present in rules pertaining to, for example, medication administration and dispensing, and can be misunderstood. The intent of the rule is that an appropriately trained person employed at the premises has been directed by a licensed veterinarian to perform a service and is allowed to do so. However, the plain language of the phrase "works on" (a premises) could include, for example, groomers or receptionists with no medical training. The definition needs to be modified to more accurately describe the intent.
- R3-11-405 related to continuing education waivers could be clarified to state that the Board can approve an extension of time to complete the CE, which is the most common understanding of the waiver, or completely waive the requirement. The rule could be modified to incorporate both options.
- R3-11-501(1) has two issues in that it incorporates too many unrelated topics and includes "professionally acceptable procedures" and "use of current professional and scientific knowledge" as Ethical standards. The latter two terms would be more appropriately placed in R3-11-502 Standards of Practice. Removing this section of R3-11-501(1) leaves it more understandable.
- R3-11-606(A)(1)(d) refers to a certified veterinary technician applying on the basis of "transfer from another state." "Transfer" is not the correct term, as it implies that one is giving up certification in another state to become certified in Arizona. There are no restrictions in the statutes to prevent an individual from being certified/licensed/registered as a veterinary technician in multiple states. This rule needs modification to better state the intention, which is to describe an individual applying for certification in Arizona who currently holds a certificate/license/registration in at least one other state.
- R3-11-707(2) states that an applicant for a veterinary medical premises shall "pass" an inspection conducted by the Board. This clarity of this rule could be increased by modifying the language to say that the applicant must adequately

respond to all potential violations identified at an inspection prior to licensure. Inspections by the board are not pass/fail.

- Definitions in R3-11-1001 for types of animal cremation (i.e. individual, communal, private) may need modification. The Board has learned that there is confusion among animal cremation providers and the public regarding these terms. With public input during a rules package, the Board can endeavor to develop definitions that can be acceptable to all.

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

However, the Board received a suggestion from the Arizona Veterinary Medical Association to modify continuing education requirements to include two (2) hours related to mental health concerns and solutions for the veterinary professional. Veterinarians have one of the highest suicide rates among professionals in the U.S.

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

The Board has completed no rulemaking since the Council approved the Board's last 5YRR on December 2, 2014, so there is no new economic, business, and consumer impact estimate to assess. In the 5YRR approved on December 2, 2014, the Board indicated the economic impact of the rules was consistent with that projected when the rules were made. The Board has received no information causing it to change that conclusion.

However, in June 2017, as part of the response to Executive Order 2017-03, the Board conducted a review of training requirements, continuing education, and fees, which all contribute to the impact on businesses (veterinary medical premises and animal crematories) and individuals. This review involved contacting Veterinary Boards in all other states to seek data for comparison and utilizing information from annual surveys conducted by the American Association of Veterinary State Boards (AAVSB).

The Board discussed the results of the review, noting that the training and CE requirements were equal to or less than the average of other states. The Board was not aware of any data to support the need for increasing the number of CE hours and believed the 20 required hours was appropriate to keep licensees updated with new

medical information that would enhance patient care. Nationwide, there are no trends that support eliminating CE for veterinary professionals, as it is commonly accepted that advances in science and medicine will always point towards professionals staying informed of new methods, technologies, and medications to protect the lives of their patients and public health.

For this 5 Year Rule Review, updated data pertaining to CE was obtained from the AAVSB and it appeared there had not been any major changes except that some states have added a requirement related to opioids and mental health awareness for veterinarians. While some Arizona licensees have expressed concern over the new requirement for DEA registrants to complete three (3) hours of opioid-related or addiction-related CE each renewal cycle, their concerns are difficulty in locating appropriate CE and not the economic impact to individuals. This new requirement is not in addition to the CE rules already in place, thus, it was determined that the financial burden on licensees has not changed because of it. This specific CE was initiated in 2018 as part of the Arizona Opioid Epidemic Act and applies to most health care professionals.

The June 2017 study indicated that Arizona's initial fees and biennial renewal fees were above the average; most Arizona board fees are set in statute. While many Veterinary Boards in the U.S. are a part of a larger agency, some, like Arizona's, are completely self-supporting. The Arizona State Veterinary Medical Examining Board receives no funding from the State General Fund. All aspects of the Board's operations are primarily funded by application and license (new and renewal) fees, which are paid for by the individuals who utilize the Board's services. It is extremely difficult to compare states to one another pertaining to fees, as the breakdown of required services to be provided, varying State organization models, and statutory frameworks in which they operate varies so widely.

From reviewing past agency data, the agency has always operated on a modest budget. To analyze the need for current fees charged, revenues from the previous six fiscal years was reviewed. While revenues in non-renewal years have remained relatively stable with increases of less than 2% in those years, the revenues in renewal years has been steadily increasing. The FY19 revenues reflected an 8.4% increase over

FY17 (renewal years). The Board continues to review the agency's expected future needs and may take action to lower veterinary application fees if appropriate. As it is, the bulk of the Board's revenue is received in license renewal years, with a small percentage in the non-renewal years. Over the past approximate 10 years, the number of licensees has stayed relatively steady with associated steady, reliable income to cover the agency's budget appropriation each year. However, the Board is also watching a recent upward trend in the number of veterinary applications received. In the past 3-5 years, corporate practices have been purchasing many veterinary facilities once owned by local veterinarians. With that has come increased competition and the need for more veterinarians to fill the gaps created by growing businesses and new veterinary medicine business models.

The rules impact on veterinary businesses primarily relates to meeting the minimum standards for sanitation, safety, and veterinary medical procedures so that the animals and the public are protected. The Board reviewed these very minimal requirements to determine if any were of significant expense to the business. Working in the field, the professionals on the Board are knowledgeable of the costs related to requirements such as providing appropriate surgical instruments and anesthesia equipment and found no impact over what a veterinarian would provide in absence of such rules. As well, in the Board's 2017 review of the national average for premises license fees, Arizona's were lower than the average. Additionally, unlike many other states, Arizona does not impose a fee for inspections that occur after a facility is licensed and concluded that there is insignificant economic impact to veterinary businesses because of rules.

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

10. Has the agency completed the course of action indicated in the agency's previous 5YRR? No

In the 2014 5YRR, the Board indicated several Sections in Articles 2 through 4 needed to be amended to accommodate the statutory change related to issuing veterinary faculty licenses. The Board also indicated an intention to amend R3-11-207 to address the issue identified in item 5. The Board did not complete this course of action because

as explained in item 4, the statutory changes have had minimal impact. The Board concluded it was better to use scarce state resources to address more pressing needs.

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 persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective;

Many of the costs of these rules, including paperwork and other compliance costs, to persons regulated by the rules result from statutory directives provided by the legislature. For example, it is statute that requires an individual to submit an application for licensure or certification (A.R.S. §§ 32-2213, 32-2242, 32-2271, and 32-2292); requires an applicant to take and pass an examination (A.R.S. §§ 32-2214 and 32-2242); requires license and certificate renewal every two years (A.R.S. §§ 32-2218, 32-2246, 32-2272, and 32-2292); requires that fees be paid (A.R.S. §§ 32-2219, 32-2250, 32-2273); and establish numerous grounds for disciplinary action (A.R.S. §§ 32-2233, 32-2249, 32-2274, and 32-2294).

The rules primarily provide guidance to an applicant or licensee regarding the procedure for complying with the statutory requirements for being qualified and making application for licensure and maintaining licensure. The rules also inform an applicant or licensee of the procedure used in the event disciplinary action is necessary. Because the rules simply implement statutory requirements, it is presumed the legislature determined the benefits of the requirements outweighed the costs and the requirements were the minimum necessary to protect the public, which is the underlying regulatory objective.

There are some rule provisions that impose a cost on persons regulated by the rules. For example, fees are required to be paid by certified check or money order which often involve small bank fees for issuance, documents must be assembled and submitted with an application, continuing education is required and must be documented, standards of practice are specified, and certain minimal standards and procedures are required of owners of animal crematories.

Over the past few years, and in preparation for this report, the Board worked to identify rules and fees that could be modified or eliminated to lessen the burden on the applicant/licensee without jeopardizing public health and safety. Several application documents were determined to not be essential and can be eliminated:

- R3-11-203(C): Remove the requirement for character reference letters to be sent directly to the Board by three persons who have known the applicant for at least three years.
- R3-11-203(D): Remove the requirement for an applicant who has experience in veterinary medicine to have a veterinarian send to the Board a letter indicating the applicant's professional qualifications and character of the applicant.
- R3-11-203(H): Remove the requirement for the applicant to send a typewritten letter or current resume summarizing the applicant's experience and qualifications.

While A.R.S. § 32-2215(A)(1) requires a veterinary applicant to "be of good moral character," the Board has no data to connect a positive moral character letter to actual proper professional behavior in the workplace.

The Board also reviewed additional requirements such as submission of a veterinary college transcript and license verification letters from other states where a person may be licensed. In analyzing the need for the transcripts, the Board identified that while a transcript is essential for a new graduate, it is not if the person is licensed in another state with the same education requirements. Similar to the new Universal Recognition pathway to licensure, the time burden for an applicant to identify how to get a transcript, request it, and likely follow up on its transmission is greater than the agency's need to double-check another state's verification of the same information. Therefore, R3-11-203(B) can be modified to require a transcript for new graduates and those who are not licensed in another state.

Regarding license verifications from other states, which typically do require a fee charged by the issuing state, and the applicant's time to make such a request, the Board considered the fact that currently, there is no national database where all states participate and report license information and disciplinary actions. The AAVSB has

operated such a database for many years but all states still do not participate. Reviewing an applicant's disciplinary history from other states is a critical step in the application process. It is the Board's duty to protect the public by utilizing effective licensing methods. Without such information, unqualified or questionable applicants could be licensed in our state. This requirement clearly outweighs the minimal cost/time burden on the applicant.

After review of the agency's process for a license verification request for current and former licensees and understanding of the time/cost of a licensee to make such a request for a nominal fee (\$15), the Board recommends removing the fee for license verifications (R3-11-105(A)(9)) for current licensees; former licensees would still be required to submit the fee. Current licensees' \$400 biennial renewal fee is presumed to cover the cost of an occasional verification request. Applicants rely on the agency to quickly produce and send the verification documents, as they are needed to meet deadlines in other states. Removing the need for a payment will allow the agency to issue a verification as soon as the person needs it, rather than waiting for payment. These verifications are a very small portion of the Board staff's activities and take little time to process. In FY19, 219 requests were fulfilled (from current and former licensees), with an associated income of \$3285, which would not be of major consequence to the agency revenues. The actual cost per year after a rule change would be less, as this figure cited incorporates both current and former licensees. In 2017 the Board investigated the option of an online process for requesting/payment of verification requests; the estimated cost to the agency was \$15,800 and was not funded in the FY19 budget request.

The analysis and outcome for rules related to continuing education and costs to meet veterinary premises minimum standards were described in Item #8. In each of these cases, the Board established the provision because the Board determined that doing so was necessary to protect public health and safety. The Board believes each provision is the minimum necessary to achieve the underlying regulatory objective.

12. Are the rules more stringent than federal law?

No

No federal law is uniquely 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:

The Board's statutes (See A.R.S. §§ 32-2213, 32-2215, 32-2272, and 32-2292), require individualized licenses be issued; therefore, a general permit is not applicable.

14. Proposed course of action:

The Board intends to amend its rules by December 2020 to address the issues identified in this report. The Board hopes to have received an exemption to rulemaking from the Governor's office by mid-January 2020. Notification to stakeholders and time to seek rule input would begin in February for at least two months, followed by initiation of a Board sub-committee by April to analyze public input, draft rules, have several reviews by the entire Board, prepare for and hold an oral comment proceeding by October, and make final revisions to submit by early December 2020.

TITLE 3. AGRICULTURE
CHAPTER 11. VETERINARY MEDICAL EXAMINING BOARD
(Authority: A.R.S. § 32-2201 et seq.)

ARTICLE 1. GENERAL PROVISIONS

- Section
- R3-11-101. Definitions
R3-11-102. Board Meetings
R3-11-103. Evaluating Board Services
R3-11-104. Premise License
R3-11-105. Fees
R3-11-107. Residence and Veterinary Practice Addresses
R3-11-108. Time-frames for Licensure, Certification, Permit, and Continuing Education Approvals
 Table 1. Time-frames (in days)
R3-11-109. Arizona Ombudsman-Citizens' Aide

ARTICLE 2. APPLICATION AND EXAMINATION FOR LICENSURE

- Section
- R3-11-201. Application for a Veterinary Medical License
R3-11-203. Documents Required with a License Application
R3-11-204. Renewal of Veterinary License

ARTICLE 3. TEMPORARY PERMITTEES

- Section
- R3-11-301. Application for a Temporary Permit
R3-11-304. Extension of Temporary Permits
R3-11-305. "Good and Sufficient Reason" for Failure to Take a State Examination

ARTICLE 4. CONTINUING EDUCATION REQUIREMENTS

- Section
- R3-11-401. Continuing Education
R3-11-402. Approval of Continuing Education
R3-11-403. Documentation of Attendance
R3-11-405. Waiver

ARTICLE 5. STANDARDS OF PRACTICE

- Section
- R3-11-501. Ethical Standards
R3-11-502. Standards of Practice

ARTICLE 6. VETERINARY TECHNICIANS

- Section
- R3-11-602. Direction, Supervision and Control
R3-11-603. Examination Committee
R3-11-604. Examinations
R3-11-605. Certified Veterinary Technician Services
R3-11-606. Application for a Veterinary Technician Certificate
R3-11-607. Renewal of Veterinary Technician Certificate

ARTICLE 7. VETERINARY MEDICAL PREMISES AND EQUIPMENT

- Section
- R3-11-701. General Veterinary Medical Premises Standards

- R3-11-702. Equipment and Supplies
- R3-11-703. Maintenance Standards for a Veterinary Medical Premises
- R3-11-704. Surgical Equipment
- R3-11-705. Mobile Clinics
- R3-11-706. Mobile Units
- R3-11-707. Application for a Veterinary Medical Premises License

ARTICLE 8. DRUG DISPENSING

Section

- R3-11-801. Notification that Prescription-only Drugs or Controlled Substances May Be Available at a Pharmacy
- R3-11-802. Labeling Requirements
- R3-11-803. Packaging Requirements
- R3-11-805. Storage
- R3-11-807. Dispensing a Controlled Substance or Prescription-only Drug

ARTICLE 9. INVESTIGATIONS AND HEARINGS

Article 9, consisting of Sections R3-11-901 through R3-11-905, adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3).

Section

- R3-11-901. Investigations of Alleged Violations
- R3-11-902. Informal Interview
- R3-11-903. Formal Hearing
- R3-11-904. Rehearing or Review of Decisions
- R3-11-905. Depositions, Issuance of Subpoenas, Service

ARTICLE 10. ANIMAL CREMATORY MINIMUM STANDARDS

Article 10, consisting of Sections R3-11-1001 through R3-11-1010, made by final rulemaking at 13 A.A.R. 513, effective April 7, 2007 (Supp. 07-1).

Section

- R3-11-1001. Definitions
- R3-11-1002. Obtaining an Animal Crematory License
- R3-11-1003. Renewing an Animal Crematory License
- R3-11-1004. Fees
- R3-11-1005. Minimum Standards for an Animal Crematory
- R3-11-1006. Minimum Operating Standards for an Animal Crematory
- R3-11-1007. Written Procedures Required
- R3-11-1008. Recordkeeping Requirements
- R3-11-1009. Change in Responsible Owner
- R3-11-1010. Change in Operator

ARTICLE 1. GENERAL PROVISIONS

R3-11-101. Definitions

- A. The definitions in A.R.S. §§32-2201, 32-2216(B), 32-2231(D), 32-2232(23), and 32-2281(E) apply to this Chapter.
- B. Additionally, in this Chapter unless otherwise specified:
 1. “Administrative completeness review” means the Board’s process for determining that an individual has provided all of the information and documents required by A.R.S. §§ 32-2201 through 32-2296 and this Chapter for an application.
 2. “Animal owner” means an individual who has all or part of the lawful right to an animal or an individual designated by the animal owner to act on the animal owner’s behalf.
 3. “Applicant” means an individual requesting a certificate, permit, license, or continuing education approval from the Board.
 4. “Application packet” means the fees, forms, documents, and additional information the Board requires to be submitted by an applicant or on the applicant’s behalf.
 5. “Compartment” means an enclosure provided to contain an animal.
 6. “Continuing education” means completing or presenting a workshop, seminar, lecture, conference, class, or instruction related to the:
 - a. Practice of veterinary medicine if a veterinarian, or
 - b. Work of a veterinary technician if a veterinary technician.
 7. “Credit hour” means one clock hour of participation in continuing education.
 8. “Current” means up to date and extending to the present time.
 9. “Days” means calendar days.
 10. “Direction, supervision, and control” means:
 - a. Pertaining to veterinary technicians, the written or oral instructions of a veterinarian responsible for an animal; or
 - b. Pertaining to temporary permittees, the same as direct and personal instruction, control, or supervision as stated in A.R.S. § 32-2216(B).
 11. “Disciplinary action” means a proceeding brought by the Board under A.R.S. Title 32, Chapter 21 or this Chapter.
 12. “ECFVG” means Educational Commission for Foreign Veterinary Graduates.
 13. “Hours of operation” means the specific time during which a licensed veterinary medical premises is open to the public for business.
 14. “Housed” means an animal is maintained in a compartment.
 15. “Livestock” livestock and ratites as defined in A.R.S. §§ 3-1201 (5) and (10).
 16. “Medication” means an over-the-counter drug defined in A.R.S. § 32-1901, prescription-only drug, prescription-only device defined in A.R.S. § 32-1901, or controlled substance.
 17. “Mobile clinic” means a self-contained trailer, van, or mobile home not attached to the ground designed to function as a self-contained clinic.
 18. “Mobile unit” means a vehicle from which out-patient veterinary medical services are delivered to temporary sites and that is not designed to function as a self-contained clinic.
 19. “Over-the-counter drug” means the same as prescribed in A.R.S. § 32-1901.
 20. “Party” means the same as prescribed in A.R.S. § 41-1001.
 21. “PAVE” means Program for Assessment of Veterinary Education Equivalence.
 22. “Personnel” means any individual, licensed by the Board or unlicensed, who works on a veterinary medical premises.
 23. “Physical plant” means a building or an area within a building housing a licensed veterinary medical premise, including the architectural, structural, mechanical, electrical, plumbing, and fire protection elements of the building.
 24. “Prescription-only drug” means the same as prescribed in A.R.S. § 32-1901.

25. "RACE" means Registry of Approved Continuing Education and is a subdivision of the American Association of Veterinary State Boards.
26. "Sanitize" means to disinfect and reduce pathogen counts, including bacteria, viruses, mold, and fungi.
27. "Scientific meeting" means a live presentation of continuing education that is not provided at a veterinary college.
28. "Sharps container" means a puncture resistant, leak-proof container that can be closed and is used for handling, storing, transporting, and disposing of objects that may cut or penetrate skin or mucosa, such as needles, scalpel blades, or razor blades.
29. "Veterinary medical premise" means a physical plant licensed by the Board on which veterinary medical services will be performed.
30. "Veterinary medical services" means the acts listed in A.R.S. § 32-2201(27).

Historical Note

Former Rule 2; Former Section R3-11-02 repealed, new Section R3-11-02 adopted effective March 23, 1979 (Supp. 79-2). Former Section R3-11-02 renumbered as Section R3-11-102 and amended by adding subsections (C) and (D) effective February 24, 1988 (Supp. 88-1). Former Section R3-11-101 renumbered to R3-11-102, new Section R3-11-101 renumbered from R3-11-102 and amended effective August 31, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 4070, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 3596, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-102. Board Meetings

The Board shall:

1. Hold its annual meeting in June of each year;
2. Make the date, time, and place of its annual meeting available to the public at least 20 days before the date of the annual meeting; and
3. Post notice of a special meeting on its web site and bulletin board at least 24 hours before the special meeting.

Historical Note

Former Rule 1; Former Section R3-11-01 repealed, new Section R3-11-01 adopted effective March 23, 1979 (Supp. 79-2). Former Section R3-11-01 renumbered without change as Section R3-11-101 effective February 24, 1988 (Supp. 88-1). Former Section R3-11-102 renumbered to R3-11-101, new Section R3-11-102 renumbered from R3-11-101 and amended effective August 31, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-103. Evaluating Board Services

Under A.R.S. § 32-2207(8)(c), a member of the public may evaluate the services provided by the Board by:

1. Submitting an evaluation form provided by the Board at the time services are provided.
2. Submitting comments through the Board's web site,
3. Submitting a letter to the Board, and
4. Attending and speaking at a Board meeting.

Historical Note

Former Rule 3; Former Section R3-11-03 repealed, new Section R3-11-03 adopted effective March 23, 1979 (Supp. 79-2). Former Section R3-11-03 repealed, new Section R3-11-03 adopted effective November 18, 1982 (Supp. 82-6). Former Section R3-11-03 renumbered without change as Section R3-11-103 effective February 24, 1988 (Supp. 88-1). Amended effective August 31, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 14 A.A.R. 3596, effective November 8, 2008 (Supp. 08-3). R3-11-103 renumbered to R3-11-204; new

Section R3-11-103 made by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-104. Premise License

The veterinary medical premise license shall be maintained in the premise for which it is issued.

Historical Note

Adopted effective April 26, 1984 (Supp. 84-2). Former Section R3-11-04 amended and renumbered as Section R3-11-104 effective February 24, 1988 (Supp. 88-1).

R3-11-105. Fees

A. Veterinarian fees are as follows:

1. Regular license application and state examination - \$400.00
2. Specialty or endorsement application and state examination - \$750.00
3. License issued in odd-numbered year - \$200.00
4. License issued in even-numbered year - \$100.00
5. License renewal - \$400.00
6. Reinstatement penalty - \$50.00
7. Duplicate license - \$25.00
8. Temporary permit - \$75.00
9. Verification licensure fee - \$15.00

B. Veterinary technician fees are as follows:

1. Application and examination - \$150.00
2. Certificate issued in odd-numbered year - \$50.00
3. Certificate issued in even-numbered year - \$25.00
4. Certificate renewal - \$100.00
5. Delinquency fee authorized by A.R.S. § 32-2247 - \$25.00
6. Duplicate certificate - \$20.00

C. Veterinary medical premises fees are as follows:

1. License issued in odd-numbered year - \$100.00
2. License issued in even-numbered year - \$50.00
3. License renewal - \$200.00
4. Duplicate license - \$20.00
5. Penalty fee authorized by A.R.S. § 32-2272(E) - \$100.00

D. Fees for the duplication or copying of public records under A.R.S. § 39-121.03 are nonrefundable and are as follows:

1. Noncommercial and commercial copy - \$.25 per page
2. Copying requiring more than 15 minutes - \$5.00 for each 15-minute interval exceeding 15 minutes
3. Directories for noncommercial use - \$.05 per name and address
4. Directories for noncommercial use printed on labels - \$.10 per name and address
5. Directories for commercial use - \$.25 per name and address
6. Directories for commercial use printed on labels - \$.30 per name and address
7. A directory in (3), (4), (5), or (6) issued on an electronic medium - \$5.00 and the applicable name and address fee

E. During the pendency of a complaint, the Board shall not charge the veterinarian who is the subject of the complaint or the individual who has filed the complaint, for duplication of public records regarding the complaint.

F. The Board shall charge \$5.00 per copy of the veterinary statutes and rules. A licensee may obtain one free copy of the veterinary statutes and rules each renewal period.

G. The Board shall charge \$10.00 for each audio recording.

H. The Board shall waive the charges in subsection (D) for charitable organizations and government entities.

Historical Note

Former Rule 4; Former Section R3-11-04 repealed, new Section R3-11-04 adopted effective March 23, 1979 (Supp. 79-2). Amended effective February 12, 1980 (Supp. 80-1). Former Section R3-11-04 repealed,

new Section R3-11-04 adopted effective February 24, 1988 (Supp. 88-1). November 18, 1982 (Supp. 82-6). Renumbered as Section R3-11-05 effective April 26, 1984 (Supp. 84-2). Amended effective November 27, 1984 (Supp. 84-6). Former Section R3-11-05 amended and renumbered as Section R3-11-105 effective February 24, 1988 (Supp. 88-1). Amended subsection (B)(1) effective May 15, 1989 (Supp. 89-2). Amended effective August 31, 1995 (Supp. 95-3). Amended effective December 11, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 1384, effective June 4, 2006 (Supp. 06-2). Section amended by emergency rulemaking at 14 A.A.R. 3806, effective September 8, 2008, for 180 days (Supp. 08-3). Amended by final rulemaking at 14 A.A.R. 4398, effective January 3, 2009 (Supp. 08-4). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-107. Residence and Veterinary Practice Addresses

- A. Within 20 days after the issuance of a license or certificate, a licensee or certificate holder shall provide written notice to the Board of all residence and veterinary practice addresses.
- B. A licensee or certificate holder shall provide written notice to the Board within 20 days after a change of residence or veterinary practice address.

Historical Note

Section R3-11-07 adopted and renumbered as Section R3-11-107 effective February 24, 1988 (Supp. 88-1). Amended effective August 31, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 14 A.A.R. 3596, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-108. Time-frames for Licensure, Certification, Permit, and Continuing Education Approvals

- A. The overall time-frame described in A.R.S. § 41-1072(2) for each type of approval granted by the Board is set forth in Table 1. The applicant and the Executive Director of the Board may agree in writing to extend the overall time-frame. The overall time-frame and the substantive time-frame may not be extended by more than 25% of the overall time-frame.
- B. The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of approval granted by the Board is set forth in Table 1.
 1. The administrative completeness review time-frame begins:
 - a. For approval or denial of a temporary permit, when the Board receives the written request for a temporary permit required under R3-11-301(A)(4);
 - b. For approval or denial of a veterinary medical license, when the Board receives the application packet required under R3-11-201(A);
 - c. For approval or denial of a veterinary technician certificate, when the Board receives the application packet required under R3-11-606(A);
 - d. For approval or denial of a veterinary medical premises license, when the Board receives the application packet required under R3-11-707;
 - e. For approval or denial of continuing education, when the Board receives the written request required under R3-11-402(B);
 - f. For approval or denial of a waiver of the continuing education requirement, when the Board receives the written request required under R3-11-405(A);
 - g. For approval or denial of an animal crematory license, when the Board receives the application packet required under R3-11-1002(B); and
 - h. For approval or denial of a license or certificate renewal, when the Board receives a renewal application.
 2. If an application packet or request submitted under subsection (B)(1) is incomplete, the Board shall send the applicant a written notice specifying the missing document or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the postmark date of the notice until the date the Board receives a complete application packet or request from the applicant.

3. If an application packet or request is complete, the Board shall send a written notice of administrative completeness to the applicant.
 4. If the Board grants a license or approval during the time provided to assess administrative completeness, the Board shall not issue a separate written notice of administrative completeness.
- C. The substantive review time-frame described in A.R.S. § 41-1072(3) is set forth in Table 1 and begins on the postmark date of the notice of administrative completeness.
1. During the substantive review time-frame, the Board may make one comprehensive written request for additional information or documentation. The time-frame for the Board to complete the substantive review is suspended from the postmark date of the comprehensive written request for additional information or documentation until the Board receives the additional information or documentation.
 2. The Board shall send a written notice granting a license or other approval to an applicant who meets the qualifications and requirements in A.R.S. § 32-2201 through § 32-2296 and this Chapter.
 3. The Board shall send a written notice of denial to an applicant who fails to meet the qualifications in A.R.S. § 32-2201 through § 32-2296 or this Chapter.
- D. The Board shall consider an application withdrawn if, within 360 days from the date on which the materials required under subsection (B)(1) are submitted, the applicant fails to supply the missing information under subsection (B)(2) or (C)(1).
- E. An applicant who does not wish an application withdrawn under subsection (D) may request a denial in writing within 360 days from the application submission date.
- F. If a time-frame's last day falls on a Saturday, Sunday, or an official state holiday, the next business day will be considered the time-frame's last day.

Historical Note

Adopted effective December 11, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 4070, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 3596, effective November 8, 2008 (Supp. 08-3).

Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

Type of Applicant	Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
Temporary Permittee (R3-11-301)	Temporary Permit	A.R.S. § 32-2216	30	15	15
Veterinary License by Examination, Endorsement, for a Specialty License, or Temporary Permittee (R3-11-103, R3-11-201 & R3-11-301)	Veterinary License or Renewal	A.R.S. §§ 32-2212 and 32-2213	60	15	45
Veterinary Technician (R3-11-606 & R3-11-607)	Veterinary Technician Certificate or Renewal	A.R.S. §§ 32-2242 and 32-2244	60	30	30
Veterinary Medical Premises (R3-11-707)	Veterinary Medical Premises License or Renewal	A.R.S. §§ 32-2271 and 32-2272	90	30	60

Animal Crematory (R3-11-1002 & R3-11-1003)	Animal Crematory License or Renewal	A.R.S. § 32-2292	90	30	60
Licensee or certificate holder (R3-11-405)	Approval of a Continuing Educa- tion Waiver	A.R.S. § 32-2207(8)	60	30	30
Licensee Requesting Continuing Education Pre-approval (R3-11-402)	Pre-approval of Continuing Educa- tion	A.R.S. § 32-2207(8)	60	30	30

Table 1. Time-frames (in days)

Historical Note

Adopted effective December 11, 1998 (Supp. 98-4). Amended by final rulemaking at 11 A.A.R. 5455, effec-
tive February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 513, effective April 7,
2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 3596, effective November 8, 2008 (Supp.
08-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-109. Arizona Ombudsman-Citizens' Aide

The Board shall notify the public about the existence of the Arizona Ombudsman-Citizens' Aide by providing the ombudsman-citizens' aide's name, address, and telephone number on the Board's web site.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3).
Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by
final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

ARTICLE 2. APPLICATION AND EXAMINATION FOR LICENSURE

R3-11-201. Application for a Veterinary Medical License

- A. An applicant for a veterinary medical license shall submit an application packet to the Board that contains:
 - 1. A notarized application form signed by the applicant that contains the information set forth in A.R.S. § 32-2213;
 - 2. The documents required under R3-11-203; and
 - 3. The applicable fees, payable by certified check or money order:
 - a. If applying for a regular license, the applicant shall submit the application fee required in R3-11-105.
 - b. If applying for a license by endorsement under A.R.S. § 32-2215(C) or a specialty license under A.R.S. § 32-2215(D), the applicant shall submit the application and license issuance fees required under R3-11-105.
- B. If an applicant has passed the North American Veterinary Licensing Examination and is required to take only the state examination, the applicant shall submit the application packet required under subsection (A) no later than 30 days before the date the applicant intends to take the state examination.
- C. If an applicant is required to take the North American Veterinary Licensing Examination, the applicant shall apply directly to the National Board of Veterinary Medical Examiners.

Historical Note

Adopted effective March 23, 1979 (Supp. 79-2). Former Section R3-11-20 renumbered without change as
Section R3-11-201 effective February 24, 1988 (Supp. 88-1). Amended effective August 31, 1995 (Supp.
95-3). Section repealed; new Section adopted effective December 11, 1998 (Supp. 98-4). Amended by fi-
nal rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking
at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-202. Repealed**Historical Note**

Adopted effective March 23, 1979 (Supp. 79-2). Former Section R3-11-21 amended and renumbered as Section R3-11-202 effective February 24, 1988 (Supp. 88-1). Amended effective August 31, 1995 (Supp. 95-3). Section repealed by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3).

R3-11-203. Documents Required with a License Application

- A. An applicant who is a veterinary student at the time of application shall submit with the application packet required under R3-11-201(A) a letter from the office of the dean of the veterinary college stating that the applicant is expected to graduate within 45 days following the next administration of the examination required under A.R.S. § 32-2214(C).
- B. An applicant who is not a veterinary student at the time of application shall cause a transcript verifying receipt of the degree of doctor of veterinary medicine to be mailed from the college directly to the Board.
- C. At the time of application, an applicant shall cause letters of character reference to be sent directly to the Board by three persons who are not related to the applicant and who have known the applicant for at least three years.
- D. At the time of application, an applicant who has experience in the field of veterinary medicine as a practicing veterinarian or as an employee of a licensed veterinarian shall cause a letter from a veterinarian indicating the professional qualifications and character of the applicant to be sent directly to the Board.
- E. An applicant who has been or is at the time of application a licensed veterinarian in another state shall cause each state board that has licensed the applicant to send directly to the Board a letter indicating the applicant's standing, including whether the applicant is currently under investigation or ever has been disciplined for violation of a veterinary medical practice act.
- F. Unless waived under A.R.S. § 32-2215(C) or (D), an applicant who has successfully passed the North American Veterinary Licensing Examination within five years before making application shall request that a transcript of the scores be forwarded to the Board directly by the organization responsible for score reporting or the professional examination service.
- G. At the time of application, an applicant shall submit to the Board a passport-type photograph of the applicant no larger than 1 1/2 x 2 inches that was taken during the preceding six months.
- H. At the time of application, an applicant shall submit to the Board a typewritten letter or current resume summarizing the applicant's experience and qualifications.
- I. As required under A.R.S. § 41-1080(A), at the time of application, an applicant shall submit to the Board the specified documentation of citizenship or alien status indicating the applicant's presence in the U.S. is authorized under federal law.

Historical Note

Adopted effective August 31, 1995 (Supp. 95-3). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 3596, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-204. Renewal of Veterinary License

- A. According to A.R.S. § 32-2218, a license issued under A.R.S. Title 32, Chapter 21 expires on December 31 of every even-numbered year unless renewed.
- B. A licensee shall meet the continuing education requirements of Article 4 of this Chapter as a condition of renewal of a license.
- C. No later than February 1 of every odd-numbered year, a licensee shall submit to the Board in writing or through the Board's online renewal process:
 1. A renewal application, provided by the Board, that is signed and dated by the licensee and contains:
 - a. The licensee's name, residence, mailing and veterinary practice addresses, name of veterinary practice, and telephone numbers for residence and veterinary practice;
 - b. A statement of whether the licensee is licensed to practice veterinary medicine in any other state of the United States, and if so, the name of the state, license number, license issuance date, and status of the license;

- c. A statement of whether a complaint has been filed during the two-year period preceding the renewal date against the licensee with a veterinary regulatory authority in another state, and if so, the name of the state, and the date, description, and resolution of the complaint;
 - d. A statement of whether the licensee is currently under investigation by a veterinary regulatory authority in another state, and if so, the name of the state, license number, and the nature and status of the investigation;
 - e. A statement of whether, within the two-year period preceding the renewal date, any disciplinary action has been taken against the licensee's veterinary license in another state including:
 - i. The name of the state;
 - ii. The license number;
 - iii. The reason for the disciplinary action;
 - iv. Whether the disciplinary action is currently pending; and
 - v. Whether the license has been suspended, revoked, or placed on probation;
 - f. A statement of whether, within the two-year period preceding the renewal date, the licensee has been charged with a felony or any misdemeanor involving conduct that may affect patient health and safety including:
 - i. The charged felony or misdemeanor;
 - ii. The city, county, and state where the felony or misdemeanor took place;
 - iii. The court having jurisdiction over the felony or misdemeanor;
 - iv. Whether the charges were dismissed;
 - v. If applicable, the date of the conviction;
 - vi. Whether the conviction was set aside;
 - vii. Notice of expungement, if applicable;
 - viii. Notice of restoration of civil rights, if applicable; and
 - ix. Probation officer's name, address, and telephone number, if applicable;
 - g. A statement that the licensee has met the continuing education requirements in Article 4 of this Chapter; and
 - h. A statement by the licensee that the information contained on the renewal application is true and correct;
2. The renewal fee required by the Board;
 3. If the documentation previously submitted under R3-11-203(I) was a limited form of work authorization issued by the federal government, evidence that the work authorization has not expired; and
 4. A list of continuing education completed by the licensee that meets the requirements in Article 4 of this Chapter.
- D.** If a licensee fails to submit the materials required under subsection (C) by February 1 of every odd-numbered year, the licensee shall immediately stop engaging in the practice of veterinary medicine until the licensee complies with the requirements in A.R.S. § 32-2218 and this Chapter.
- E.** Continued veterinary practice by an individual who fails to comply with subsection (C) constitutes "probable cause" of criminal violation of A.R.S. § 32-2238(A)(4) for purposes of referral to the County Attorney's Office or the Office of the Attorney General for criminal prosecution, injunctive relief, or any other action provided by law.

Historical Note

New Section R3-11-204 renumbered from R3-11-103 and amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3)

ARTICLE 3. TEMPORARY PERMITTEES

R3-11-301. Application for a Temporary Permit

A. An applicant for a temporary permit shall:

1. Submit to the Board the application form required under R3-11-201(A)(1) and the documents required under R3-11-203;

2. Submit to the Board both the application and examination fee and temporary permit fee, payable by certified check or money order, required under R3-11-105;
 3. Schedule with the Board a date to take the state examination;
 4. After complying with subsections (A)(1) through (3), submit all of the following to the Board:
 - a. A written request for a temporary permit, signed by the applicant, that states:
 - i. The name and business address of the licensed veterinarian who will employ the applicant; and
 - ii. The name of each licensed veterinarian who will provide direct and personal instruction, control, or supervision of the applicant;
 - b. Written documentation of graduation from a veterinary college; and
 - c. A sworn affidavit, signed by the applicant, stating the applicant:
 - i. Has graduated from a veterinary college;
 - ii. Has read and understands A.R.S. § 32-2216 and this Section;
 - iii. Agrees to work under the direct and personal instruction, control, or supervision of the licensed veterinarian employing the applicant; and
 - iv. Agrees to notify the Board in writing within 10 days from the date of termination of employment.
- B.** A licensed veterinarian employing an applicant for a temporary permit shall submit to the Board:
1. A letter detailing:
 - a. The type of work to be conducted by the applicant;
 - b. The name of each licensed veterinarian who will assume direct and personal instruction, control, or supervision when the employing veterinarian is absent; and
 - c. The procedures, including frequency, for reviewing medical treatment and records of medical treatment of animals;
 2. A sworn affidavit, signed by the veterinarian, stating the veterinarian:
 - a. Is currently practicing veterinary medicine in Arizona;
 - b. Has read and understands A.R.S. § 32-2216 and this Section;
 - c. Accepts full responsibility for providing direct and personal instruction, control, or supervision to the applicant; and
 - d. Agrees to notify the Board in writing within 10 days from the date of termination of applicant's employment.

Historical Note

Adopted effective March 23, 1979 (Supp. 79-2). Former Section R3-11-30 renumbered without change as Section R3-11-301 effective February 24, 1988 (Supp. 88-1). Amended effective August 31, 1995 (Supp. 95-3). Section repealed; new Section adopted effective December 11, 1998 (Supp. 98-4). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-304. Extension of Temporary Permits

- A.** The Board shall extend a temporary permit as allowed by A.R.S. § 32-2216(B), only if the temporary permittee submits to the Board evidence of good and sufficient reason for failing to take the scheduled state examination and evidence that the temporary permittee is scheduled to take the next state examination following issuance of the extension.
- B.** As provided under A.R.S. § 32-2216(B), the Board shall not extend a temporary permit a second time.

Historical Note

Adopted effective March 23, 1979 (Supp. 79-2). Former Section R3-11-33 renumbered without change as Section R3-11-304 effective February 24, 1988 (Supp. 88-1). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-305. "Good and Sufficient Reason" for Failure to Take a State Examination

For purposes of A.R.S. § 32-2216(B), the Board shall consider the following in determining whether "good and sufficient reason" exists for failure to take a state examination:

1. Illness or disability,

2. Military service, or
3. Any other circumstance demonstrated by the temporary permittee to be beyond the temporary permittee's control.

Historical Note

Adopted effective March 23, 1979 (Supp. 79-2). Former Section R3-11-34 renumbered without change as Section R3-11-305 effective February 24, 1988 (Supp. 88-1). Amended effective August 31, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3).

ARTICLE 4. CONTINUING EDUCATION REQUIREMENTS

R3-11-401. Continuing Education

- A. Except as provided in subsection (B), during the two-year period preceding license expiration, a licensee shall complete 20 credit hours of Board-approved continuing education, subject to the following:
 1. A maximum of two credit hours in practice management;
 2. One credit hour for each hour of attendance at a veterinary college seminar;
 3. One credit hour for each hour of attendance at a scientific meeting related to veterinary medicine;
 4. One credit hour, to a maximum of five, for:
 - a. Each hour spent developing or making a presentation related to veterinary medicine,
 - b. Each hour of study using tapes or CDs, and
 - c. Each hour spent reading articles in veterinary journals or periodicals pertaining to veterinary medicine or controlled substances; and
 5. One credit hour for each hour of continuing education obtained at an interactive program, including an interactive program on the internet.
- B. A licensee receiving an initial license in an even-numbered year shall complete 10 credit hours of continuing education before the licensee's initial renewal date.
- C. If a licensee graduated from a veterinary college within 11 months before the license application date, the licensee may apply 10 credit hours of veterinary college course work to fulfill the continuing education requirement at the time of first renewal.
- D. Except as provided in subsection (E), during the two-year period preceding certificate expiration, a certificate holder shall complete 10 credit hours of Board-approved continuing education, subject to the following:
 1. One credit hour for each hour of attendance at a veterinary college seminar;
 2. One credit hour for each hour of attendance at a class at a veterinary technology school;
 3. One credit hour for each hour of attendance at a scientific meeting related to the work of a veterinary technician;
 4. One credit hour, to a maximum of two and one-half, for:
 - a. Each hour spent developing or making a presentation related to the work of a veterinary technician;
 - b. Each hour of study using tapes or CDs; and
 - c. Each hour spent reading articles in veterinary journals or periodicals pertaining to veterinary medicine or controlled substances; and
 5. One credit hour for each hour of continuing education obtained at an interactive program, including an interactive program on the internet.
- E. A certificate holder receiving an initial certificate in an even-numbered year shall complete five credit hours of continuing education before the certificate holder's first renewal date.

Historical Note

Adopted effective March 23, 1979 (Supp. 79-2). Former Section R3-11-40 repealed, new Section R3-11-40 adopted effective November 18, 1982 (Supp. 82-6). Former Section R3-11-40 renumbered as Section R3-11-401 and subsection (A) amended effective February 24, 1988 (Supp. 88-1). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 4070, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 3596, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-402. Approval of Continuing Education

A. The following continuing education is approved by the Board:

1. For a veterinarian:
 - a. Continuing education taught in or under the authority of a veterinary college;
 - b. Continuing education sponsored by the Arizona Veterinary Medical Association, American Association of Veterinary State Boards, a state or national veterinary association or academy approved by the Board, or continuing education approved according to subsections (B) and (C); or
 - c. Continuing education approved by RACE;
 2. For a veterinary technician:
 - a. Continuing education taught in or under the authority of a veterinary technician school or school of veterinary medicine;
 - b. Continuing education sponsored by the Arizona Veterinary Medical Association or American Association of Veterinary States Boards or approved by RACE;
 - c. Continuing education approved by the Board that is sponsored by a state or national veterinary technician association or academy;
 - d. Continuing education approved by RACE of the American Association of Veterinary State Boards; or
 - e. Continuing education approved according to subsections (B) and (C).
- B. In addition to the continuing education approved according to subsection (A), a person who provides continuing education may request pre-approval of continuing education by submitting to the Board at least 60 calendar days before the continuing education takes place, a written request that includes:
1. A description of the continuing education;
 2. The date, time, and place where the continuing education will take place;
 3. The number of credit hours of the continuing education;
 4. The name of each individual providing the continuing education, if available; and
 5. The name of the organization providing the continuing education, if applicable.
- C. In determining whether to approve a request for pre-approval submitted according to subsection (B), the Board shall consider whether the continuing education:
1. Is designed to provide instruction or knowledge in current developments, skills, and procedures related to veterinary medicine or work of a certificate holder;
 2. Is developed and provided by an individual with knowledge and experience in the subject area; and
 3. Contributes directly to the professional competence of the licensee or certificate holder.
- D. The Board shall approve or deny a request for pre-approval according to the time-frames set forth in Table 1.

Historical Note

Adopted effective March 23, 1979 (Supp. 79-2). Former Section R3-11-41 renumbered without change as Section R3-11-402 effective February 24, 1988 (Supp. 88-1). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 3596, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-403. Documentation of Attendance

A licensee or certificate holder shall submit a written document of continuing education with a renewal application that includes:

1. The name of the licensee or certificate holder;
2. The title of each continuing education;
3. The date of completion of each continuing education;
4. The number of credit hours of each continuing education;
5. A statement, signed and dated by the licensee or certificate holder, verifying the information in the document; and

6. If the continuing education was obtained on the internet, a copy of a document issued by the provider of the continuing education that states the number of hours obtained.

Historical Note

Adopted effective March 23, 1979 (Supp. 79-2). Former Section R3-11-42 repealed, new Section R3-11-42 adopted effective November 18, 1982 (Supp. 82-6). Former Section R3-11-42 renumbered without change as Section R3-11-403 effective February 24, 1988 (Supp. 88-1). Amended effective August 31, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 3596, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-405. Waiver

- A licensee or certificate holder seeking a waiver from the continuing education requirements in this Article shall submit a written request to the Board by December 10th before the license or certificate expires that contains the licensee's or certificate holder's name and an explanation of the reason for the request.
- The Board shall consider the following in determining whether to grant a waiver from the continuing education requirements in this Article:
 1. Illness or disability,
 2. Military service or absence from the United States, or
 3. Any other circumstance demonstrated by the licensee or certificate holder to be beyond the licensee's or certificate holder's control.

Historical Note

Adopted effective March 23, 1979 (Supp. 79-2). Amended effective November 18, 1982 (Supp. 82-6). Former Section R3-11-44 renumbered without change as Section R3-11-405 effective February 24, 1988 (Supp. 88-1). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

ARTICLE 5. STANDARDS OF PRACTICE

R3-11-501. Ethical Standards

Under A.R.S. § 32-2232(12), a veterinarian practicing under a license or permit shall practice according to the following standards of professional ethics, which are based on the Principles of Veterinary Medical Ethics of the American Veterinary Medical Association.. The breach of any of the following standards constitutes grounds for disciplinary action against a veterinary license or permit under A.R.S. §§ 32-2233 and 32-2234.

1. A veterinarian shall show respect for the veterinarian's colleagues, the owner of an animal to whom veterinary medical services are being provided, and the public through courteous verbal or written interchange, considerate treatment, professional appearance, professionally acceptable procedures, and use of current professional and scientific knowledge.
2. A veterinarian shall not slander or injure the professional standing or reputation of another member of the profession or condemn the character of that individual's professional acts in a false or misleading manner.
3. A veterinarian shall offer or seek a consultation or a referral whenever it appears that the quality of veterinary medical service provided by the veterinarian will be enhanced.
4. When a veterinarian agrees to provide veterinary medical services to an animal, the veterinarian shall comply with the standards of practice in R3-11-502 regardless of the fees charged.
5. A Responsible Veterinarian employed by a partnership, corporation, or individual that is not licensed by the Board shall ensure that the veterinary judgment and responsibility of each veterinarian employed by the partnership, corporation, or individual is neither influenced nor controlled by the partnership, corporation, or individual to the detriment of an animal.
6. A veterinarian shall ensure that emergency services are consistent with A.R.S. § 32-2201 through § 32-2296, this Chapter, and the needs and standards of the locality where the emergency medical services are provided.

7. A veterinarian is free to choose whom the veterinarian will serve within the limits of the law. A veterinarian who agrees to provide veterinary medical services to an animal is responsible for the welfare of the animal until the animal is released, referred, or discharged by the veterinarian or the veterinarian is dismissed by the animal owner.
8. A veterinarian shall provide records or copies of records of veterinary medical services, including copies of radiographs, to an animal owner or another licensed veterinarian currently providing veterinary medical services within 10 days from the date of the animal owner's or other licensed veterinarian's request, or in less than 10 days if the animal's medical condition requires.
9. A veterinarian shall not make a false statement on or alter any document, record, or report concerning treatment of an animal.

Historical Note

Adopted effective March 23, 1979 (Supp. 79-2). Amended effective November 18, 1982 (Supp. 82-6). Former Section R3-11-50 renumbered without change as Section R3-11-501 effective February 24, 1988 (Supp. 88-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 3596, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-502. Standards of Practice

- A. Before providing a veterinary medical service or housing an animal, a Responsible Veterinarian shall ensure that the animal owner is provided a written notice that states whether personnel will be present on the veterinary medical premises for 24-hour observation of the animal.
- B. A Responsible Veterinarian shall ensure that a notice of where veterinary medical services may be obtained when the veterinary medical premises is not open for business:
 1. Is placed on the voice mail of the veterinary medical premises; and
 2. Contains the name, telephone number, and address of a veterinarian or veterinary medical premises that is available to provide veterinary medical services. Livestock veterinarians are exempt from providing an address.
- C. Before providing a veterinary medical service, a veterinarian shall ensure that the animal owner or the animal owner's agent is provided an estimate of the cost for the veterinary medical service, except in the case of livestock.
- D. When providing a veterinary medical service, a veterinarian shall ensure that no expired supplies are used.
- E. Before a surgical patient or hospitalized animal is discharged, a veterinarian shall ensure that the animal owner is provided with instructions detailing care of the animal after discharge and documents in the medical record that verbal or written care instructions were provided.
- F. Before euthanizing an animal for which the animal owner is known, a veterinarian shall obtain signed authorization from the animal owner or verbal authorization from the animal owner that is witnessed by one other individual and documented in the medical record.
- G. For animals with a suspected or diagnosed contagious disease or illness, a veterinarian shall provide a separate isolation area that is not in close proximity to other animals and shall ensure that the ill animal does not come into contact with another animal or the other animal's compartment.
- H. If general anesthesia is administered or surgery is performed on an animal by a veterinarian, the veterinarian shall ensure:
 1. A prior signed authorization is obtained from the animal owner if the animal owner is known or verbal authorization that is witnessed by one other individual and documented in the medical record is obtained from the known animal owner. This provision does not apply to livestock;
 2. Within six hours before anesthesia is administered or surgery is performed, the animal is examined and the animal's temperature, heart rate, respiratory rate, diagnosis, and general condition are recorded in the animal's medical record except for species or in situations that make the examination impractical or potentially detrimental to the animal or examiner;
 3. The animal's heart rate and respiratory rate are recorded in the animal's medical record immediately after giving the animal a general anesthetic and monitored and recorded a minimum of every 15 minutes while

- anesthesia is being administered except for species or in situations that make the examination impractical or potentially detrimental to the animal or examiner;
4. After the animal is given a general anesthetic, the animal is continuously observed by personnel until the animal is extubated and able to swallow; and
 5. The following information is recorded in a written anesthesia log, which is separate from both the controlled drug log maintained under subsection (K) and medical record of each animal maintained under subsection (L) and is maintained on the veterinary medical premises for three years from the date the anesthesia is administered:
 - a. The animal's name and species,
 - b. The name of the animal owner,
 - c. The date of administration of the anesthesia,
 - d. The recovery status of the animal, and
 - e. The name of the veterinarian.
- I.** A veterinarian shall follow manufacturer's label requirements for the storage and handling of biologics, veterinary supplies, and veterinary medications.
- J.** A veterinarian who dispenses a prescription-only drug shall:
1. Comply with all federal and state laws, including A.A.C. Title 3, Chapter 11, Article 8, regarding the dispensing of a prescription-only drug; and
 2. Ensure that a prescription-only drug or prescription-only device is destroyed or returned to the manufacturer or distributor no later than 30 days after its expiration date.
- K.** A veterinarian who dispenses or administers a controlled substance shall:
1. Comply with all federal and state laws including A.A.C. Title 3, Chapter 11, Article 8;
 2. Maintain an inventory record on the veterinary medical premises for two years from the date of entry of each controlled substance purchased by the veterinarian that contains the:
 - a. Name of the controlled substance,
 - b. Strength of the controlled substance,
 - c. Date the controlled substance was received by the veterinarian,
 - d. Amount of the controlled substance received by the veterinarian,
 - e. Name of the distributor of the controlled substance, and
 - f. Invoice number; and
 3. Maintain a dispensing or administration log on the veterinary medical premises, separate from the inventory record required under subsection (K)(2), for two years from the date of entry that contains for each controlled substance dispensed or administered the:
 - a. Name of the controlled substance,
 - b. Strength of the controlled substance,
 - c. Amount of the controlled substance,
 - d. Name of the animal to which dispensed or administered,
 - e. Name of the animal owner,
 - f. Date dispensed or administered,
 - g. Name of the veterinarian who dispensed or administered the controlled substance, and
 - h. Decremental amounts of the controlled substance quantifying the amount remaining.
- L.** Except as provided in subsection (N), a veterinarian shall maintain on the veterinary medical premises for three years after the last date an animal receives veterinary medical services a written medical record containing the:
1. Name, address, and telephone number of the animal owner;
 2. Description of the animal's color and markings or a color photograph of the animal, and the sex, breed, weight, and age of the animal;
 3. Date of veterinary medical services and date a written entry is made to the medical record, if the entry is made on a date other than when the veterinary medical services were provided;
 4. Results of examination, including temperature, heart rate, respiratory rate, and general condition of the animal, except for livestock and species or in situations that make the examination impractical or potentially detrimental to the animal or examiner;

5. The animal's tentative or definitive diagnosis;
 6. Treatment provided to the animal;
 7. Name of each medication administered including:
 - a. Concentration, except when the medication is only offered in one size and strength;
 - b. Amount;
 - c. Frequency; and
 - d. Route of administration;
 8. Name of each medication prescribed including concentration, amount, and frequency;
 9. Name and result of each diagnostic and laboratory test conducted;
 10. Signature or initials of each individual placing an entry in the medical record; and
 11. Signature or initials of the veterinarian performing the veterinary medical services.
- M.** A veterinarian shall ensure that a radiograph of an animal is permanently labeled with the following information and maintained on the veterinary medical premises for three years from the last date an animal receives veterinary medical services:
1. The name of the animal owner,
 2. The name of the animal,
 3. The date the radiograph was taken,
 4. The name of the veterinarian or veterinary medical premises, and
 5. The anatomical orientation.
- N.** A veterinarian who administers a rabies vaccine to an animal on behalf of an animal control agency or animal shelter and provides no other veterinary medical service to the animal:
1. Is exempt from the requirements of subsection (L);
 2. Shall generate a rabies vaccination record for each animal vaccinated that includes:
 - a. The name and address of the animal owner;
 - b. A description or color photograph of the animal that includes species, breed, sex, age, and color;
 - c. The date of vaccination;
 - d. The vaccine manufacturer's name;
 - e. The serial number of the vaccine used;
 - f. The date re-vaccination is due; and
 - g. The veterinarian's signature; and
 3. Shall provide a copy of each rabies vaccination record to the veterinary medical premises, animal control agency, or animal shelter at which the rabies vaccination was provided. If a copy of the rabies vaccination record is provided to the veterinary medical premises, the veterinary medical premises shall maintain the record for at least three years from the date of vaccination.
- O.** In this Section, unless otherwise specified:
1. "Animal control agency" means a board, commission, department, office, or other administrative unit of federal or state government or of a political subdivision of the state that is responsible for controlling rabies in animals in a specific geographic area.
 2. "*Animal shelter*" means a duly incorporated humane society, animal welfare society, society for the prevention of cruelty to animals or other nonprofit corporate organization devoted to the welfare, protection and humane treatment of animals. A.R.S. § 11-1022(H).

Historical Note

Adopted effective February 24, 1988 (Supp. 88-1). Section R3-11-51 adopted and renumbered as Section R3-11-502 effective February 24, 1988 (Supp. 88-1). Amended effective August 31, 1995 (Supp. 95-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Section amended by final rulemaking at 11 A.A.R. 448, effective March 5, 2005 (05-1). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 4070, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 3596, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-603. Examination Committee

The Board may appoint a committee of Arizona licensed veterinarians and certified veterinary technicians to assist the Board to prepare and administer examinations of applicants for veterinary technician certificates. An examination recommended by the examination committee is subject to the approval of the Board.

Historical Note

Adopted effective February 12, 1980 (Supp. 80-1). Former Section R3-11-62 renumbered without change as Section R3-11-603 effective February 24, 1988 (Supp. 88-1). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3).

R3-11-604. Examinations

- A. The Board shall hold a veterinary technician examination at least once a year. A minimum of 20 days before the examination, the Board shall send an applicant a written notice of the date, time, and place of the examination.
- B. An applicant shall pass a national veterinary technician examination and an Arizona veterinary technician examination with a score of at least 70 percent on each examination before being certified by the Board.
- C. An applicant with a passing score on either the national veterinary technician examination or the Arizona veterinary technician examination shall retake the examination if the applicant does not obtain certification within five years after the date of the examination.
- D. An applicant who meets all the requirements in A.R.S. § 32-2242(D) is not required to retake the national veterinary technician examination. However, an applicant who meets all the requirements in A.R.S. § 32-2242(D) shall pass the Arizona veterinary technician examination within five years before obtaining certification.

Historical Note

Adopted effective March 23, 1979 (Supp. 79-2). Amended effective November 18, 1982 (Supp. 82-6). Former Section R3-11-63 renumbered without change as Section R3-11-604 effective February 24, 1988 (Supp. 88-1). Amended effective August 31, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-605. Certified Veterinary Technician Services

- A. Except as provided in subsection (B), a certified veterinary technician may perform the tasks delegated by a licensed veterinarian while under the direction, supervision, and control of the licensed veterinarian.
- B. A certified veterinary technician shall not:
 1. Perform surgery,
 2. Diagnose,
 3. Prescribe a medication, or
 4. Provide a prognosis.

Historical Note

Adopted effective March 23, 1979 (Supp. 79-2). Former Section R3-11-64 renumbered without change as Section R3-11-605 effective February 24, 1988 (Supp. 88-1). Amended effective August 31, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3).

R3-11-606. Application for a Veterinary Technician Certificate

- A. Except as provided in subsection (B), an applicant for a veterinary technician certificate shall submit, at least 65 days before an examination date, an application packet to the Board that contains:
 1. A notarized application form, signed by the applicant, containing:
 - a. The applicant's name, mailing address, residence and business telephone numbers, and Social Security number;
 - b. The name of the veterinarian currently employing applicant, if employed by a veterinarian;
 - c. The name and address of the veterinary premises where applicant is employed, if employed; and
 - d. A statement of whether application is being made on the basis of education or transfer from another state:

- i. If application is based on education, the applicant shall submit written documentation of graduation from a school that meets the requirements in A.R.S. § 32-2242(B) with a curriculum in veterinary technology; or
 - ii. If application is based on transfer from another state, the applicant shall submit the information required in (A)(1)(d)(i) and proof required under A.R.S. § 32-2242(D);
 2. If an applicant has passed a national veterinary technician examination, the applicant shall provide the date on which the applicant took the examination and arrange to have an official transcript of the applicant's scores from the national veterinary technician examination sent directly to the Board by the American Association of Veterinary State Boards;
 3. An applicant who has been or is at the time of application certified or registered in another state as a veterinary technician shall cause each state board that has certified or registered the applicant to send directly to the Board a letter indicating the applicant's standing, including whether the applicant is currently under investigation or has ever been disciplined for violation of a veterinary technician or medical practice act;
 4. As required under A.R.S. § 41-1080(A), an applicant shall submit to the Board the specified documentation of citizenship or alien status indicating the applicant's presence in the U.S. is authorized under federal law; and
 5. A certified check or money order for the application and examination fee required in R3-11-105.
- B. A veterinary technician student who expects to graduate at least 30 days before an examination date shall submit to the Board, no later than 65 days before the examination date, the application required under subsection (A) and rather than the documentation required under subsection (A)(1)(d)(i), a letter from the dean of the school that indicates the applicant is in good standing and states the expected date of graduation.
- C. A veterinary technician student who submits an application under subsection (B) shall submit to the Board the documentation required under subsection (A)(1)(d)(i) no later than 15 days following the date of graduation.

Historical Note

Adopted effective December 11, 1998 (Supp. 98-4). Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 3596, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-607. Renewal of Veterinary Technician Certificate

- A. No later than February 1 of every odd-numbered year, a certificate holder shall submit:
1. A signed and dated renewal application form, which is provided to the certificate holder by the Board, containing the following information:
 - a. The certificate holder's name, residence address, work address, and work telephone number;
 - b. A statement of whether, within the two-year period preceding the renewal date, the certificate holder has been charged with a felony or any misdemeanor involving conduct that may affect patient health and safety including:
 - i. The charged felony or misdemeanor;
 - ii. The city, county, and state where the felony or misdemeanor took place;
 - iii. The court having jurisdiction over the felony or misdemeanor;
 - iv. Whether the charges were dismissed;
 - v. The date of the conviction;
 - vi. Whether the conviction was set aside;
 - vii. Notice of expungement, if applicable;
 - viii. Notice of restoration of civil rights, if applicable; and
 - ix. Probation officer's name, address, and telephone number, if applicable; and
 - c. A statement by the certificate holder that the information contained on the renewal form is true and correct.
 2. The written documentation of continuing education required under R3-11-403;
 3. If the documentation previously submitted under R3-11-606(A)(4) was a limited form of work authorization issued by the federal government, evidence that the work authorization has not expired; and

4. The fee required by the Board under R3-11-105.
- B. A certificate holder who fails to submit the certificate renewal fee and information required under subsection (A) before February 1 of every odd-numbered year:
 1. Forfeits all privileges and rights extended by the certificate, and
 2. Shall immediately cease performing veterinary technician services until the certificate holder:
 - a. Complies with the requirements of subsection (A), and
 - b. Pays the delinquency fee required under R3-11-105 in addition to the certificate renewal fee.

Historical Note

Adopted effective November 18, 1982 (Supp. 82-6). Amended subsection (C) effective November 27, 1984 (Supp. 84-6). Former Section R3-11-66 renumbered without change as Section R3-11-607 effective February 24, 1988 (Supp. 88-1). Amended effective August 31, 1995 (Supp. 95-3). Section repealed; new Section adopted effective December 11, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 14 A.A.R. 3596, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

ARTICLE 7. VETERINARY MEDICAL PREMISES AND EQUIPMENT

R3-11-701. General Veterinary Medical Premises Standards

A Responsible Veterinarian shall ensure that:

1. The physical plant of a veterinary medical premises conforms to state and local building and fire codes and local zoning requirements;
2. A veterinary medical premise's identification is visible to the public from the outside of its physical plant. The identification includes the hours of operation and shall be placed so that it is unobstructed from public view. If the hours of operation include hours after dusk, a means of illuminating the sign shall be provided and used during the hours of operation after dusk;
3. Floors, tables, countertops, sinks, and fixtures within the veterinary medical premises are made of nonporous materials that can be sanitized.
4. Water and a means of achieving water temperatures from 32°F to 212°F is provided on the veterinary medical premises;
5. Refrigerated storage space, large enough to contain all deceased animals except livestock, is provided on the veterinary medical premises, pending necropsy and disposal pick-up or, in the case of a mobile unit, if requested by the client, arrangements are made for disposal of the body, except livestock;
6. Storage space is provided on the veterinary medical premises for biohazardous medical waste pending disposal pick-up;
7. If animals, other than livestock, will be housed on a veterinary medical premises, an individual compartment, equipped with a latch, for each animal housed on the veterinary medical premises is provided;
8. A sharps container is provided on the veterinary medical premises; and
9. A working scale is provided at the veterinary medical premises for use with animals other than livestock.

Historical Note

Adopted effective April 26, 1984 (Supp. 84-2). Former Section R3-11-70 renumbered without change as Section R3-11-701 effective February 24, 1988 (Supp. 88-1). Section repealed, new Section R3-11-701 renumbered from R3-11-702 and amended effective August 31, 1995 (Supp. 95-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 14 A.A.R. 3596, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-702. Equipment and Supplies

A Responsible Veterinarian shall ensure that equipment and supplies are available on the veterinary medical premises of an adequate number and type to provide the veterinary medical services that are offered at the veterinary medical premises.

Historical Note

Section R3-11-71 adopted and renumbered as Section R3-11-702 effective February 24, 1988 (Supp. 88-1).

Former Section R3-11-702 renumbered to R3-11-701, new Section R3-11-702 adopted effective August 31, 1995 (Supp. 95-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-703. Maintenance Standards for a Veterinary Medical Premises

A Responsible Veterinarian shall ensure that:

1. All exits, corridors, and passageways inside and outside the veterinary medical premises are unobstructed at all times;
2. Combustible material such as paper, boxes, and rags are not allowed to accumulate inside or outside the veterinary medical premises;
3. Temperatures are maintained between 65°F and 90°F in each room where an animal, other than livestock, is treated or housed;
4. Floors, countertops, tables, sinks, and any other equipment or fixtures used in a veterinary medical premises are maintained in a clean condition and sanitized after contact with an animal or animal tissue; and
5. Animal compartments are cleaned and sanitized at least once every 24 hours when an animal, other than livestock, is being housed and after each animal, other than livestock, vacates the compartment.

Historical Note

Renumbered from R3-11-704 and amended effective August 31, 1995 (Supp. 95-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3).

Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-704. Surgical Equipment

In addition to complying with the requirements in this Article, if surgery is performed on a veterinary medical premises, a responsible veterinarian shall ensure that the following is provided on the veterinary medical premises:

1. Caps, masks, and sterile gloves and gowns;
2. Sterile surgical packs, including:
 - i. Drapes;
 - ii. Sponges; and
 - iii. Surgical instruments necessary to perform a surgical procedure;
3. An oxygen tank that contains oxygen sufficient for each animal to whom general anesthesia is administered;
4. A means of administering anesthesia for each animal that will receive general anesthesia;
5. A fixed or portable surgical light to illuminate the surgical site; and
6. A light for use if the surgical light will not operate.

Historical Note

Adopted effective April 26, 1984 (Supp. 84-2). Former Section R3-11-73 amended and renumbered as Section R3-11-704 effective February 24, 1988 (Supp. 88-1). Former Section R3-11-704 renumbered to R3-11-703, new Section R3-11-704 renumbered from R3-11-705 and amended effective August 31, 1995 (Supp. 95-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3).

R3-11-705. Mobile Clinics

- A. Except for R3-11-701(1), R3-11-701(2), R3-11-701(5), and R3-11-701(6) the application process and standards contained in this Article apply to mobile clinics.
- B. A Responsible Veterinarian shall ensure that a mobile clinic has:
 1. An electrical power source;
 2. Storage space for biohazardous waste pending disposal pick-up; and
 3. Storage space, separate from storage space in subsection (B)(2), for the transportation of a deceased animal.

Historical Note

Section R3-11-74 adopted and renumbered as Section R3-11-705 effective February 24, 1988 (Supp. 88-1).

Former Section R3-11-705 renumbered to R3-11-704, new Section R3-11-705 renumbered from R3-11-706 effective August 31, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-706. Mobile Units

An Responsible Veterinarian shall:

1. Ensure that controlled substances and prescription-only drugs are maintained accessible only to authorized personnel,
2. Meet manufacturer's label requirements for the storage and handling of biologics and veterinary supplies and medications requiring temperature control, and
3. Maintain sterile surgical supplies and equipment.

Historical Note

Section R3-11-75 adopted and renumbered as Section R3-11-706 effective February 24, 1988 (Supp. 88-1).

Former Section R3-11-706 renumbered to R3-11-705, new Section R3-11-706 renumbered from R3-11-707 and amended effective August 31, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-707. Application for a Veterinary Medical Premises License

An applicant for a veterinary medical premises license shall:

1. Submit the following to the Board:
 - a. A notarized application form, signed by the Responsible Veterinarian, that contains the information set forth in A.R.S. § 32-2272; and
 - b. The fee required in R3-11-105, payable by certified check or money order; and
2. Pass an inspection conducted by the Board.

Historical Note

Adopted effective April 26, 1984 (Supp. 84-2). Former Section R3-11-76 renumbered without change as Section R3-11-707 effective February 24, 1988 (Supp. 88-1). Renumbered to R3-11-706 effective August 31, 1995 (Supp. 95-3). New Section adopted effective December 11, 1998 (Supp. 98-4). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

ARTICLE 8. DRUG DISPENSING

R3-11-801. Notification that Prescription-only Drugs or Controlled Substances May Be Available at a Pharmacy

- A. A dispensing veterinarian shall notify an animal owner that some prescription-only drugs and controlled substances may be available at a pharmacy by:
1. Stating the availability at or before the time of dispensing;
 2. Posting a written statement that is visible to the animal owner; or
 3. Providing the animal owner with written notification.
- B. A dispensing veterinarian may provide a written, electronic, or telephonic prescription if requested by an animal owner and the dispensing veterinarian:
1. Has a valid doctor-patient relationship with the animal, and
 2. Determines that providing the prescription is in the best interest of the animal.

Historical Note

Adopted effective August 31, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

Editor's Note: The following Section was adopted under an exemption from A.R.S. Title 41, Chapter 6 which means that the Department did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review; the Department was not required to hold public hearings on these rules; and the Attorney General has not certified these rules.

R3-11-802. Labeling Requirements

A veterinarian shall dispense a prescription-only drug or a controlled substance in a container bearing a legible label that sets forth all of the information required under A.R.S. § 32-2281(A)(1).

Historical Note

Adopted effective August 31, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-803. Packaging Requirements

- A. A veterinarian shall dispense four ounces or less of a prescription-only drug in a childproof container unless the animal owner waives this requirement.
- B. A veterinarian shall dispense a controlled substance in a child-proof container.
- C. A veterinarian may dispense more than four ounces of a bulk prescription-only drug in a non-childproof container.
- D. A veterinarian may dispense a prescription-only drug in the manufacturer's original dispensing package without repackaging the prescription-only drug in a child-proof container.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3).
Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4).

R3-11-805. Storage

- A. A dispensing veterinarian shall store controlled substances under lock and key except for controlled substances that are authorized by a responsible veterinarian to be administered by personnel.
- B. A dispensing veterinarian shall store prescription-only drugs in an area to which members of the public are not allowed access unless accompanied by a veterinarian or a member of the veterinarian's staff.
- C. A dispensing veterinarian shall store prescription-only drugs and prescription-only devices in compliance with state and federal laws and in compliance with the manufacturer's requirements.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3).
Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4).

R3-11-807. Dispensing a Controlled Substance or Prescription-only Drug

- A. When dispensing a controlled substance:
 1. A dispensing veterinarian or personnel who are not veterinarians but who are authorized by a veterinarian may:
 - a. Select the controlled substance,
 - b. Count the quantity of the controlled substance, and
 - c. Place the controlled substance in a prescription container.
 2. Licensed or unlicensed personnel may:
 - a. Prepare labels,
 - b. Prepare drug containers for controlled substances, or
 - c. Record information required by state and federal laws.
 3. A dispensing veterinarian shall review the label of a repackaged controlled substance and the patient's medical record and ensure that the label complies with R3-11-502 and state and federal laws before the controlled substance is dispensed.
- B. When dispensing a prescription-only drug:
 1. A dispensing veterinarian or personnel who are not veterinarians but who are authorized by a veterinarian may:

- a. Repackage prescription-only drugs,
 - b. Prepare labels,
 - c. Prepare containers for prescription-only drugs, or
 - d. Record information required by state or federal laws.
2. The dispensing veterinarian authorizing the dispensing shall ensure that records are maintained according to R3-11-502(K) and R3-11-502(L) and all state and federal laws are followed.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3).

Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 4070, effective December 4, 2006 (Supp. 06-4).

ARTICLE 9. INVESTIGATIONS AND HEARINGS

R3-11-901. Investigations of Alleged Violations

- A. A person may notify the Board of an alleged violation of A.R.S. §§ 32-2201 through 32-2296 and this Chapter. The Board also may initiate a complaint on its own motion.
- B. The Board shall send a written notice to the licensee or certificate holder who is the subject of a complaint. The licensee or certificate holder shall provide a written response and all relevant records or documents concerning the complaint if requested by the Board, no later than 15 days from the date of the notice. If a medical record is relevant to the complaint, the licensee or certificate holder shall ensure that the version of the medical record provided to the Board is typewritten.
- C. The Board may request the licensee or certificate holder to reply to any statements or documents the Board receives concerning a complaint. If the Board requests the licensee or certificate holder to provide the Board with additional information concerning a complaint, the licensee or certificate holder shall respond in writing within 15 days from the date of the request.
- D. The Board may request the complainant and other witnesses or the licensee or certificate holder to appear before the Board to assist in the Board's investigation.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3).

Amended by final rulemaking at 12 A.A.R. 4070, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-902. Informal Interview

- A. The Board shall conduct an informal interview under A.R.S. § 32-2234, 32-2249, 32-2274, or 32-2294 as follows:
 1. The Board shall send a written notice of the informal interview to the licensee or certificate holder by personal service or certified mail, return receipt requested, at least 20 days before the informal interview. The Board shall ensure that the notice contains:
 - a. The time, place, and date of the informal interview;
 - b. An explanation of the informal nature of the interview;
 - c. A statement of the subject matter or issues involved;
 - d. The licensee's or certificate holder's right to appear with or without the assistance of an attorney;
 - e. A notice that if a licensee or certificate holder fails to appear at the informal interview, the informal interview may be held in the licensee's or certificate holder's absence; and
 - f. The licensee's or certificate holder's right to a formal hearing held according to A.R.S. § 32-2234, 32-2249, 32-2274, or 32-2294.
 2. During the informal interview:
 - a. The Board may:
 - i. Swear in the licensee or certificate holder and all witnesses;
 - ii. Question the licensee or certificate holder and all witnesses; and
 - iii. Deliberate.
 - b. The licensee or certificate holder may question witnesses.
 3. At the conclusion of the informal interview the Board may:

- a. Order additional investigation;
 - b. Order another informal interview;
 - c. Dismiss the complaint;
 - d. Impose disciplinary sanctions authorized by A.R.S. § 32-2234, 32-2249, 32-2274, or 32-2294 if a violation is found; or
 - e. Order a formal hearing on the complaint.
- B. The Board shall issue written findings of fact, conclusions of law, and order of the Board no later than 60 days from the date of the conclusion of the informal interview.
- C. A licensee, certificate holder, or the Board may seek a rehearing or review of a Board decision as stated in A.A.C. R3-11-904 or A.R.S. § 41-1092.02.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3).

Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 513, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-903. Formal Hearing

- A. If a formal hearing under A.R.S. § 32-2234, 32-2249, 32-2274, or 32-2294 is to be held before an administrative law judge, the requirements in A.R.S. § 41-1092 through 41-1092.11 apply.
- B. If a formal hearing under A.R.S. § 32-2234, 32-2249, 32-2274, or 32-2294 is to be held directly before the Board, the requirements in A.R.S. § 41-1092 through 41-1092.11 and the following apply:
 1. The Board shall provide a written complaint and notice of formal hearing to a licensee or certificate holder at the licensee's or certificate holder's last known address of record, by personal service or certified mail, return receipt requested at least 30 days before the date set for the formal hearing;
 2. A licensee or certificate holder served with a complaint and notice of hearing shall file an answer by the date specified in the notice of hearing admitting or denying the allegations in the complaint;
 3. A complaint and notice of hearing may be amended at any time. The Board shall send written notice of any changes in the complaint and notice of hearing to the licensee or certificate holder at least 20 days before a formal hearing;
 4. The licensee or certificate holder may appear at the formal hearing with or without the assistance of an attorney. If the licensee or certificate holder fails to appear, the Board may hold the formal hearing in the licensee's or certificate holder's absence;
 5. The Board may conduct a formal hearing without adherence to the rules of procedure or rules of evidence used in civil proceedings. At the formal hearing, the Board shall rule on the procedure to be followed and admissibility of evidence; and
 6. The Board shall send a written decision that includes written findings of fact, conclusions of law, and order to the licensee or certificate holder within 60 days after the formal hearing is concluded. The licensee, certificate holder, or Board may seek rehearing or review of the order according to A.A.C. R3-11-904 or A.R.S. § 41-1092.02.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3).

Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 513, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-904. Rehearing or Review of Decisions

- A. Except as provided in subsection (F), a party who is aggrieved by a decision issued by the Board may file with the Board, not later than 30 days after service of the decision, a written motion for rehearing or review of the decision specifying the grounds for rehearing or review. For purposes of this Section, a decision is considered to have been served when personally delivered to the party's last known address or mailed by certified mail to the party or the party's attorney.
- B. A party filing a motion for rehearing or review under this rule may amend the motion at any time before it is ruled upon by the Board. Other parties may file a response within 15 days after the date the motion for re-

- hearing or review is filed. The Board may require that the parties file supplemental memoranda explaining the issues raised in the motion and may permit oral argument.
- C. The Board may grant a rehearing or review of the decision for any of the following causes materially affecting the party's rights:
1. Irregularity in the proceedings of the Board or an abuse of discretion, which deprived the party of a fair hearing;
 2. Misconduct of the Board or its hearing officer or the prevailing party;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly-discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing; or
 7. That the findings of fact or decision is not supported by the evidence or is contrary to law.
- D. The Board may affirm or modify its decision or grant a rehearing to any party on all or part of the issues for any of the reasons in subsection (C). An order granting a rehearing or review shall specify the grounds for the rehearing or review.
- E. Not later than 30 days after a decision is issued by the Board, the Board may, on its own initiative, grant a rehearing or review of its decision for any of the reasons in subsection (C). An order granting a rehearing shall specify the grounds for the rehearing or review.
- F. If the Board makes specific findings that the immediate effectiveness of a decision is necessary for the immediate preservation of public health and safety and determines that a rehearing or review of the decision is impracticable, unnecessary or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, the aggrieved party shall make an application for judicial review of the decision within the time limits permitted for an application for judicial review of the Board's final decision at A.R.S. § 41-1092.02.
- G. The Board shall rule on the motion for rehearing or review within 15 days after the response has been filed, or at the Board's next meeting after the motion is received, whichever is later. If a motion for rehearing or review is granted, the Board shall hold the rehearing or review within 90 days from the date the Board issues the order for rehearing or review.
- Historical Note**
- New Section adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3).
- Amended by final rulemaking at 11 A.A.R. 5455, effective February 4, 2005 (Supp. 05-4).
- R3-11-905. Depositions, Issuance of Subpoenas, Service**
- A. A party desiring to take the deposition of a witness who is unable to attend a hearing before the Board shall submit a request to take a deposition of an unavailable witness to the Board.
1. If the Board grants the request to take a deposition of an unavailable witness, the party may proceed to take the deposition of the witness by complying with the Arizona Rules of Civil Procedure.
 2. The Board may, in its discretion, designate the time and place before whom the deposition may be taken.
 3. The party requesting the deposition shall bear the expense of the deposition.
- B. A subpoena may be issued as follows:
1. If a hearing is to be conducted by the Board, the Board may issue a subpoena for the attendance of a witness or the production of books, records, documents and other evidence according to A.R.S. § 32-2237(F).
 - a. The Board shall serve a subpoena on each party at least 10 days before the hearing date.
 - b. A party shall submit a written request for a subpoena with the Board. The party shall submit the request in the time necessary to allow compliance with subsection (B)(1)(a).
 - c. The party requesting service of a subpoena shall bear the expense of the service of the subpoena.
 2. If a hearing is to be conducted by an administrative law judge, a subpoena is issued by the Office of Administrative Hearings according to A.R.S. § 41-1092.02.

- C. Service of any decision, order, notice, subpoena, or other process may be made personally in the same manner as provided for service of process in a civil action, or may be mailed by certified mail, postage prepaid, to the last address of record with the Board.
1. Personal service is effective on the date received. Service by certified mail is effective when deposited in the United States mail.
 2. Service upon an attorney for a party constitutes service upon the party.
 3. Proof of service may be made by the affidavit or oral testimony of the process server.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 3918, effective September 20, 2000 (Supp. 00-3).

ARTICLE 10. ANIMAL CREMATORIAL MINIMUM STANDARDS

R3-11-1001. Definitions

In this Article:

“Animal remains” means the body or part of the body of a dead animal in any stage of decomposition.

“Authorizing agent” means an individual legally entitled to authorize the cremation of animal remains.

“Communal cremation” means remains from multiple animals are in the cremation chamber without any form of separation or identification during the cremation process.

“Cremated remains or ashes” means the residual of animal remains recovered after completion of the cremation process.

“Cremation chamber” means the enclosed space within which the cremation process takes place.

“Individual cremation” means the remains of each animal are separated and placed in a mapped location in the cremation chamber during the cremation procedure.

“Major changes in the scope of animal crematory services,” as used in A.R.S. § 32-2292(C), means an increase or decrease in the number of retorts or the addition of services offered or provided by an animal crematory licensed under this Article.

“Operator” means the individual who is responsible for the day-to-day operation of an animal crematory licensed under this Article.

“Owner” means the person named under A.R.S. § 32-2292(B)(2).

“Private cremation” means the remains of only one animal are placed in the cremation chamber.

“Process” means to reduce identifiable bone fragments remaining after cremation to unidentifiable cremated remains.

“Renewal period” means the two years between January 1 of an odd-number year and December 31 of an even-numbered year.

“Responsible Owner” means the person designated by the crematory owner to be responsible to the Board for the operation of the animal crematory.

“Retort” means the machine used to cremate animal remains.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 513, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-1002. Obtaining an Animal Crematory License

- A. A person shall not provide or represent to provide animal cremation services before submitting to the Board an application and the fee required under subsection (B).
- B. To obtain an animal crematory license, the Responsible Owner of an animal crematory shall:
 1. Submit an application, using a form obtained from the Board, which provides, but is not limited to, the following information:

- a. Name of the animal crematory;
 - b. Address of the fixed location of the animal crematory;
 - c. Name of the person owning the animal crematory:
 - i. If the owner is an individual, that individual's name;
 - ii. If the owner is a partnership, the names of all partners; and
 - iii. If the owner is corporation or another business form, the names of all individuals owning at least 10 percent of the business;
 - d. For each individual identified under subsection (B)(1)(c):
 - i. Residential address; and
 - ii. Documentation of citizenship or alien status, specified under A.R.S. § 41-1080(A), indicating the individual's presence in the U.S. is authorized under federal law.
 - e. Names of all operators;
 - f. A description of all services that will be provided or offered by the animal crematory;
 - g. A description of the animal crematory premises;
 - h. A description of any cremation equipment; and
 - k. Name and signature of the Responsible Owner;
2. Submit the fee required under R3-11-1004(1);
 3. Submit evidence that all operators have received training in the safe and proper operation of the crematory from the manufacturer of the retort or other provider;
 4. Submit a copy of every application for or license or permit issued for the animal crematory to operate in this state; and
 5. Schedule an inspection of the animal crematory by a Board designee.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 513, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-1003. Renewing an Animal Crematory License

- A. An animal crematory license expires on December 31 of every even-numbered year.
- B. A Responsible Owner that fails to submit a renewal application and the fee required under R3-11-1004(2) to the Board on or before December 31 of an even-numbered year shall cease providing animal cremation services until a renewal application is submitted.
- C. To renew an animal crematory license, the Responsible Owner shall submit to the Board, between October 1 and December 31 of an even-numbered year:
 1. A renewal application that provides the following information:
 - a. Name of the animal crematory;
 - b. Address of the fixed location of the animal crematory;
 - c. Name of the owner of the animal crematory:
 - i. If the owner is an individual, that individual's name;
 - ii. If the owner is a partnership, the names of all partners; and
 - iii. If the owner is corporation or another business form, the names of all individuals owning at least 10 percent of the business;
 - d. For individuals named under subsection (C)(1)(c), if the documentation previously submitted under R3-11-1002(B)(1)(d)(ii) was a limited form of work authorization issued by the federal government, evidence that the work authorization has not expired;
 - e. Names of all operators; and
 - f. Signature of the Responsible Owner; and
 2. The fee required under R3-11-1004(2)
- D. If a renewal application is not submitted as required under subsection (C) but is submitted before February 1 following expiration on the previous December 31, the Responsible Owner shall include with the renewal application an affirmation that animal cremation services were not provided at the animal crematory after the animal crematory license expired on the previous December 31.

- E. If a renewal application is not submitted under either subsection (C) or (D), the Responsible Owner may have the animal crematory re-licensed within one year following expiration only by:
 - 1. Submitting the renewal application and fee required under subsection (C);
 - 2. Submitting the affirmation required under subsection (D); and
 - 3. Submitting the penalty required under R3-11-1004(3).
- F. If a renewal application is not submitted under subsection (C), (D), or (E), the Responsible Owner may have the animal crematory re-licensed only by complying with R3-11-1002.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 513, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-1004. Fees

Under the authority provided by A.R.S. § 32-2207(9), the Board establishes and shall collect the following fees:

- 1. Animal crematory license: \$400;
- 2. Renewal of an animal crematory license: \$400;
- 3. Penalty for license renewal after January 31 following expiration: \$100; and
- 4. Duplicate license: \$10.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 513, effective April 7, 2007 (Supp. 07-1).

R3-11-1005. Minimum Standards for an Animal Crematory

The owner shall ensure that:

- 1. The animal crematory complies with all federal, state, and local laws;
- 2. The animal crematory is at a fixed location;
- 3. The retort is constructed to withstand temperatures high enough to reduce animal remains to bone fragments yet protect persons and property from damage from excessive heat or harmful emissions;
- 4. The retort is shielded from public view;
- 5. The retort is competently installed. If the retort is installed in Arizona after the effective date of this Article, the retort shall be installed according to the manufacturer's recommendations and in accordance with all state, federal, and local laws and ordinances;
- 6. If the retort is inside a building:
 - a. It is vented to the outside of the building; and
 - b. There is adequate exhaust to prevent heat buildup;
- 7. The cremation chamber receives fresh air to aid in combustion;
- 8. The animal crematory has a storage facility that:
 - a. Chills animal remains to at least 40 °F;
 - b. Is secure from access by unauthorized individuals; and
 - c. Preserves the dignity of the animal remains;
- 9. The animal crematory has the equipment and supplies necessary to conduct cremations in a manner that protects the health and safety of crematory employees and the public; and
- 10. All city, county, and other building codes, restrictions, and guidelines applicable to the animal crematory are followed.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 513, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-1006. Minimum Operating Standards for an Animal Crematory

The owner shall ensure that:

- 1. The animal crematory accepts delivery of animal remains only from:
 - a. The owner of the animal remains;
 - b. An animal shelter or humane society;
 - c. A veterinarian licensed under this Chapter;

- d. An individual or entity with whom the animal crematory has a written contract regarding collection, pick-up, or delivery services;
 - e. An authorized agent of a person described under subsections (1)(a) through (1)(d); or
 - f. A state, county, city, or other corporation authorized to remove dead animals.
2. Animal remains that cannot be cremated immediately upon receipt are placed in the storage facility described in R3-11-1005(8) but for no more than 30 days;
 3. If animal remains are submitted for individual cremation:
 - a. The animal remains are cremated separate from other animal remains;
 - b. The cremated remains are not commingled with other cremated remains;
 - c. The cremated remains are removed from the cremation chamber to the extent feasible and placed in an appropriately sized and securely closed container;
 - d. A label containing the following information is permanently affixed to the container in which the cremated remains are placed:
 - i. Name of the crematory,
 - ii. Name of the animal cremated, and
 - iii. Date of cremation; and
 - e. The cremated remains are disposed according to instructions from the authorizing person or agent;
 4. All animal remains submitted for cremation are cremated;
 5. Animal remains that are communally cremated are disposed of in a legal manner;
 6. The cremation chamber is:
 - a. Operated in a safe and sanitary manner and maintained so the cremation chamber functions in an effective and efficient manner; or
 - b. Operated and maintained according to the manufacturer's recommendations if the retort is installed in Arizona after the effective date of this Article;
 7. Employees of the animal crematory who handle animal remains use universal precautions and exercise reasonable care to minimize the risk of injury or transmitting communicable disease; and
 8. Instructions for operation of the cremation chamber, including emergency shut-down procedures, are located at the animal crematory and easily accessible.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 513, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-1007. Written Procedures Required

- A. The Responsible Owner shall ensure that the animal crematory has written procedures regarding the manner in which:
 1. Animal remains are identified from the time the animal crematory accepts delivery of the animal remains until the cremated remains are released according to instructions from the authorizing person or agent;
 2. Authorization to cremate is obtained and documented;
 3. The cremation chamber is loaded and unloaded;
 4. Cremated remains are processed;
 5. Cremated remains, including unclaimed cremated remains, are returned to the authorized agency or disposed of; and
 6. Records are to be completed and maintained for three years from the date of service.
- B. The Responsible Owner shall ensure that all employees involved in providing animal cremation services are familiar with and follow the required procedures.
- C. The Responsible Owner shall make these written procedures available for inspection by the Board upon request.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 513, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-1008. Recordkeeping Requirements

- A. The Responsible Owner shall ensure that records containing the following information are maintained for three years:
 - 1. For the cremation of individual animal remains:
 - a. Last name of the owner of the animal;
 - b. Name of the animal;
 - c. Description of the animal, including its weight;
 - d. Name of the individual, facility, or organization from which the animal was received;
 - e. Authorization to cremate;
 - f. Date of cremation and in which retort the cremation occurred; and
 - g. Date and manner of disposition of cremated remains;
 - 2. For a communal cremation of animal remains:
 - a. Name of the individual, facility, or organization from which the animal remains were received;
 - b. Number of animals and estimated total weight;
 - c. Last name of animals' owners, if known;
 - d. Names of animals, if known;
 - e. Authorization to cremate;
 - f. Date of cremation and in which retort the cremation occurred; and
 - g. Date and manner of disposition of cremated remains.
- B. If an animal crematory uses a service to collect, pick up, or deliver animal remains for cremation, the Responsible Owner shall enter into a written contract with the service that requires the service to inform the authorizing person or agent, in writing, of the name of the animal crematory that will do the cremation. The Responsible Owner shall maintain a copy of any contract for two years after expiration of the contract term.
- C. The Responsible Owner shall maintain for three years records of all maintenance performed on the retort.
- D. The Responsible Owner shall make the records required under this Section available for inspection by the Board upon request.
- E. Under A.R.S. § 32-2294(A)(3), the Responsible Owner shall make records required under subsection (A) available on request to the authorizing person or agent.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 513, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-1009. Change in a Responsible Owner

Under A.R.S. § 32-2292(D), a change of Responsible Owner, cancels a license and the Responsible Owner shall:

- 1. Submit the cancelled license to the Board within 20 days after the change in Responsible Owner; and
- 2. Ensure that animal cremation services are not provided until an application and fee are submitted under R3-11-1002.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 513, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

R3-11-1010. Change in Operator

Within 30 days after a change in operator, the Responsible Owner shall provide a written notice to the Board that includes:

- 1. Name of the licensed animal crematory;
- 2. Animal crematory license number;
- 3. Name of the former operator;
- 4. Name of the new operator;
- 5. Date on which the new operator assumed responsibility for the animal crematory; and
- 6. An affirmation, signed by the Responsible Owner, that the new operator received training in the safe and proper operation of the cremation chamber and the written procedures required under R3-11-1007.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 513, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 1886, effective October 7, 2013 (Supp. 13-3).

As of September 1, 2019

32-2201. Definitions

In this chapter, unless the context otherwise requires:

1. "Animal" means any animal other than human.
2. "Board" means the Arizona state veterinary medical examining board.
3. "Certified veterinary technician" means either:
 - (a) A graduate of a minimum two-year American veterinary medical association accredited program in veterinary technology who has passed a national and a state veterinary technician examination.
 - (b) A person who is certified on or before December 31, 2010 pursuant to the rules adopted by the board.
4. "Consulting" means providing professional or expert advice that is requested by a veterinarian licensed in this state and that is rendered only on a specific case basis.
5. "Controlled substance" means any substance that is registered and controlled under the federal controlled substances act (P.L. 91-513).
6. "Cremation" means the heating process that reduces animal remains to bone fragments by combustion and evaporation.
7. "Crematory" means a building or portion of a building that is licensed pursuant to article 8 of this chapter and that houses a retort in which only animal remains are cremated.
8. "Direct supervision" means that a licensed veterinarian is physically present at the location where animal health care is being performed.
9. "Gross incompetence" means any professional misconduct or unreasonable lack of professional skill in the performance of professional practice.
10. "Gross negligence" means treatment of a patient or practice of veterinary medicine resulting in injury, unnecessary suffering or death that was caused by carelessness, negligence or the disregard of established principles or practices.
11. "Indirect supervision" means that a licensed veterinarian is not physically present at the location where animal health care is being performed but has given either written or oral instructions for treatment of the animal patient.
12. "Letter of concern" means an advisory letter to notify a veterinarian that, while there is insufficient evidence to support disciplinary action, the board believes the veterinarian should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in action against the veterinarian's license.

13. "Licensed veterinarian" means a person who is currently licensed to practice veterinary medicine in this state.
14. "Licensed veterinary faculty member" means a person who is currently licensed to practice veterinary medicine as an employee of a veterinary college in this state.
15. "Malpractice" means treatment in a manner contrary to accepted practices and with injurious results.
16. "Medical incompetence" means lacking sufficient medical knowledge or skills, or both, to a degree likely to endanger the health of patients or lacking equipment, supplies or medication to properly perform a procedure.
17. "Negligence" means the failure of a licensed veterinarian to exercise reasonable care in the practice of veterinary medicine.
18. "Regularly" means that veterinary services are offered to the public once a month or more frequently.
19. "Responsible veterinarian" means the veterinarian who is responsible to the board for compliance by licensed veterinary premises with the laws and rules of this state and of the federal government pertaining to the practice of veterinary medicine and responsible for the establishment of policy at such premises.
20. "Specialist" means a veterinarian who is certified as a diplomate in a particular discipline by a national specialty board or college recognized by the American veterinary medical association after the completion of additional education and training, an internship or residency, passing required examinations and meeting any other criteria required by the various individual national specialty boards or colleges.
21. "Supervising veterinarian" means a licensed veterinarian who is responsible for the care rendered to an animal by a certified veterinary technician or a veterinary assistant.
22. "Temporary sites" means sites where outpatient veterinary services are performed.
23. "Twenty-four hour services" means veterinary services when a veterinarian is on the premises twenty-four hours a day.
24. "Veterinarian" means a person who has received a doctor's degree in veterinary medicine from a veterinary college.
25. "Veterinarian client patient relationship" means all of the following:
 - (a) The veterinarian has assumed the responsibility for making medical judgments regarding the animal's health and need for medical treatment and the client, owner or caretaker has agreed to follow the veterinarian's instructions.
 - (b) The veterinarian has sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the animal's medical condition. Sufficient knowledge is obtained when the veterinarian has recently seen and is personally acquainted with the keeping and caring of the animal as a result of examining the animal, when the veterinarian makes medically appropriate and timely visits to the premises where the animal is kept or when a veterinarian affiliated with the practice has reviewed the medical record of such examinations or visits.

(c) The veterinarian is readily available for a follow-up evaluation or the veterinarian has arranged for either of the following:

(i) Emergency coverage.

(ii) Continuing care and treatment by another veterinarian who has access to the animal's medical records.

26. "Veterinary assistant" means an individual who provides care under the direct or indirect supervision of a veterinarian or certified veterinary technician.

27. "Veterinary college" means any veterinary college or division of a university or college that offers the degree of doctor of veterinary medicine or its equivalent and that conforms to the standards required for accreditation by the American veterinary medical association.

28. "Veterinary faculty member" means a person who has received a doctor's degree in veterinary medicine from a veterinary college and who is an employee of a veterinary college in this state.

29. "Veterinary medicine" includes veterinary surgery, obstetrics, dentistry, acupuncture, manipulation and all other branches or specialties of veterinary medicine and the prescribing, administering or dispensing of drugs and medications for veterinary purposes.

30. "Veterinary student" means a student who is regularly enrolled in a veterinary college.

32-2202. Board; appointment; term; qualifications; officers; compensation

A. There shall be an Arizona state veterinary medical examining board consisting of nine members appointed by the governor pursuant to section 38-211.

B. Each member shall serve for a term of four years. A member shall not serve more than two full terms. After notice and a hearing before the governor, a member of the board may be removed on a finding by the governor of continued neglect of duty, incompetence or unprofessional or dishonorable conduct. The term of any member automatically ends on written resignation submitted to the board or to the governor.

C. Five members shall be licensed veterinarians who have an established practice location in this state or are employed by a university or a political subdivision of the state and who have resided and practiced in the state for at least five years immediately preceding appointment, no more than three of whom shall be from the same veterinary college. Three members shall not be veterinarians, two representing the general public and one representing the livestock industry. One member shall be a certified veterinary technician who has held the designation for at least five years, is currently employed in the veterinary field in this state and has practiced and resided in this state for at least five years immediately preceding appointment. Except as provided in subsection F of this section, a person who has been convicted of a violation of any provision of this chapter is ineligible for appointment.

D. The board shall elect a chairman and such other officers as it deems necessary. The term of each officer shall be one year ending June 30, or until the officer's successor is elected and qualifies.

E. Each member of the board shall receive compensation at a rate not exceeding one hundred dollars for each day engaged in the service of the board.

F. The governor may appoint a person to the board who has previously been sanctioned pursuant to section 32-2233, subsection B.

32-2203. Reports

The chairman of the board shall make an annual report to the governor on or before October 1 of each year. The report shall include a summary of licenses or certificates denied, suspended or revoked and licensees censured and placed on probation and a financial statement for the preceding fiscal year. Any member of the board may submit a separate report to the governor on or before October 1 of each year that includes the member's comments on the board's licensing and disciplinary activities for the preceding fiscal year.

32-2204. Meetings; quorum

A. The board shall hold one annual meeting and other meetings as necessary. Special meetings may be called by the chairman of the board. The time and place of the annual meeting and the method of giving notice of special meetings shall be fixed by the rules adopted by the board.

B. At each board meeting the board shall make a call to the public informing attendees that any member of the public may address the board regarding any matter that appears on the board's agenda.

C. The board shall tape record all discussions of complaints that are not conducted in executive session. The board shall retain the tapes for at least two years.

D. A majority of the board members shall constitute a quorum.

32-2205. Veterinary medical examining board fund

A. The veterinary medical examining board fund is established. Pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all fees and other revenue accruing to the board in the state general fund and deposit the remaining ninety per cent in the veterinary medical examining board fund.

B. All monies deposited in the veterinary medical examining board fund are subject to section 35-143.01.

32-2206. Board personnel

Subject to title 41, chapter 4, article 4, the board may employ personnel as it deems necessary to provide investigative, professional and clerical assistance as required to perform its duties under this article. Personnel are eligible to receive compensation in an amount as determined pursuant to section 38-611. The board may contract with other state or federal agencies as required to carry out this article.

32-2207. Veterinary board; powers and duties

The primary duty of the board is to protect the public from unlawful, incompetent, unqualified, impaired or unprofessional practitioners of veterinary medicine through licensure and regulation of the profession in this state. The powers and duties of the board include:

1. Administering and enforcing this chapter and board rules.
2. Regulating disciplinary actions, the granting, denial, revocation, renewal and suspension of licenses and certificates and the rehabilitation of licensees and certificate holders pursuant to this chapter and board rules.
3. Prescribing the forms, content and manner of application for licensure and certification and renewal of licensure and certification and setting deadlines for the receipt of materials required by the board.
4. Keeping a record of all licensees and certificate holders, board actions taken concerning all applicants, licensees and certificate holders and the receipt and disbursal of monies.
5. Adopting an official seal for attestation of licenses, certificates and other official papers and documents.
6. Investigating charges of violations of this chapter and board rules and orders.
7. Subject to title 41, chapter 4, article 4, employing an executive director who serves at the pleasure of the board.
8. Adopting rules pursuant to title 41, chapter 6 that relate to the qualifications and regulation of doctors of veterinary medicine, certified veterinary technicians, veterinary premises, mobile veterinary clinics and crematories and other rules that the board deems necessary for the administration of this chapter. The rules may include continuing education requirements for licensees and certificate holders and shall include:
 - (a) Minimum standards of veterinary practice.
 - (b) Provisions to ensure that the public has reasonable access to nonconfidential information about the licensing or certification status of persons regulated under this chapter and about resolved complaints against licensees and certificate holders.
 - (c) Provisions to ensure that members of the public have an opportunity to evaluate the services that the board provides to the public.
 - (d) A provision that licensed veterinary faculty members are not subject to continuing education requirements.
9. Establishing by rule fees and penalties as provided in this chapter, including fees for the following:
 - (a) Reproduction of documents.
 - (b) Verification of information about a licensed veterinarian at the request of a veterinary licensing board in another jurisdiction.
 - (c) Return of checks due to insufficient funds, an order to stop payment or a closed account.
 - (d) Provision of a list of the names of veterinarians, certified veterinary technicians or veterinary premises licensed or certified by the board.

10. Adopting rules that require the board to inform members of the public about the existence of the office of the ombudsman-citizens aide established by section 41-1375.

32-2208. Immunity from personal liability

Members, agents and employees of the board and members of board committees are immune from personal liability with respect to acts done and actions taken in good faith within the scope of their authority.

32-2209. Substance abuse treatment and rehabilitation plan; private contract; funding

A. The board may establish a plan for the treatment and rehabilitation of licensees or certificate holders who are impaired by alcohol or drug abuse. The plan shall include education, intervention, therapeutic treatment and posttreatment monitoring and support.

B. The board may contract with other organizations to implement the plan established pursuant to subsection A of this section. A contract with a private organization shall require that the private organization do all of the following:

1. Make periodic reports to the board regarding treatment program activity.

2. Pursuant to a written request by the board or its executive director with direction from the chairman, release all treatment records.

3. Make quarterly reports to the board by case number regarding each participant's diagnosis and prognosis and recommendations for each participant's continuing care, treatment and supervision.

4. Immediately report to the board the name of an impaired licensee or certificate holder whom the organization believes to be a danger to the licensee or certificate holder or to others.

5. Immediately report to the board 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 up to five per cent from each fee collected from renewal of licenses pursuant to section 32-2219 for implementation of the plan established by this section.

D. A licensee or certificate holder who is impaired by alcohol or drug abuse may enter into a stipulation order with the board, or the licensee or certificate holder may be placed on probation or be subject to other action as provided by law. A licensee or certificate holder who is impaired by alcohol or drug abuse and who self-refers before any board investigation or disciplinary action may enter into a nondisciplinary and confidential contract with the plan administrator for participation in the plan.

E. Participants in the plan are either confidential or known. Confidential participants are self-referred and may remain unidentified to the board, subject to maintaining compliance with their nondisciplinary and confidential contract with the plan administrator. Known participants are under a board order of discipline to complete a minimum tenure in the plan. After a known participant completes the minimum tenure, the board may terminate the board order and reinstate the participant's license to practice veterinary medicine or certification as a veterinary technician.

32-2211. Exceptions from application of chapter

This chapter shall not apply to:

1. A commissioned veterinary medical officer of the United States armed services, or employees of the animal disease eradication division of the United States department of agriculture.
2. A person treating an animal belonging to himself or his employer while in the regular service of such employer, or the animal of another without compensation therefor. Animals consigned by their legal owner for feeding or care to consignment livestock operations shall be considered to be the property of the consignee.
3. A licensed veterinarian of another state or foreign country consulting with a licensed veterinarian in this state.
4. A veterinary student who performs acts of health care or prescribed veterinary procedures as a part of the student's educational experience if both of the following apply:
 - (a) The acts are assigned by a licensed veterinarian or a licensed veterinary faculty member who is responsible for the animal's care.
 - (b) The student works under the direct supervision of a licensed veterinarian or a licensed veterinary faculty member.
5. A veterinary assistant employed by a licensed veterinarian performing duties other than diagnosis, prognosis, prescription or surgery under the direct supervision or indirect supervision of such veterinarian who shall be responsible for such assistant's performance.

32-2212. Issuance of license; previous licenses qualified; use of designations

- A. If an applicant for a veterinary license satisfactorily passes the examination given by the board, demonstrates a scientific and practical knowledge of the art and science of veterinary medicine and complies with this chapter, the board shall issue a license to the applicant to practice veterinary medicine in this state.
- B. If an applicant for a veterinary faculty member license complies with this chapter and is approved by the board, the board shall issue a veterinary faculty member license to the applicant to practice veterinary medicine as a faculty member of the veterinary college where the applicant is employed. A licensed veterinary faculty member may practice veterinary medicine only under the licensee's official academic responsibilities.
- C. The board shall deny licensure to an applicant who has satisfied all licensing requirements but who has not submitted the license issuance fee within twelve months after the date of the examination or, for a veterinary faculty member license applicant, within twelve months after the date of application. An applicant who fails to submit the fee within that time forfeits qualification for licensure, and the applicant shall reapply for licensure pursuant to sections 32-2213 and 32-2214.
- D. All persons presently licensed to practice veterinary medicine in the state of Arizona who have complied with the provisions of law existing prior to June 12, 1967 shall be considered as licensed

veterinarians under this chapter, and the names of such licensees shall be entered on the official register kept by the board.

E. No person shall append any letters to such person's name indicating a degree in veterinary medicine, such as D.V.M. or V.M.D., or use the word doctor, veterinary, veterinarian, professor, animal doctor or animal surgeon, or any abbreviation or combination thereof of similar import in connection with such person's name, or any trade name in the conduct of any occupation or profession pertaining to the diagnosis or treatment of animal diseases or conditions mentioned in this chapter, unless such person is licensed to practice veterinary medicine under this chapter.

32-2213. Application for license; retention of examination materials

A. A person desiring to practice veterinary medicine or surgery, including as a faculty member at a veterinary college, shall apply in writing to the board for a license to practice. The application shall be on a form provided by the board and shall require the following information:

1. The name, age and address of the applicant.
2. The names of schools of veterinary medicine that the applicant attended, the dates of attendance and the date of transfer.
3. The degrees held from schools of veterinary medicine.
4. The location and length of time in active practice in other states or territories of the United States, if any, and whether or not the applicant is in good standing in each location of practice.
5. An affidavit that the facts recited in the application are accurate, true, and complete.
6. An affidavit that no complaint has been filed and is pending, no investigation is pending and no disciplinary action has been taken or is pending on any veterinary license the applicant holds from another state.
7. For a veterinary faculty member license application, documentation from an authorized official of a veterinary college in this state that shows that the applicant has been appointed to the faculty of that veterinary college.
8. Any other information that is required by rules adopted by the board.

B. All examination papers, tapes, questions and answers shall be maintained in accordance with a retention schedule approved by the Arizona state library, archives and public records.

32-2214. Examination of applicants; confidentiality

A. All applicants for a veterinary license, not including a veterinary faculty member license, shall take an examination that consists of the following:

1. A state examination approved by the board.
2. The North American veterinary licensing examination.

- B. The state examination shall be both:
1. Held in January and June of each year unless otherwise provided by the board.
 2. Conducted so that the members of the board do not know the name of the applicant until the judging or grading is officially completed.
- C. A grade of at least seventy-five percent is required to successfully pass the North American veterinary licensing examination. A grade of at least seventy-five percent is required to successfully pass the state examination. The scores of the North American veterinary licensing examination and the state examination shall not be averaged. National board scores that are received from either the national examination committee or the North American veterinary licensing examination committee from another state may be accepted for part of an applicant's passing score.
- D. An applicant's score that was received within the preceding five years and that is on record at the national examination service or the North American veterinary licensing examination committee shall be verified through either the national examination service or the North American veterinary licensing examination committee, unless the applicant is applying for a license by endorsement or a specialty license under section 32-2215, subsection C or D, in which case the applicant's score shall be transcribed and received by the board.
- E. All examination materials, records of examination grading and performance and transcripts of educational institutions concerning applicants or licensees are confidential and not public records.
- 32-2215. Qualifications for license to practice veterinary medicine**
- A. An applicant for a license issued under this chapter shall:
1. Be of good moral character.
 2. Be a graduate of a veterinary college that is accredited by the American veterinary medical association or hold a certificate issued by the educational commission for foreign veterinary graduates, the program for the assessment of veterinary education equivalence or a foreign graduate testing program approved by the board. This paragraph does not apply to an applicant for a veterinary faculty member license who has graduated from a veterinary college.
 3. Satisfactorily pass both a state examination approved by the board as provided in this chapter and the North American veterinary licensing examination. This paragraph does not apply to an applicant for a veterinary faculty member license.
- B. An applicant may be denied licensure either before or after an examination if the applicant has committed any act that if committed by a licensee would be grounds for suspension or revocation of a license to practice veterinary medicine under this chapter.
- C. The board may waive the examination requirement pursuant to section 32-2214, subsection A, paragraph 2 and, except as provided in subsection E of this section, may issue a license by endorsement to an applicant to practice veterinary medicine if the applicant provides all required documentation pursuant to section 32-2213 and meets the following requirements:

1. Holds an active license in one or more other states or in Canada and submits verification that the applicant has previously taken and passed the examination required by section 32-2214, with a score at least equal to the score required to pass in this state. An applicant who received original licensure before the examination required by section 32-2214 was required in the state in which the applicant was originally licensed may be eligible for licensure without having taken that examination as required pursuant to this chapter if all other requirements are met.
2. Lawfully and actively engages in the practice of veterinary medicine for at least three of the preceding five years or six of the preceding ten years in one or more states in this country or in Canada before filing an application for licensure in this state.
3. Has graduated from a veterinary college recognized by the board.
4. Successfully passes a state examination approved by the board with a grade of at least seventy-five percent.
5. Pays a fee for the license of seven hundred fifty dollars.

D. The board may waive the examination requirement pursuant to section 32-2214, subsection A, paragraph 2 and, except as provided in subsection E of this section, may issue a specialty license to an applicant to practice veterinary medicine if the applicant provides all required documentation pursuant to section 32-2213 and meets the following requirements:

1. Holds a current certification as a specialist of a national specialty board or college recognized by the American veterinary medical association.
2. Limits the applicant's practice to the scope of the applicant's board certification.
3. Successfully passes a state examination approved by the board with a score of at least seventy-five percent.
4. Pays a fee for the specialty license of seven hundred fifty dollars.

E. The board shall determine whether previous disciplinary action prevents licensure by endorsement or specialty licensure of an applicant to practice veterinary medicine, and the board may discipline the licensee at the time of licensure as a result of the previous disciplinary action.

F. Any veterinary faculty member who is employed by a veterinary college that is accredited by the American veterinary medical association, if applicable, is subject to the requirements under the veterinary faculty member license.

32-2216. Issuance of temporary permits; emergency temporary permits; definition

A. The board may issue temporary permits to veterinary license applicants and to veterinarians who are licensed in other states and who enter this state to provide voluntary services during a state of emergency as declared by the governor or the board of supervisors of the county in which the board of supervisors has declared a local emergency pursuant to section 26-311. Except for applicants who are veterinary faculty members who have graduated from a veterinary college, applicants for all temporary permits must be graduates of an American veterinary medical association accredited veterinary college or holders of a

certificate from the educational commission for foreign veterinary graduates or from a program for the assessment of veterinary education at the time of application.

B. The temporary permit issued under this section entitles a veterinary license applicant to engage in the active practice of veterinary medicine in this state as an employee of a licensed veterinarian, this state or any county or municipality in this state. The applicant is eligible for the next examination, if the applicant has not violated any provision of this chapter. An applicant working under the direct and personal instruction, control or supervision of a licensed veterinarian and whose compensation is paid by the veterinarian may perform those acts of animal health care assigned by the veterinarian having responsibility for the care of the animal. The temporary permit described in this subsection expires twenty days after the examination. If the applicant fails for good and sufficient reason to take the examination, the board, by majority consent, may extend the permit until the next succeeding examination. Except as otherwise provided in this section, the holder of a temporary permit must be examined and satisfactorily pass the license examination next following the issuance of the permit and duly receive a license in order to continue active professional practice. The temporary permit may be extended only one time. For the purposes of this subsection, "direct and personal instruction, control or supervision" means that a veterinarian who is licensed by the board is physically present and personally supervising a temporary permittee when the permittee is practicing acts of veterinary medicine except if the permittee is at a temporary site for the purpose of delivering services to large animals or if the permittee is administering emergency services not during regular office hours. In these cases, phone contact constitutes direct and personal instruction, control or supervision.

C. If an employer, for any reason, terminates the employment of the applicant, the employing veterinarian shall notify the board and the temporary permit described in subsection B of this section is immediately void.

D. An emergency temporary permit that is issued to an individual who is a veterinarian licensed in good standing in another state entitles the individual to provide voluntary veterinary care during a state of emergency or local emergency for the sole purpose of assisting in care related to that emergency. The emergency temporary permit expires ninety days after the date of issuance or at the end of the state of emergency or local emergency, whichever occurs first. An applicant for an emergency temporary permit shall submit a complete application, including information regarding veterinary licensure in any other state and verification that the statutes and rules pertaining to the board have been reviewed. The board shall verify whether the veterinarian is licensed in the state or states indicated and confirm the applicant's good standing. The applicant is not required to pass the state veterinary examination. A veterinarian who is issued an emergency temporary permit under this section shall practice in accordance with all laws and rules related to the practice of veterinary medicine in this state. The board may investigate any alleged violation by a holder of an emergency temporary permit and take disciplinary action as prescribed in this chapter. A veterinarian granted an emergency temporary permit under this section is a licensed, certified or authorized emergency responder pursuant to section 49-133 and an emergency worker as defined in section 26-301.

E. For the purposes of this section, "emergency temporary permit" means a temporary permit that is issued to a veterinarian who is licensed in another state and who enters this state to provide voluntary services during a state of emergency as declared by the governor or a local emergency declared by a county board of supervisors pursuant to section 26-311.

32-2217. Employees of the state or political subdivisions; license

The board shall issue a license to any person who is not licensed by examination to practice veterinary medicine in the state and who is employed as a veterinarian by the state or any political subdivision thereof. An applicant for a license under the terms of this section shall make written application therefor to the board as required by section 32-2213 and shall meet the qualifications prescribed by section 32-2215 with the exception of subsection A, paragraph 3. The holder of a license issued under the terms of this section shall engage only in such actions of the practice of veterinary medicine as shall be authorized by the board, and in no event shall acts of practice be performed for any person or firm other than the state or the political subdivision employing the licensee. The licensee shall be subject to the rules of the board and the provisions of this chapter relating to unprofessional or dishonorable conduct. A license expires on December 31 of every even numbered year unless suspended or revoked. A license is renewable for two years on payment of the renewal fee. The fee for issuance of the license shall be five dollars in even numbered years and ten dollars in odd numbered years, and the biennial renewal fee shall be ten dollars. The license shall be revoked upon termination of employment of the licensee.

32-2217.01. Issuance of permit to nonresident

- A. The board may issue to a person residing within twenty-five miles of Arizona in the state of California, Colorado, Nevada, New Mexico or Utah, who is licensed to practice veterinary medicine in the state of residence and whose practice extends into this state, a permit in the form prescribed by the board authorizing such extended practice in this state.
- B. Application for a permit shall be made upon a form provided by the board. The application shall contain an irrevocable consent that actions arising out of or involving the permittee's practice of veterinary medicine in this state may be commenced within this state by service of pleadings or process upon the board, which shall forward to the permittee by certified mail a duplicate copy of the pleading or process.
- C. The permittee shall be subject to the rules of the board and the provisions of this chapter relating to the practice of veterinary medicine and relating to unprofessional or dishonorable conduct.
- D. A permit issued under the provisions of this section expires on December 31 of every even numbered year unless suspended or revoked. The fee for issuance of the permit is fifty dollars in even numbered years and one hundred dollars in odd numbered years. The biennial renewal fee is one hundred dollars.

32-2218. License renewal and reinstatement

- A. Except as provided in subsection D of this section or section 32-4301, a license issued under this chapter remains in effect until December 31 of every even-numbered year unless it is suspended or revoked. Except as provided in section 32-4301, on submittal of an application for renewal and payment of a renewal fee, a license is renewed for two years.
- B. Failure to pay the license fee before February 1 following expiration of the license shall be a forfeiture of the license, and the license shall not be restored except upon written application to the board and payment of a penalty fee of fifty dollars in addition to all regular license fees and past due fees owed to the board. A person applying for reinstatement of a license within thirty-six months of expiration shall not be required to submit to an examination because of failure to pay the license fee, but it is unlawful for a person to practice veterinary medicine or any branch of veterinary medicine during the period in which the person's license has been forfeited by reason of nonpayment of the license fee. If an applicant for reinstatement of a license has not completed the continuing education requirements, a license may be reinstated if the continuing education requirements are completed within six months of reinstatement. A

person who does not apply for reinstatement within thirty-six months after expiration of the license must meet the requirements set forth in sections 32-2213, 32-2214 and 32-2215.

C. An application for renewal shall include a signed statement that no complaint has been filed and is pending, no investigation is pending and no disciplinary action has been taken or is pending on any veterinary license the veterinarian holds from another state.

D. A veterinary faculty member license issued under this chapter remains in effect until December 31 of every even-numbered year unless it is suspended or revoked or unless the licensee is no longer employed by the veterinary college. If the licensee is no longer employed by the veterinary college, the license expires on the date of the separation of employment.

32-2219. Fees; veterinary licenses; veterinary faculty member licenses

A. Every original application for a veterinary license or a veterinary faculty member license shall be accompanied by an examination fee of not more than four hundred dollars.

B. For every issuance of a veterinary license or a veterinary faculty member license there shall be collected a fee of not more than one hundred dollars in even-numbered years and two hundred dollars in odd-numbered years.

C. For every renewal of a veterinary license or a veterinary faculty member license there shall be collected a fee of not more than four hundred dollars.

D. Every request for a temporary permit shall be accompanied by a fee of seventy-five dollars.

E. For every issuance of a duplicate license, there shall be collected a fee of not more than twenty-five dollars.

F. No fee shall be returned to an applicant.

32-2231. Acts constituting the practice of veterinary medicine; exceptions; definitions

A. A person shall be regarded as practicing veterinary medicine, surgery and dentistry within the meaning of this chapter who, within this state:

1. By advertisement, or by any notice, sign or other indication, or by a statement written, printed or oral, in public or in private, made, done or procured by himself or any other at his request claims, announces, makes known or pretends ability or willingness to diagnose any animal condition, disease, deformity, defect, wound or injury or to perform any type of surgical procedure on animals.

2. Advertises or makes known or claims ability and willingness to perform the following for hire, fee, compensation or reward that is directly or indirectly promised, offered, expected, received or accepted:

(a) Prescribe or administer any drug, medicine, treatment, method or practice for any animal.

(b) Perform any operation or manipulation on or apply any apparatus or appliance to any animal.

- (c) Give any instruction or demonstration for the cure, amelioration, correction or reduction or modification of any animal condition, disease, deformity, defect, wound or injury.
3. Diagnoses or prognosticates any animal condition, disease, deformity, defect, wound or injury for hire, fee, reward or compensation that is directly or indirectly promised, offered, expected, received or accepted.
4. Prescribes or administers any drug, medicine, treatment, method or practice, performs any operation or manipulation, or applies any apparatus or appliance for the cure, amelioration, correction or modification of any animal condition, disease, deformity, defect, wound or injury for hire, fee, compensation or reward that is directly or indirectly promised, offered, expected, received or accepted.
- B. This section does not apply to:
1. Duly authorized representatives of the United States department of agriculture in the discharge of any duty authorized by the director in charge of the animal disease eradication division.
 2. A certified veterinary technician performing a task or function authorized by the rules of the board in the employ of and under the direction, supervision and control of a licensed veterinarian or a licensed veterinary faculty member.
 3. An equine dental practitioner if all of the following apply:
 - (a) The equine dental practitioner is certified by the international association of equine dentistry or the academy of equine dentistry.
 - (b) The equine dental practitioner performs any of the following procedures under the general supervision of a licensed veterinarian:
 - (i) The application of any apparatus used to work on the oral cavity.
 - (ii) The examination of dental conditions.
 - (iii) The removal of overgrowth from the teeth of horses and the removal of sharp enamel points from the teeth of horses, excluding any extractions unless the certified equine dental practitioner is under the direct supervision of a licensed veterinarian.
 - (iv) Any treatment of the oral cavity as authorized by the animal's owner, excluding any extractions unless the certified equine dental practitioner is under the direct supervision of a licensed veterinarian.
 - (c) The equine dental practitioner provides both of the following to the board:
 - (i) Proof of current certification from the international association of equine dentistry or the academy of equine dentistry.
 - (ii) A written statement signed by the supervising veterinarian that the certified equine dental practitioner will be under the general or direct supervision of the licensed veterinarian when performing the procedures prescribed by this paragraph.

(d) Both the supervising veterinarian and the certified equine dental practitioner maintain dental charts for procedures done pursuant to this paragraph.

4. A veterinary student who performs acts of health care or prescribed veterinary procedures as a part of the student's educational experience if both of the following apply:

(a) The acts are assigned by a licensed veterinarian or a licensed veterinary faculty member who is responsible for the animal's care.

(b) The student works under the direct supervision of a licensed veterinarian or a licensed veterinary faculty member.

C. Notwithstanding subsection B, paragraph 3 of this section, only a licensed veterinarian and not an equine dental practitioner may prescribe or administer, or both prescribe and administer, any drug or medicine.

D. For the purposes of this section:

1. "Direct supervision" means a licensed veterinarian must authorize and be physically present for the procedure.

2. "General supervision" means a licensed veterinarian must be available for consultation by telephone or other form of immediate communication.

32-2232. Unprofessional or dishonorable conduct

As used in this chapter, unprofessional or dishonorable conduct includes:

1. The fraudulent use of any certificate or other official form used in practice that would increase the hazard of dissemination of disease, the transportation of diseased animals or the sale of inedible food products of animal origin for human consumption.

2. Inadequate methods in violation of meat inspection procedures prescribed by the federal government and Arizona meat inspection laws or wilful neglect or misrepresentation in the inspection of meat.

3. Misrepresentation of services rendered.

4. Failure to report, or the negligent handling of, the serious epidemic diseases of animals, such as anthrax, rabies, glanders, brucellosis, tuberculosis, foot and mouth disease, hog cholera, and other communicable diseases known to medical science as being a menace to human or animal health.

5. The dispensing or giving to anyone of live culture or attenuated live virus vaccines to be administered by a layman without providing instruction as to their administration and use.

6. Having professional connection with, or lending one's name to, any illegal practitioner of veterinary medicine and the various branches thereof.

7. Chronic inebriety or unlawful use of narcotics, dangerous drugs or controlled substances.

8. Fraud or dishonesty in applying or reporting on any test or vaccination for disease in animals.
9. False, deceptive or misleading advertising, having for its purpose or intent deception or fraud.
10. Conviction of a crime involving moral turpitude, or conviction of a felony.
11. Malpractice, gross incompetence or gross negligence in the practice of veterinary medicine.
12. Violation of the ethics of the profession as defined by rules adopted by the board.
13. Fraud or misrepresentation in procuring a license.
14. Knowingly signing a false affidavit.
15. Distribution of narcotics, dangerous drugs, prescription-only drugs or controlled substances for other than legitimate purposes.
16. Violation of or failure to comply with any state or federal laws or regulations relating to the storing, labeling, prescribing or dispensing of controlled substances or prescription-only drugs as defined in section 32-1901.
17. Offering, delivering, receiving or accepting any rebate, refund, commission, preference, patronage, dividend, discount or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring animals or services to any person.
18. Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation or conspiracy to violate any of the provisions of this chapter, a rule adopted by the board or a written order of the board.
19. Failing to dispense drugs and devices in compliance with article 7 of this chapter.
20. Performing veterinary services without adequate equipment and sanitation considering the type of veterinary services provided.
21. Failure to maintain adequate records of veterinary services provided.
22. Medical incompetence in the practice of veterinary medicine.
23. Cruelty to or neglect of animals. For the purposes of this paragraph, "cruelty to or neglect of animals" means knowingly or negligently torturing, beating or mutilating an animal, killing an animal in an inhumane manner or depriving an animal of necessary food, water or shelter.
24. Representing that the veterinarian is a specialist if the veterinarian lacks the credentials to be a specialist.
25. Performing veterinary services without having a valid veterinarian client patient relationship.
26. Releasing, prescribing or dispensing any prescription drugs in the absence of a valid veterinarian client patient relationship.

32-2233. Revocation or suspension of license or permit; civil penalty; report of perjury

- A. The board, by majority consent, may revoke or suspend a permit or license granted to any person under this chapter or may impose a civil penalty of not to exceed one thousand dollars against any veterinarian or the responsible veterinarian, or both, for:
1. Unprofessional or dishonorable conduct.
 2. Publicly professing to cure or treat diseases of a highly contagious, infectious and incurable nature.
 3. Curing or treating an injury or deformity in such a way as to deceive the public.
 4. Testing any animal for any communicable disease and knowingly stating verbally or in writing that the animals are diseased or in a disease-free condition if the statement is contrary to the indication of the test made.
- B. The board may sanction any of the following conduct as an administrative violation, rather than unprofessional conduct, and may impose a civil penalty of not more than one thousand dollars for any of the following:
1. Failure to timely renew the veterinary license or the premises license while continuing to practice veterinary medicine or conducting business from that premises.
 2. Failure to notify the board in writing within twenty days of any change in residence, practice, ownership, management or responsible veterinarian.
 3. Minor records violations that are routine entries into a medical record and that do not affect the diagnosis or care of the animal.
- C. The civil penalties collected pursuant to this chapter shall be deposited in the state general fund.
- D. The board may report to the proper legal authorities for perjury anyone it suspects of giving deliberate, fraudulent testimony whether the testimony is given personally, telephonically or in writing.

32-2234. Informal and formal hearings; censure or probation; notice; consent agreements; rehearing; judicial review

- A. If the board receives information indicating that a veterinarian may have engaged in unprofessional or dishonorable conduct, and if it appears after investigation that the information may be true, the board may issue a notice of formal hearing or the board may request an informal interview with the veterinarian. If the veterinarian refuses the interview, and other evidence indicates suspension or revocation of the veterinarian's license may be in order, or if the veterinarian accepts and the results of the interview indicate suspension or revocation of the veterinarian's license may be in order, the board shall issue a notice of formal hearing and proceed pursuant to title 41, chapter 6, article 10. If the veterinarian refuses the interview, and other evidence relating to the veterinarian's professional competence indicates that disciplinary action should be taken other than suspension or revocation of the veterinarian's license, or if the veterinarian accepts the informal interview and the informal interview and other evidence relating to

the veterinarian's professional competence indicate that disciplinary action should be taken other than suspension or revocation of the veterinarian's license, the board may take any or all of the following actions:

1. Issue a decree of censure.
2. Fix a period and terms of probation as are best adapted to protect the public and rehabilitate or educate the veterinarian. The terms of probation may include temporary suspension, for not to exceed thirty days, or restriction of the veterinarian's license to practice. The failure to comply with any term of the probation is cause to consider the entire case plus any other alleged violations of this chapter at a formal hearing pursuant to title 41, chapter 6, article 10.

3. Impose a civil penalty of not to exceed one thousand dollars per violation.

B. Notwithstanding subsection A of this section, the board may require a veterinarian or certified veterinary technician under investigation to be interviewed by the board or its representatives. The board may require a licensee or certificate holder who is under investigation pursuant to subsection A of this section to undergo at the licensee's or certificate holder's expense any combination of medical, physical or mental examinations that the board finds necessary to determine the veterinarian's or the certified veterinary technician's condition.

C. On receipt of an allegation of drug or alcohol abuse, the board or the executive director acting with the approval of both a veterinarian member and a public member of the board may require a licensee or certificate holder who is under investigation pursuant to subsection A of this section to undergo, at the licensee's or certificate holder's expense, testing or examination to detect the presence of alcohol or other drugs.

D. If, as a result of information ascertained during an investigation, informal interview or formal hearing of a veterinarian, the board has concern for the veterinarian's conduct but has not found the veterinarian's conduct in violation of section 32-2232, the board in its discretion may issue a letter of concern to the veterinarian regarding the veterinarian's conduct or issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

E. Notwithstanding subsection A of this section, the board may enter into a consent agreement with a veterinarian either before or after conducting an informal interview. Pursuant to a consent agreement, the board may take any of the disciplinary actions listed in subsection A, paragraphs 1, 2 and 3 of this section or may act to otherwise limit or restrict the veterinarian's practice or to rehabilitate the veterinarian.

F. If the board finds, based on information it receives pursuant to this section, that public or animal health, safety or welfare requires emergency action, and incorporates a finding that emergency action is necessary in its order, the board may order summary suspension of a license pending proceedings for revocation or other action. If the board orders a summary suspension, the board shall serve the licensee with a written notice that states the charges and that the licensee is entitled to a formal hearing before the board or an administrative law judge within sixty days pursuant to title 41, chapter 6, article 10.

G. Before a permit or license may be revoked or suspended for any cause provided by section 32-2233, other than by terms of probation, the board must serve notice and conduct a hearing in the manner prescribed by title 41, chapter 6, article 10.

H. After service of notice of the decision of the board suspending or revoking a license, censuring a licensee, placing a licensee on probation or dismissing the complaint, the licensee may apply for a rehearing or review by filing a motion pursuant to title 41, chapter 6, article 10. The filing of a motion for rehearing shall be a condition precedent to the right of appeal provided by this section. The filing of a motion for rehearing shall suspend the operation of the board's action in suspending or revoking a license or censuring or placing a licensee on probation and shall allow the licensee to continue to practice as a veterinarian pending denial or granting of the motion and pending the decision of the board on rehearing if the motion is granted. The board may also grant a rehearing on its own motion, if it finds newly discovered evidence or any other reason justifying a reconsideration of the matter.

I. Except as provided in section 41-1092.08, subsection H, any party aggrieved by a final order or decision of the board may appeal to the superior court pursuant to title 12, chapter 7, article 6.

J. If the state veterinary medical examining board acts to modify any veterinarian's prescription writing privileges, it shall immediately notify the Arizona state board of pharmacy of the modification.

K. All notices that the board is required to provide to any person under this chapter are fully effective by personal service or by mailing a true copy of the notice by certified, return receipt mail addressed to the person's last known address of record in the board's files. Notice by mail is complete at the time of its deposit in the mail. Service on any person represented in a matter by an attorney is complete when the notice is sent to the attorney at the last known address of record in the board's files.

L. The board shall retain all complaint files for at least ten years and shall retain all complaint files in which disciplinary action was taken for at least twenty-five years.

32-2235. Complaints

A. Any person may file a complaint against a licensee for a violation of this chapter. Except as provided in subsection C, complaints shall be submitted in proper form and signed by the complainant. Each complaint shall be turned over to an appointed staff investigator who shall compile the written complaint and the written response and may verify statements and any evidence submitted by the complainant and the respondent.

B. If after completion of this preliminary investigation the staff investigator believes that there would not be a violation of this chapter if the allegations were proven to be true or if the complaint does not fall under the jurisdiction of the board, the board shall review the written information and investigative report at a scheduled board meeting at which time the board may dismiss the complaint or proceed as otherwise authorized.

C. A complaint may be anonymous if it is regarding either of the following:

1. Substance abuse by a veterinarian or certified veterinary technician.
2. A person committing the unlicensed practice of veterinary medicine.

D. The board, on its own initiative and based on information from any source, may investigate any alleged violation of this chapter.

32-2236. Refusal to issue or renew license; reapplication

A. The board, by majority consent, may refuse to issue or renew a permit or license for any of the causes prescribed in section 32-2233. The procedure for refusal to issue or renew a license or permit, or both, shall be as provided in section 32-2234.

B. If a permit or license is not issued or renewed, such person may not apply for a permit or license until six months have elapsed from the date of refusal, and the new application shall be accompanied with the regular examination fee and the license fee.

32-2237. Committee to investigate violations; referral to county attorney or attorney general; inspection of records; subpoenas; civil penalty; injunctions; cease and desist orders; confidentiality

A. The board shall appoint one or more investigative committees, each consisting of three licensed veterinarians who are not board members and two members of the general public who are not board members. The board shall appoint and dismiss members of investigative committees. Each member shall serve for a term of two years. A committee member may not serve more than four consecutive terms. A member of the investigative committee must resign when the member files an application to serve on the board. A quorum for an investigative committee shall include at least three members, at least two of whom must be veterinarians.

B. The investigative committee may interview witnesses, gather evidence and otherwise investigate any allegations accusing any person of violating any of the provisions of this chapter. An assistant attorney general shall advise the investigative committee on all questions of law arising out of its investigations. The expenses of the committee shall be paid out of the veterinary medical examining board fund.

C. The investigative committee shall prepare a written report relating to any allegations it investigates. The committee shall present its report to the board in an open meeting. The report shall include:

1. A summary of the investigation.

2. Findings of fact.

3. Either a recommendation to dismiss the allegation made in the complaint or a finding that a violation of this chapter or a rule adopted pursuant to this chapter occurred.

D. If the board rejects any recommendation contained in a report of the investigative committee, it shall document the reasons for its decision in writing.

E. Upon the complaint of any citizen of this state, or upon its own initiative, the board may investigate any alleged violation of this chapter. If after investigation the board has probable cause to believe that an unlicensed person is performing acts that are required to be performed by a person licensed pursuant to this chapter, the board may take one or more of the following enforcement actions:

1. Issue a cease and desist order.

2. Request the county attorney or attorney general to file criminal charges against the person.

3. File an action in the superior court to enjoin the person from engaging in the unlicensed practice of veterinary medicine.

4. After notice and an opportunity for a hearing, impose a civil penalty of not more than one thousand dollars for each violation.

F. The board or its agents or employees may at all reasonable times have access to and the right to copy any documents, reports, records or other physical evidence of any veterinarian, including documents, reports, records or physical evidence maintained by and in the possession of any veterinary medical hospital, clinic, office or other veterinary medical premises being investigated, if such documents, records, reports or other physical evidence relates to a specific investigation or proceeding conducted by the board.

G. The board on its own initiative or upon application of any person involved in an investigation or proceeding conducted by the board may issue subpoenas compelling the attendance and testimony of witnesses or demanding the production for examination or copying of documents, reports, records or any other physical evidence if such evidence relates to the specific investigation or proceeding conducted by the board.

H. Except as provided in this subsection, all materials, documents and evidence associated with a pending or resolved complaint or investigation are confidential and are not public records. The following materials, documents and evidence are not confidential and are public records if they relate to resolved complaints:

1. The complaint.
2. The response and any rebuttal statements submitted by the licensee or certificate holder.
3. Board discussions of complaints that are recorded pursuant to section 32-2204, subsection C.
4. Written reports of an investigative committee that are prepared pursuant to subsection C of this section.
5. Written statements of the board that are prepared pursuant to subsection D of this section.

32-2238. Violations; classification

A. A person is guilty of a class 1 misdemeanor who:

1. Practices veterinary medicine or surgery under an assumed name.
2. Falsely impersonates another practitioner.
3. Fraudulently obtains a veterinary medical diploma, license or record of registration.
4. Practices veterinary medicine or surgery without a license and registration.
5. Unlawfully assumes or advertises a veterinary title conveying the impression that the person is a lawful practitioner.
6. Knowingly violates any other provision of this chapter.

B. This chapter does not prohibit any of the following:

1. A person from practicing veterinary medicine or any of its branches in partnership with another practitioner, or under a partnership or firm name, if the partnership or firm is clearly identified as that of a practicing veterinarian, and if all members of the partnership or firm are licensed to practice veterinary medicine by the board.
2. A veterinary student from performing acts of health care or prescribed veterinary procedures as a part of the student's educational experience if both of the following apply:
 - (a) The acts are assigned by a licensed veterinarian or a licensed veterinary faculty member who is responsible for the animal's care.
 - (b) The student works under the direct supervision of a licensed veterinarian or a licensed veterinary faculty member.
3. A licensed veterinary faculty member from performing the licensed veterinary faculty member's regular clinical functions, from giving lectures, instructions or demonstrations or from practicing veterinary medicine as a veterinary faculty member in connection with continuing education courses or seminars to licensed veterinarians, certified veterinary technicians, veterinary students or veterinary technician students.

32-2239. Duty of veterinarian to report suspected abuse, cruelty, neglect or animal fighting; immunity

- A. A veterinarian who reasonably suspects or believes that an animal has been a victim of abuse, cruelty or neglect or has been involved in animal fighting shall report that suspicion, or cause a report to be made, to law enforcement within forty-eight hours after treatment or examination. The report shall include the breed and description of the animal and the name and address of the owner or person who sought the examination or treatment. Veterinary records shall be provided to local law enforcement on request in furtherance of any criminal investigation for abuse, cruelty, neglect or animal fighting.
- B. A veterinarian shall report, in writing, suspected cases of abuse of livestock to the associate director of the division of animal services in the Arizona department of agriculture pursuant to title 3, chapter 11, article 1. The report shall be made within forty-eight hours after treatment or examination and shall include the breed and description of the animal together with the name and address of the owner.
- C. A veterinarian who files a report as provided in this section shall be immune from civil liability with respect to any report made in good faith.

32-2239.01. Duty to report; clients seeking controlled substances; immunity

- A. A veterinarian who reasonably suspects or believes that a client or person is trying to obtain controlled substances with an intent other than to treat the patient animal shall report that suspicion, or cause a report to be made, to local law enforcement within forty-eight hours after the treatment or examination. The report shall include the name and address of the client or person who sought the examination or treatment. The veterinary records pertaining to the investigation initiated pursuant to the report to law enforcement under this subsection shall be provided to local law enforcement on request for any further criminal investigation.
- B. A veterinarian who files a report or causes a report to be filed pursuant to subsection A of this section is immune from civil liability with respect to any report made in good faith.

32-2240. Reporting of unprofessional conduct; immunity

A. Any person may report to the board any information the person has that appears to show that a veterinarian is or may be medically incompetent or is or may be guilty of:

1. Unprofessional conduct.
2. Animal abuse.

B. A person who reports information to the board in good faith pursuant to this section is immune from civil liability.

32-2240.01. Burial in landfill; notification requirement; licensed crematory

A. If an animal dies in the care of a veterinarian or an animal's owner brings a dead animal to a veterinarian and the animal's owner requests that the animal be buried, the veterinarian shall notify the owner if the burial is to be done in a landfill.

B. If the owner chooses cremation and a veterinarian offers cremation services, the veterinarian shall use a crematory licensed pursuant to article 8 of this chapter.

32-2241. Certified veterinary technician; services performed

A certified veterinary technician may perform those services authorized by the board pursuant to section 32-2245 in the employ of and under the direction, supervision and control of a licensed veterinarian who shall be responsible for the performance of the certified veterinary technician. Compensation for such authorized services shall be derived solely from the employing veterinarian.

32-2242. Application for certification as veterinary technician; qualifications

A. A person desiring to be certified as a veterinary technician shall make written application to the board upon a form furnished by the board.

B. The applicant shall be of good moral character and at least eighteen years of age and shall furnish satisfactory evidence of graduation from a two-year curriculum in veterinary technology, or the equivalent of such graduation as determined by the board, in a college or other institution approved by the board.

C. The application shall be accompanied by the application and examination fee established by the board.

D. An applicant from another state is not required to retake the veterinary technician national examination if the applicant can provide all of the following:

1. Proof that the applicant's original score meets the minimum score required by the board.
2. Proof that the applicant holds an active license in good standing in another state or in Canada.
3. Proof of employment as a veterinary technician in two of the preceding four years or four of the preceding seven years.

32-2243. Examination

The board shall adopt rules and regulations governing the written examinations and practical demonstrations by which all applicants shall be tested and shall provide for giving reasonable notice of the time and place for examinations.

32-2244. Certificate

An applicant who passes the examination prescribed by the board, on payment of the fee established by the board within one year after passing the examination, shall receive a certificate in a form prescribed by the board.

32-2245. Certified veterinary technician; services; rules and regulations

A. The board shall adopt rules and regulations pertaining to and limiting the services performed by a certified veterinary technician.

B. Services performed by a certified veterinary technician shall not include surgery, diagnosis or prognosis of animal diseases or prescribing of drugs and medicine.

32-2246. Duration of certificate

A certificate issued pursuant to this article shall expire on December 31 of every even-numbered year unless suspended or revoked. On payment of the renewal fee, a certificate is renewed for a period of two years.

32-2247. Renewal of expired certificates

Except as otherwise provided in this article, an expired certificate may be renewed at any time within three years after its expiration on filing of application for renewal on a form prescribed by the board and payment of the renewal fee in effect on the last preceding regular renewal date. Except as provided in section 32-4301, if the certificate is renewed more than thirty days after its expiration, the applicant as a condition precedent to renewal shall also pay the delinquency fee established by the board. Renewal under this section shall be effective on the date on which the application is filed, on the date the renewal fee is paid or on the date on which the delinquency fee, if any, is paid, whichever occurs last.

32-2248. Renewal of certification; certificates expired three years or more

Except as provided in section 32-4301, a person who fails to renew a certificate within three years after its expiration may not renew it, and it shall not be restored, reissued or reinstated thereafter, but such person may apply for and obtain a new certificate if:

1. The applicant is of good moral character.
2. No fact, circumstance or condition exists which, if the certificate were issued, would justify its revocation or suspension.
3. The applicant takes and passes the examination, if any, which would be required on application for certification for the first time.

4. All fees are paid which would be required on application for certification for the first time.

32-2249. Disciplinary action; grounds; emergency care by technician; letter of concern

A. Except as provided in subsection B of this section, the board may:

1. Take one or more of the following actions:

- (a) Revoke or suspend a certificate.
- (b) Issue a decree of censure.
- (c) Place a certified veterinary technician on probation.
- (d) Impose a civil penalty not to exceed one thousand dollars per violation.

2. Take one or more of the actions described in paragraph 1 for any of the following reasons:

- (a) The employment of fraud, misrepresentation or deception in obtaining certification.
- (b) Conviction on a charge of cruelty to animals or conviction of a felony, in which case the record of such conviction will be conclusive evidence.
- (c) Chronic inebriety or habitual use of narcotics, dangerous drugs or controlled substances.
- (d) Gross ignorance or inefficiency in connection with the performance of technical procedures in veterinary medicine.
- (e) Representing himself as a doctor of veterinary medicine.
- (f) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation or conspiracy to violate any of the provisions of this chapter, a rule adopted under this chapter or a written order of the board issued pursuant to this chapter.
- (g) Practicing veterinary medicine.
- (h) Gross incompetence or gross negligence.
- (i) Following orders that are in violation of this chapter or rules adopted pursuant to this chapter.

B. In an emergency, a certified veterinary technician may render emergency care or first aid if the technician is supervised telephonically by a licensed veterinarian or until a licensed veterinarian arrives. This does not preclude emergency care as outlined in section 32-2261.

C. If the board receives information indicating that a certified veterinary technician may have engaged in unprofessional or dishonorable conduct and it appears after investigation that the information may be true, the board may request an informal interview. If the certified veterinary technician refuses the interview or if other evidence relating to the technician's professional competence indicates that disciplinary action should be taken, the board may take the action as prescribed by subsection A of this section.

D. If, as a result of information ascertained during an investigation, informal interview or formal hearing of a certified veterinary technician, the board has concern for the certified veterinary technician's conduct but has not found the conduct to be a reason listed in subsection A of this section, the board may issue a letter of concern to the technician regarding the technician's conduct.

32-2250. Veterinary technician certificate fees

The board shall establish the fees provided for in this article in amounts not to exceed the following:

1. Application and examination fee, one hundred fifty dollars.
2. Issuance of a certificate fee, twenty-five dollars in even-numbered years and fifty dollars in odd-numbered years.
3. Renewal fee, one hundred dollars.
4. Delinquency fee, twenty-five dollars.
5. Duplicate certificate fee, twenty dollars.

32-2261. Emergency aid; nonliability

Any person licensed or certified pursuant to this chapter who gratuitously and in good faith gives emergency treatment to a sick or injured animal at the scene of an emergency shall not be liable in damages to the owner of such animal in the absence of gross negligence.

32-2271. License required; inspections

A. A person shall not provide veterinary services, including diagnosis, treatment, dentistry, surgery or dispensing prescription-only veterinary drugs, to the public without a license issued by the board.

B. A premises license shall be for a fixed location where a veterinarian retains the records of a veterinary practice, stores veterinary equipment or offers veterinary services to the public. A responsible veterinarian who holds a premises license may provide veterinary services to the public at the licensed fixed location and any temporary site in this state at which adequate equipment and sanitation are available considering the type of veterinary medical services provided. A veterinarian shall obtain a separate premises license for each fixed location at which veterinary services are regularly offered to the public. The responsible veterinarian may authorize other licensed veterinarians to provide services to the public pursuant to the responsible veterinarian's veterinary premises license. Both the responsible veterinarian and the veterinarian who provides the veterinary services shall maintain records of the veterinary services provided and ensure that adequate equipment and sanitation are available.

C. The board shall inspect all fixed locations before issuing a premises license. Adequate equipment and sanitation shall be available for use at any location which is necessary to provide the range of veterinary services which the veterinarian proposes to offer.

D. The board may inspect any site at which a veterinarian offers veterinary services to the public.

E. This section does not apply to county sponsored rabies vaccination clinics, veterinarians exempt under section 32-2211 and veterinarians licensed under section 32-2217.

32-2272. Veterinary premises license; application; nontransferability; expiration; renewal; civil penalty

A. Any person who desires to establish premises at or from which veterinary services are offered to the public shall file with the board an application for a veterinary premises license accompanied by the license fee.

B. The application shall be on a form prescribed and furnished by the board and shall contain:

1. The name and location of the premises.

2. The name of the person owning the premises and the name and signature of the veterinarian responsible to the board for the operation of the premises. The responsible veterinarian shall be a veterinarian who is licensed in this state and who resides in this state or who holds a special permit under section 32-2217.01, except that a veterinarian who only provides services at a temporary site in the state does not have to reside in this state.

3. A description of the services provided at or from the premises.

C. A license is valid only for the responsible veterinarian to whom it is issued. A license is not subject to sale, assignment or transfer, voluntary or involuntary. A license is not valid for any premises other than those for which issued. If there have been major changes in the scope of veterinary services offered, the premises are subject to reinspection.

D. A change of responsible veterinarian or owner shall cancel a premises license. The responsible veterinarian or owner shall surrender the premises license to the board within twenty days of the change in responsible veterinarian or owner. The failure of the responsible veterinarian or owner to notify the board in writing within twenty days of a change in responsible veterinarian or owner is grounds for disciplinary action.

E. Except as provided in section 32-4301, a license expires on December 31 of every even-numbered year unless suspended or revoked. A license is renewable for two years upon payment of the renewal fee. If the renewal fee is not paid before February 1 following the expiration of the license, a penalty fee of one hundred dollars shall be paid in addition to the renewal fee before the premises may be relicensed.

F. Within ninety days of receipt of an initial application and fee, the board shall issue a license if the application demonstrates compliance with this article or shall notify the applicant at his last address of record if the application is not in conformance with this article. Veterinary medical services may be performed at any premises for which an application fee is submitted pending issuance of the license or notification of a deficiency in the application.

G. If a veterinary premises ceases to operate and the premises owner is subject to this chapter, the premises owner must continue to comply with the requirements of this chapter and rules adopted by the board. The premises owner is subject to a civil penalty of not more than one thousand dollars for each violation of the requirements of this chapter or rules adopted by the board. The total penalty shall not exceed five thousand dollars.

H. If the responsible veterinarian is only an employee, the premises owner is subject to a civil penalty of not more than one thousand dollars for each violation of this article. The total penalty shall not exceed five thousand dollars.

32-2273. Premises license fees

The board may establish and collect in advance fees, not to exceed the following:

1. For issuance of a license:
 - (a) In an odd-numbered year, one hundred dollars.
 - (b) In an even-numbered year, fifty dollars.
2. For renewal of a license, two hundred dollars.
3. For a duplicate license, twenty dollars.

32-2274. Grounds for refusal to issue or renew license or for disciplinary action; procedure

A. The board may take disciplinary action against the responsible veterinarian, may place the responsible veterinarian on probation or may revoke, suspend, refuse to issue or refuse to renew a premises license for any of the following grounds:

1. Failure to notify the board in writing within twenty days of a change of ownership, management or responsible veterinarian.
2. Failure to maintain clean and sanitary facilities for the performance of services in accordance with the rules adopted by the board.
3. A violation of section 32-2233 or any rule adopted pursuant to that section.
4. Failure to maintain accurate records or reports as required by this chapter or by federal or state laws and rules pertaining to the storing, labeling, selling, dispensing, prescribing and administering of controlled substances.
5. Failure to maintain veterinary medical supplies, controlled substances and surgical and other equipment in a safe, efficient and sanitary manner.
6. Failure to keep written records of all animals receiving veterinary services, failure to provide a summary of such records upon request to the client or failure to produce such records at the request of the board.
7. Revocation or suspension of the license to practice veterinary medicine of the responsible veterinarian holding the veterinary medical premises license.
8. Failure of the responsible veterinarian to maintain a current license to practice veterinary medicine.

9. Failure of the responsible veterinarian to maintain a current premises license to provide veterinary services to the public at a fixed location.
 10. Failure of emergency or twenty-four hour facilities to give copies of medical records to the owner or the owner's agent on release of an animal.
- B. If the board receives information indicating that disciplinary action should be taken against the responsible veterinarian or a veterinary premises license, and if it appears after investigation that the information may be true, the board may issue a notice of formal hearing or the board may hold an informal interview. If the results of the informal interview indicate suspension or revocation of the responsible veterinarian's license or the premises license or other action may be in order, the board shall issue a notice of formal hearing and proceed pursuant to title 41, chapter 6, article 10. If the informal interview and other evidence indicate that disciplinary action should be taken other than suspension or revocation, the board may take any one or a combination of the following actions:
1. Issue a decree of censure.
 2. Fix such period and terms of probation as are best adapted to protect the public and rehabilitate or educate the responsible veterinarian or veterinary premises license holder. The terms of probation may include temporary suspension for not to exceed thirty days. The failure to comply with any term of the probation is cause to consider the entire case plus any other alleged violations of this chapter at a formal hearing pursuant to title 41, chapter 6, article 10.
 3. Impose a civil penalty of not more than one thousand dollars for each violation.
- C. Before a license may be revoked or suspended for any cause provided by subsection A of this section, the board shall serve notice and conduct a hearing in the manner prescribed by title 41, chapter 6, article 10.
- 32-2275. Rules; adoption; considerations**
- The board may adopt rules setting forth minimum standards for veterinary medical premises and for the practice of veterinary medicine. The board shall, in the development of these rules, take into consideration the needs, problems and practices relating to the differences encountered by large animal veterinarians and other veterinarians and shall also consider the different needs, problems and practices encountered in the provision of veterinary services in rural or remote locations in comparison with the provision of veterinary services at the veterinarian's principal place of business.
- 32-2276. Retention of jurisdiction**
- The lapsing or suspension of a license by operation of law or by order of the board or a court of law or the voluntary surrender of a license does not deprive the board of jurisdiction to do any of the following:
1. Proceed with any investigation of or action or disciplinary proceeding against the licensee.
 2. Render a decision suspending or revoking the license or denying the renewal or right of renewal of the license.
 3. Assess a civil penalty pursuant to section 32-2233 or section 32-2237, subsection E.

32-2281. Dispensing of drugs and devices; conditions; definition

A. A veterinarian may dispense drugs and devices kept by the veterinarian if:

1. All prescription-only drugs are dispensed in packages labeled with the following information:

(a) The dispensing veterinarian's name, address and telephone number.

(b) The date the drug is dispensed.

(c) The animal owner's name and the animal's or herd's identification.

(d) The name, strength and quantity of the drug, directions for its use and any cautionary statements.

2. The dispensing veterinarian enters into the medical record the name, strength and quantity of the drug dispensed, the date the drug is dispensed and the therapeutic reason.

B. A veterinarian dispensing a schedule II controlled substance or a benzodiazepine shall comply with the following:

1. Limit the initial amount of a schedule II controlled substance dispensed by the veterinarian to a five-day supply at a dosage clinically appropriate for the animal being treated. A prescription that is filled at a pharmacy is not subject to this limit.

2. Limit the initial amount of a benzodiazepine dispensed by the veterinarian to a fourteen-day supply at a dosage clinically appropriate for the animal being treated. A prescription that is filled at a pharmacy is not subject to this limit.

3. For treatment of an animal with a chronic condition that requires long-term use of a schedule II controlled substance or benzodiazepine, after the initial five-day or fourteen-day period pursuant to paragraph 1 or 2 of this subsection, dispense not more than a thirty-day supply at one time at a dosage clinically appropriate for the animal being treated. A prescription for a chronic condition that is filled at a pharmacy is not subject to this limit. For the purposes of this paragraph, "chronic condition" means a condition that requires ongoing treatment beyond the five-day or fourteen-day period prescribed in paragraph 1 or 2 of this subsection, including cancer, postsurgical treatment, posttraumatic injury, neuropathic pain, chronic severe cough, collapsing trachea and congestive heart failure.

C. The board shall adopt rules providing that the animal's owner or the person responsible for the animal shall be notified that some prescription-only drugs may be available at a pharmacy and a written prescription may be provided to the animal's owner or the person responsible for the animal if requested.

D. A veterinarian shall dispense only to the animal's owner or person responsible for the animal the veterinarian is treating and only for conditions being treated by that veterinarian. The veterinarian shall supervise the dispensing process. For the purposes of this subsection, "supervision" means that a veterinarian makes the determination as to the legitimacy or the advisability of the drugs or devices to be dispensed.

E. This section shall be enforced by the board, which shall establish rules regarding access to and labeling, recordkeeping, storage and packaging of drugs that are consistent with the requirements of

chapter 18 of this title. The board may conduct periodic inspections of dispensing practices to ensure compliance with this section and applicable rules.

F. For the purposes of this section, "dispense" means the delivery by a veterinarian of a prescription-only drug or device to an animal, an animal's owner or the person responsible for an animal and includes the prescribing, administering, packaging, labeling, compounding and security necessary to prepare and safeguard the drug or device for delivery.

32-2291. License requirements; inspections

A. An animal crematory license shall be for a fixed location where animal cremation occurs. A person who holds an animal crematory license may provide animal cremation services to the public at the licensed fixed location. There shall be a separate animal crematory license for each fixed location at which animal cremation services are regularly offered to the public.

B. The board shall inspect all fixed locations before issuing an animal crematory license. Adequate equipment and sanitation shall be available for use at any location that is necessary to provide the animal cremation services offered.

C. The board may inspect any animal crematory licensed pursuant to this article.

32-2292. Animal crematory license; application; nontransferability; expiration; renewal

A. Any person who desires to establish premises at or from which animal cremation services are offered to the public shall file with the board an application for an animal crematory license accompanied by the license fee.

B. The application shall be on a form prescribed and furnished by the board and shall contain:

1. The name and location of the animal crematory.

2. The name of the person owning the animal crematory and the name and signature of the person responsible to the board for the operation of the animal crematory.

3. A description of the services provided at or from the animal crematory.

C. A license is not subject to sale, assignment or transfer, voluntary or involuntary. A license is not valid for any animal crematory other than that for which it is issued. If there are major changes in the scope of animal crematory services offered, the animal crematory is subject to reinspection.

D. A change of responsible owner cancels an animal crematory license. The responsible owner shall surrender the animal crematory license to the board within twenty days after the change in responsible owner. The failure of the responsible owner to notify the board in writing within twenty days after a change in responsible owner is grounds for disciplinary action.

E. Except as provided in section 32-4301, a license expires on December 31 of every even numbered year unless suspended or revoked. A license is renewable for two years on payment of the renewal fee. If the renewal fee is not paid before February 1 following the expiration of the license, a penalty fee of one

hundred dollars shall be paid in addition to the renewal fee before the animal crematory may be relicensed.

F. Within ninety days after receipt of an initial application and fee, the board shall issue a license if the application demonstrates compliance with this article or shall notify the applicant at the last address of record if the application is not in conformance with this article. Animal cremation services may be performed at any animal crematory for which an application fee is submitted pending issuance of the license or notification of a deficiency in the application.

32-2293. Animal crematory license fees

The board may establish and collect in advance fees for issuance of a license, renewal of a license and a duplicate license. The fees shall be determined by the board and accounted for in accordance with the provisions of section 32-2205.

32-2294. Grounds for refusal to issue or renew license or for disciplinary action; procedure; civil penalty

A. The board may take disciplinary action against the animal crematory, including revoking, suspending, refusing to issue or refusing to renew an animal crematory license for any of the following grounds:

1. Failure to notify the board in writing within twenty days after a change of the person who owns the animal crematory or the person responsible for the operation of the animal crematory.
2. Failure to maintain clean and sanitary facilities for the performance of services in accordance with the rules adopted by the board.
3. Failure to keep written records of all animals receiving crematory services, failure to provide a summary of the records on request to the client or failure to produce the records at the request of the board.
4. Failure to maintain a current animal crematory license to provide crematory services to the public at a fixed location.

B. If the board receives information indicating that disciplinary action should be taken against an animal crematory license and if it appears after investigation that the information may be true, the board may issue a notice of formal hearing or the board may hold an informal interview. If the results of the informal interview indicate suspension or revocation of the animal crematory license or other action may be in order, the board shall issue a notice of formal hearing and proceed pursuant to title 41, chapter 6, article 10. If the informal interview and other evidence indicate that disciplinary action should be taken other than suspension or revocation, the board may take any one or a combination of the following actions:

1. Issue a decree of censure.
2. Fix such period and terms of probation as are best adapted to protect the public and rehabilitate or educate the animal crematory licensee. The terms of probation may include temporary suspension not to exceed thirty days. The failure to comply with any term of the probation is cause to consider the entire case and any other alleged violations of this chapter at a formal hearing pursuant to title 41, chapter 6, article 10.

3. Impose a civil penalty of not more than one thousand dollars for each violation. The total penalty shall not exceed five thousand dollars.

C. Before a license may be revoked or suspended for any cause provided by subsection A, the board shall serve notice and conduct a hearing in the manner prescribed by title 41, chapter 6, article 10.

32-2295. Rules

The board may adopt rules setting forth minimum standards for animal crematories.

32-2296. Retention of jurisdiction

The lapsing or suspension of a license by operation of law or by order of the board or a court of law or the voluntary surrender of a license does not deprive the board of jurisdiction to do any of the following:

1. Proceed with any investigation of or action or disciplinary proceeding against the licensee.
2. Render a decision suspending or revoking the license or denying the renewal or right of renewal of the license.
3. Assess a civil penalty pursuant to section 32-2233 or section 32-2237, subsection E.

E-5

DEPARTMENT OF HEALTH SERVICES (F19-1202)

Title 9, Chapter 3, All Articles, Child Care Group Homes



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: December 3, 2019

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

FROM: Council Staff

DATE: November 12, 2019

SUBJECT: DEPARTMENT OF HEALTH SERVICES (F19-1202)

Title 9, Chapter 3, Articles 1-5, Department of Health Services - Child Care Group Homes

Summary

This Five Year Review Report (5YRR) from the Department of Health Services (Department) relates to rules in Title 9, Chapter 3, Articles 1-5 regarding Child Care Group Homes. The Articles in this Chapter address the following:

- Article 1 - General;
- Article 2 - Certification;
- Article 3 - Operating a Child Care Group Home;
- Article 4 - Program and Equipment Standards; and
- Article 5 - Physical Environment Standards.

In the previous 5YRR for these rules, the Department indicated that R9-3-408 (Field Trips and Other Trips Away from the Child Care Group Home) was inconsistent with Arizona statutes. The Department anticipated submitting a Notice of Final Rulemaking to amend this rule and to address other potential substantive issues by December 31, 2017. For the reasons indicated in the report, the Department did not complete this course of action.

Proposed Action

The Department plans to amend the rules in this Chapter to address the issues identified in this 5YRR through an expedited rulemaking. It intends to submit a Notice of Final Expedited Rulemaking to the Council by June 30, 2020.

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

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

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

The Department indicates that the rules in Chapter 3 have not been amended in the past five years. The child care group home rules were last amended through an exempt rulemaking in 2013. The Department was not required to complete an economic, small business, and consumer impact statement (EIS) in connection with that rulemaking.

In fiscal year 2019, the Department certified 186 new facilities, with 213 certification applications received. The Department approved 955 applications for initial certificates, renewals, and amended certificates. At the end of the fiscal year, 33 applications were in pending status and 157 facilities elected to close. The Department performed 2,611 regular compliance inspections and 422-complaint-based inspections.

The stakeholders include the Department, child care facilities, infants and children, child care staff, 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 Department states that the rules under review provide the least intrusive and least costly method of achieving their regulatory objectives. The Department indicates that while child care group homes may face some financial burden(s), rules that are consistent with industry standards will lead to increased safety and health for infants and children in these facilities. The Department states that the probable benefits of the rules outweigh the probable costs of the rules.

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

No. The Department indicates it did not receive any written criticisms of these 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. For the reasons specified in the report, the Department indicates that the following rules could be amended to improve their clarity, conciseness, and understandability:

- **R9-3-101** (Definitions);
- **R9-3-102** (Time-Frames);
- **R9-3-201** (Application for a Certificate);
- **R9-3-202** (Fingerprinting and Central Registry Background Check Requirements);
- **R9-3-205** (Changes Affecting a Certificate);
- **R9-3-301** (Certificate Holder and Provider Responsibilities);
- **R9-3-302** (Staff Training);
- **R9-3-303** (Enrollment of Children);
- **R9-3-306** (Pesticides);
- **R9-3-308** (Suspected Abuse or Neglect of an Enrolled Child);
- **R9-3-309** (Medications);
- **R9-3-402** (Supplemental Standards for Napping or Sleeping);
- **R9-3-403** (Supplemental Standards for Care of an Enrolled Infant or One-or Two-Year Old Child);
- **R9-3-404** (Supplemental Standards for Care of an Enrolled Child with Special Needs);
- **Table 4.2** (Meal Pattern Requirements for Children);
- **R9-3-407** (General Food Service and Food Handling Standards);
- **R9-3-408** (Field Trips and Other Trips Away from the Child Care Group Home);
- **R9-3-504** (Fire Safety, Gas Safety, and Emergency Standards);
- **R9-3-505** (General Safety Standards);
- **R9-3-506** (General Cleaning and Sanitation Standards); and
- **R9-3-507** (Diaper-Changing Standards).

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

Yes. The Department indicates that the rules are enforced as written.

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

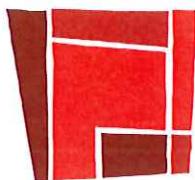
No. The Department indicates that the rules are not more stringent than corresponding federal law.

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

Not applicable. The rules were adopted before July 29, 2010 and thus do not require the issuance of a regulatory permit, license, or agency authorization.

9. Conclusion

As stated above and in the 5YRR, the Department intends to address the issues identified in the 5YRR through an expedited rulemaking. It plans to submit a Notice of Final Expedited Rulemaking to the Council by June 30, 2020. Council staff finds that this timeframe is acceptable in order to address the issues identified in the 5YRR. This expedited rulemaking will result in rules that are more clear, concise, understandable, effective, and consistent with other rules and statutes. Council staff recommends approval of this report.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

September 24, 2019

VIA EMAIL: grrc@azdhs.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. 3, 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. 3, Child Care Group Homes, which is due on September 20, 2019.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Teresa Koehler at 602-364-0813 or Teresa.Koehler@azdhs.gov.

Sincerely,



Robert Lane
Director's Designee

RL:tk

Enclosures

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



Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 3. Department of Health Services – Child Care Group Homes

September 2019

1. Authorization of the rule by existing statutes

Authorizing statutes: A.R.S. §§ 36-132(A)(1) and 36-136(G)

Implementing statutes: A.R.S. §§ 36-897.01 through 36-897.13

2. The objective of each rule:

Rule	Objective
R9-3-101	The objective of the rule is to define the terms used in Chapter 3 so requirements are clear and terms are interpreted consistently.
R9-3-102	The objective of the rule is to specify the process for Department approval of an application for a certificate and a change affecting a certificate.
Table 1.1	The objective of the table is to specify time-frame duration required for Department's approval of an application for a certificate and a change affecting a certificate.
R9-3-103	The objective of the rule is to establish which individuals may act on behalf of an applicant or certificate holder based on whether the applicant or certificate holder is an individual or business organization.
R9-3-201	The objective of the rule is to specify the requirements for submitting an application packet for licensure as a child care group home.
R9-3-202	The objective of the rule is to establish requirements for a licensee to ensure that each staff member has a current-valid fingerprint clearance card before the staff member's starting date of employment or volunteer service and maintains a current-valid fingerprint clearance card during employment or time providing volunteer service.
R9-3-203	The objective of the rule is to establish the certification fees for a certificate holder and inform a certificate holder when fees are due.
R9-3-204	The objective of the rule is to inform a certificate holder that a certificate to operate a child care group home is not valid if the certificate holder fails to submit the certification fee specified in R9-3-203.

R9-3-205	The objective of the rule is to inform a licensee of specific changes made to a child care group home that requires a licensee to notify the Department prior to making the change. Changes affecting a license include space utilization or capacity, name, ownership, and location.
R9-3-206	The objective of the rule is to inform an applicant, certificate holder, or provider that the Department, during an inspection or investigation, shall have access to the physical premises of a child care group home and permitted to interview staff members or enrolled children outside the presence of others.
R9-3-207	The objective of the rule is to specify the types of and the criteria to consider when determining a disciplinary action the Department may take.
R9-3-301	The objective of the rule is to establish the responsibilities of a certificate holder; the responsibilities and qualification criteria for a group home provider and staff members; and requirements to ensure residents are safe and receive continuously quality of care.
R9-3-302	The objective of the rule is to require a certificate holder to provide basic child care trainings to new staff members, ensure that staff members complete additional child care trainings annually, and maintain document of staff members completed training.
R9-3-303	The objective of the rule is to establish who may enroll a child into a child care group home and what information related to the child is required at the time of enrollment and disenrollment.
R9-3-304	The objective of the rule is to provide immunization requirements for enrolled children, including requirements for ensuring enrolled children maintain current age-appropriate immunizations required by 9 A.A.C. 6, Article 7.
R9-3-305	The objective of the rule is to ensure the safety of enrolled children by requiring a certificate holder to establish methods for documenting the arrival and departure of an enrolled child; for verifying an enrolled child who has written permission to self-admit or self-release; and verifying an unknown individual asked to sign out an enrolled child.
R9-3-306	The objective of the rule is to require certificate holders to make certain pesticide information available to enrolled children parents before a pesticide application occurs in a child care group home.
R9-3-307	The objective of the rule is to provide requirements to prevent the spread of illness or infestation in a child care group home and for reporting to parents and local health agencies exposure or potential exposure of a communicable disease or infestation.
R9-3-308	The objective of the rule is to provide requirements to protect enrolled children from abuse or

	neglect by requiring certificate holders and staff members to report and document suspected abuse or neglect of an enrolled child to Child Protective Services or local law enforcement.
R9-3-309	The objective of the rule is to ensure proper administration of medications, prescription and non-prescription, to enrolled children. The requirements include who may and how a medication is administered; verification of a parent or medical professional written authorized; and how to store enrolled children's medication to prevent unauthorized access.
R9-3-310	The objective of the rule is to provide requirements for a certificate holder to maintain and make available a first-aid kit to staff members for providing first-aid treatment to an enrolled child, when needed, and for a certificate holder and staff members attending to an enrolled child who has an injury, medical emergency, or death.
R9-3-401	The objective of the rule is to establish requirements that ensure areas and equipment for enrolled children are free of hazards and in good repair. The rule also includes requirements for toys and playground equipment be age-appropriate, sufficient in number, and accessible and staff members are to monitor enrolled children's health and safety by changing soiled clothing, making drinking water available, observing for overexposure to the sun, and applying sunscreen.
R9-3-402	The objective of the rule is to establish standards for the sleeping/napping needs of enrolled children and for when an attending staff member may sleep.
R9-3-403	The objective of the rule is to establish standards for the unique needs of infants and 1- and 2-year-old enrolled children. The standards require a group home to utilize safe sleeping positions and bedding; limit awake time spent in a crib, swing, and other confining device; prepare and store formula, milk, and foods; use age-specific utensils, toys, and feeding chairs; change soiled diapers; and develop a toilet training program.
R9-3-404	The objective of the rule is to establish standards for the unique needs of enrolled children with special needs and staff members who assist an enrolled child using a feeding tube or transporting an enrolled child in a wheelchair.
R9-3-405	The objective of the rule is to clarify requirements and limits a certificate holders shall ensure staff members apply when disciplining or providing guidance to enrolled children.
R9-3-406	The objective of the rule is to establish nutrition and meal standards to ensure that enrolled children receive the right balance of fruits, vegetable, milk, whole grains, and lean protein with each meal to maintain good health, growth, and development.
Table 4.1	The objective of the rule is to provide requirements for the times each type of meal is to be served to an enrolled child.

Table 4.2	The objective of the rule is to provide food components, quantities, and permitted and non-permitted combination of a meal required to be served to an enrolled child.
R9-3-407	The objective of the rule is to establish requirements to ensure that food is stored, served, and consumed in a safe and sanitary manner.
R9-3-408	The objective of the rule is to ensure that enrolled children are safe when transported by a group home during hours of operation. The requirements include obtaining parent's permission prior to transport an enrolled child and maintaining a motor vehicle used for transport according to state laws.
R9-3-501	The objective of the rule is to ensure that the child care group home has sufficient square footage, toileting facilities, climate control, and lighting.
R9-3-502	The objective of the rule is to ensure that a child care group home has sufficient outdoor activity area, shading, play equipment, landscaping, and fencing.
R9-3-503	The objective of the rule is to establish standards for maintaining a swimming pool and a safe swim environment used by enrolled children and staff members.
R9-3-504	The objective of the rule is to establish fire and emergency standards, including fire and emergency evacuation drills, for child care group homes to ensure the health and safety of enrolled children and staff members.
R9-3-505	The objective of the rule is to establish general safety standards for a child care group home to ensure the health and safety of enrolled children on the premises. The standards protect enrolled children against toxic substances, flammable liquids, window blind or curtain cords, fans; stairways; glass and mirrors, firearms, and having access to areas that contain mowers, irrigation, heating and air conditioning units, and other types of hazards conditions.
R9-3-506	The objective of the rule is to ensure a child care group home and its furnishings, equipment, supplies, materials, utensils, and toys are kept clean and free of insects and vermin.
R9-3-507	The objective of the rule is to establish requirements for maintaining clean and sanitary conditions when changing and disposing of diapers of enrolled children at a child care group home.
R9-3-508	The objective of the rule is to establish requirements for maintaining clean and sanitary conditions when animals are kept on the premises of a child care group home.

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

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation
	The rules are effective; however as identified in paragraphs 4 and 6 of this report, the rules could be improved to make clearer and increase understandability of the rules by simplifying and clarifying some requirements; updating antiquated language and outdated definitions and references, and making minor technical and grammatical changes.

4. Are the rules consistent with other rules and statutes?

Yes No

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
R9-3-301	The rule would be consistent with the communicable disease rules in 9 A.A.C. 6 Article 7 if the citation in subsections R9-3-301(J) and R9-3-304(E) were changed to “R9-6-702” from “R9-6-702(A) since 9 A.A.C. 6 Article 7 was amended in 2018 and removed subsection (A).
R9-3-206	The rule would be consistent with R9-5-301 if the rule in subsection (A) included: the local health department, the Arizona Department of Child Safety, or the local fire department, or State Fire Marshal.
R9-3-401	The rule would be consistent with A.R.S. § 36-897.13 if the rule clarified that when a parent permits, an enrolled child who is a school-aged student may possess and use a topical sunscreen product without a note or prescription from a licensed health care professional.
R9-3-408	The rule would be consistent with A.R.S. Title 8, Chapter 4, Article 8 Arizona Department of Child Safety if the citation in R9-3-308(1) were updated to remove “Child Protective Services, establish within the Arizona Department of Economic Security under A.R.S. Title 8, Chapter 10, Article 1” since repealed by Laws 2014, Ch. 1. Additionally, the rule would be consistent with A.R.S. §§ 28-907 and 28-909 if the rule in subsection (E) included requirements for children under the age of five be secured in a passenger restraint system and children ages five and older to be secured with a lap belt or integrated lap and shoulder belt.

5. Are the rules enforced as written?

Yes No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency’s proposal for resolving the issue.

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** Yes No
If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation
R9-3-101	The rule would be clearer and more understandable if the definitions in R9-3-101(3), (39), (42), and (75) were updated. The definition in R9-3-101(3) is antiquated; five or the six regional accrediting organizations listed have changed their names. The definition in R9-3-101(39)(a) should be updated to change the reference to the “Arizona Department of Education,” since A.R.S. § 15-702 requires the “State Board of Education” to provide documentation to individuals for passing the high school general education developmental test. Definition (42) should also include the words “or immediately,” since “immediately” is used as much and has the same meaning as “immediate.” Definition R9-3-101(75) is antiquated and should be changed to be consistent with other Department rules. A new definition for “calendar day” should be added to accurately count time-frames and to make consistent with other child care rules drafted by the Department; and by adding “calendar day” the definition in R9-3-101(26) “days” could be removed since no longer needed. Definition (33), an “enrolled child” would be clearer if “guardian” were listed as one who may enroll a child and if in subsection (b), staff member and child care group home were removed. Definition (63) would be clearer if the definition clarified that a provider is not included as an “individual.” Lastly, definition (73) would be clearer if “completing a Department-provided form...” were removed, since completing a Department-provided form is not instruction received during training.
R9-3-102	The rule would be clearer if the reference to “Table 1” in R9-3-102(A) and (B) were changed to “Table 1.1” to be consistent with Article 1 table title.
R9-3-201	The rule would be clearer if R9-3-102(2)(a)(vi) included “if applicable” to eliminate confusion that may occur when determining if an application is complete or whether a letter of incompleteness should be sent to the applicant request the applicant’s e-mail address and if in subsection (2)(c), the requirement clarified an applicant provide a copy of “both the front and back” of an applicant’s fingerprint clearance card.
R9-3-202	The rule title would be clearer and concise if the rule title did not include “Background Check.” The Department does not monitor or provide for background checks. Additionally, the requirement in R9-3-202(C) would be clearer if the requirement for a copy of a staff member’s or adult resident’s valid fingerprint clearance card specified that the copy include image of both the front and the back of the card and if in R9-3-202(G)(6) the requirement specified “that a staff member is currently under investigation...” rather than “the individual is

	currently under investigation. “Individual” is not defined in the Chapter and requirement in subsection (G)(6), only applies to staff members.
R9-3-205	The rule would be more understandable if the term “modification” were defined in R9-3-301; defining the term would reduce burden for certificate holders for not having to contact the Department to inquire about what is “modification.” The rule would also be clearer if subsections (E) and (F) were combined to clarify that “At least 30 days” applies to both subsections.
R9-3-301	The rule in subsection (D)(1) would be consistent with subsection (A), if subsection (D)(1) clarified that a staff member have a high school diploma or an equivalent certificate. In addition, the rule would be clearer if in subsection (E) the requirement included an enrolled child’s “legal guardian.” And when changed, the Department would also add a definition for “legal guardian” to ensure all applicable individuals are included.
R9-3-302	The rule in subsection (E)(4) would be clearer and understandable if “issued by the agency or instruction” were removed and instead added “issued to the staff member upon completing first aid and CPR training.”
R9-3-303	The rule in subsection (B) would be clearer if incorrect citation to A.R.S. § 36-3009 were changed to A.R.S. § 36-309 and if “child” included specification that the “child” is enrolled at a child care group home.
R9-3-306	The rule in R9-3-306 would be more understandable if simplified and specified that application of pesticides is not applied when children are present and clarify that the name of the licensed applicator provided pesticide services.
R9-3-308	The rule would be clearer and more understandable if in subsection (1), the outdated title "Child Protective Services" and citation were updated to "Department of Child Safety."
R9-3-309	The rule would be clearer if the requirement for securing medication in subsection (F) included securing medication that requires to be refrigerated.
R9-3-402	The rule would be more understandable if in subsection (A)(5), clarification were made to replace “is available for each enrolled child” with “is provided to each enrolled child ages two years and older.”
R9-3-403	The rule would be more understandable if in subsection (A)(2), clarification were added to “available a clean blanket” during sleep time, and if term, “positioning device” were defined.
R9-3-404	The rule would be more understandable if in subsection (A), the term “written instructions” were replaced with “individual plan” and the term “individual plan” were defined in R9-3-301.
Table 4.2	The rule would be clearer if the information in Table 4.2 were updated to make the meal pattern requirements for children and infants consistent with the Department of Agriculture

	Child and Adult Care Food Program Meal Patterns for children and infants.
R9-3-407	The rule would be clearer if the requirements in subsection (A)(11) and (12) clarified that for an enrolled child requiring a modified diet that the information be “written and posted in the kitchen.” Also, the requirement in subsection (A)(19) would be clear if simplified to state that milk dispensed from its original container and unused shall not be returned to its original container.
R9-3-408	The rule would be clearer, if in subsection (C)(1)(d), the requirement clarified that a child care group homes’ automobile insurance is in the name of the licensed business to ensure enrolled children who are transported are adequately insured.
R9-3-504	The rule would be clearer, if in subsection (A)(4), the requirement clarified that a fire extinguisher’s location and specified “is easily accessible.”
R9-3-505	The rule would be clearer, if in subsections (F)(1) and (3) were combined and simplified language to ensure understandability and consistency in providing required drills.
R9-3-506	The rule would be more understandable, if in subsection (8) a staff member could also use a “cloth” when assisting an enrolled child with special needs who cannot wash their own hands. Amending subsection (8) would include the following change: “...the enrolled child’s hands with a washcloth, <u>cloth</u> , or paper towel, or disposable wipes, using each washcloth, <u>cloth</u> , or paper towel, or disposable wipe on only one enrolled child...”
R9-3-507	The rule would be more understandable, if in subsection (A)(3) the requirement clarified that a kitchen sink may not be used. A revised subsection (A)(3) would read: “Provides access to running water <u>which is not a kitchen sink</u> and dispensed soap within 15 feet.”

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

If yes, please fill out the table below:

Commenter	Comment	Agency's Response

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

For fiscal year 2019, the Department certified 186 new facilities, with 213 certification applications received. Nine hundred and fifty five applications were approved for initial certificates, renewals, and amended certificates. The Department did not deny any applications, and 13 initial applications were withdrawn. At the end of the fiscal year, 33 applications, of which 24 were initial applications, were in pending status and 157 facilities elected to close. The Department performed 2,611 regular compliance inspections and 422 complaint-based inspections. These figures are in addition to the inspection that accompanies each application for initial certification (199). The Department performed 275 enforcement actions for licensed facilities (centers and

homes), some of them consolidating multiple complaints. This is higher than the enforcement totals reported in the 2014 five-year-review report. The Department currently has 28 surveyors who are responsible for regulating approximately 277 child care group homes. The Department currently has 11 surveyor positions vacant and 4 staff positions vacant. Each surveyor currently has a survey caseload of approximately 10 homes, including for each a portion of the pending applications. This is a slight reduction in child care group home caseload since 2014.

The child care group home rules were last amended by exempt rulemakings in 2009 at 15 A.A.R. 2091, effective January 1, 2010; in 2010 at 16 A.A.R. 1562, in 2011 at 17 A.A.R. 1530, and in 2013 at 19 A.A.R. 2607. The Department was not required to complete an economic, small business, and consumer impact statement (EIS) for the exempt rulemakings and as such, the Department did not file an EIS for any of the exempt rulemakings. The Department in its 2014 five-year-review report (Report) summarized the changes made to the rules and potential impact to affected persons. Affected persons include certificate holders (child care group homes), consumers, enrolled children, and the Department. The analysis of the estimated economic impact designated annual costs and benefits as minimal or when less than \$1,000; moderate when \$1,000 to 10,000; and substantial when greater than \$10,000. Costs and benefits were designated as significant when meaningful or important but not readily subject to quantification.

Since Chapter 3 rules have not been amended in the past five years, the Department in this five-year-review report assesses whether the impact reported in the 2014 Report is as expected. As previously noted in the 2014 Report, the exempt rulemakings effective in 2010 increased the certificate application fee, pursuant to Laws 2009, Ch. 10, to ensure revenues generated from licensing child care group homes would cover costs incurred by the Department. Additionally in R9-3-203, Certificate Renewal, was simplified and the renewal late filing fee removed. The Department estimated that the increased fees for certificates holders resulted in a minimal to moderate increase in both costs and revenues for the Department. The Department reported that the increased revenues had not covered the operation of the child care group homes program and the difference was obtained through general appropriations and other applicable funds. The Department in this report agrees that the increased fees resulted in a moderate increase in costs and revenues. Additionally, the Department reports that the fees collected do not cover program costs and the difference is still obtained through general appropriations and other applicable funds.

The 2011 exempt rulemaking made amendments throughout the Chapter to streamline and simplify requirements, update references and definitions, and reduced submittals, including changing the certificate renewal to allow all certifications be held in good standing unless revoked or suspended or a licensee does not pay the licensure fee. The change to hold certifications in good standing sharply reducing the administrative burden on the Department and child care group homes. The Department expected to experience a substantial benefit due to reduced costs from staff time saved. The Department agrees with the impact expected and reported in the 2014 Report.

The Department, in Article 1, removed, added, and updated definitions in R9-3-101. In other Sections, the Department simplified requirements by making requirements in R9-3-102 conform to the changes made through Notice of Exempt rulemaking at 16 A.A.R. 1561, and in R9-3-103, simplified requirements for applicants and certificate holders by removing subsections that specify types of business organization. The Department expected the changes to provide a significant benefit to stakeholders. In Article 2, the Department simplified and updated the application process by adding requirements for an applicant to provide an e-mail address; designating individuals to act on behalf of a business entity; and disclosing instances of prior denial or revocation of a license or certificate for health or safety reasons. The Department estimated that these changes would most likely not affect the majority of applicants for certification and expected that streamlining the application process would create a significant benefit for the Department and applicants for certification for a child care group home. The Department agrees that the changes made in Article 1 did and continues to provide significant benefits to affected persons for having rules that are clearer and easier to understand. The Department also agrees that the amended Article 2 rules still provides a significant benefit to the Department and applicants by reducing the time required to complete the application process.

Other Articles were changed to ensure procedural requirements for certificate holders are consistent with performance levels established by industry standards. Changes included updating to requirements for tuberculosis, immunizations, and exclusion during outbreaks to be consistent with Department policy; adding requirements for staff with current training in first aid and CPR to be present during hours of operation; and specifying administration and storage of prescription medications. Modernizing requirements for infants and toddlers for sleeping, waking, and eating; child discipline and separation procedures; and food preparation requirements, including hand-washing provisions and serving requirements were also made. The Department expected that certificate holders deficient in meeting the criteria would incur costs to meet new requirements. The Department agrees with the expected impact reported in 2014 regarding certificate holders incurring costs. However, the Department adds that any increase in cost for the changes related to modernizing requirements for infants and toddlers most likely occurred at the time the rules became effective. The Department expects that over the years following the rulemaking that certificate holders have received increase benefits for providing better care to infants and toddlers and infant and toddlers whose food is adequately prepared have received significant benefits.

Some Articles related to procedural and bookkeeping requirements were removed or simplified, such as removing a requirement for a provider to check the status of immunizations every three months and prohibitions against feeding cereal by bottle to an infant or toddler and against serving high-sugar cereal more than twice weekly. Additionally, other changes included reducing the capacity requirements for fire extinguishers from 2A-10-BC to 1A-10-BC and removing a requirement to document evacuation time. The Department anticipated that the changes would result in none to minimal benefits for certificate holders; the Department agrees with the impact expected.

Additionally, the Department updated health-related equipment and supervision requirements for the contents of first-aid kits and heat exposure monitoring procedures and physical plant requirements involving diaper-changing surfaces, windows, mirrors, window blinds, climate-control fixtures and appliances, and outdoor activity areas. Changes for when and how a provider may apply diapering products, sunscreen, or other substances to an enrolled child's skin were made to ensure maximum benefit to the child. Other requirements regarding the use of wheelchairs in motor vehicles were updated and a requirement for staff to teach "habits of good nutrition" to enrolled children was added. The Department reported that the changes could impose minimal or moderate cost upon certificate holders depending on the certificate holder's circumstances and were expected to provide benefit to enrolled children from improved health and safety. The Department agrees with the 2014 Report and expects that the benefits for enrolled children have been and remain to be significant.

In the 2013 exempt rulemaking, the requirements in R9-3-202 were changed to clarify fingerprinting requirements to make the rule consistent with Laws 2012, Ch. 188 and Laws 2013, Ch. 151 for central registry background checks and added a citation to A.R.S. 8-804(I), requiring licensees and staff members to submit information for central registry background checks. The Department believed that the new requirement to submit information for central registry background checks would likely result in a minimal increase in cost for licensees and staff members and a minimal increase in cost for the Department to verify that licensees and staff members had complied with A.R.S. 8-804. The Department agrees that certificate holders and staff members incur an increase in costs; however in this report, the Department clarifies that the increased cost was a result of a statutory change and not a result of the 2014 rulemaking.

The Department agrees that certificate holders, enrolled children, consumers and the Department benefit significantly from the rulemakings for providing rules that are easier to use, less expensive to enforce, and more effectively protect the health and safety of enrolled children.

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. rather

In the 2014 Report, the Department stated that the rule in R9-3-408 was not consistent with Arizona statutes. In the "Information for Individual Rule" for R9-3-408, the Department identified that the rule should include requirements for children under the age of five be secured in a passenger restraint system pursuant to A.R.S. § 28-907 and children ages five and older to be secured with a lap belt or integrated lap and shoulder belt pursuant to A.R.S. § 28-909. The Department anticipated submitting a Notice of Final Rulemaking for the Child Care Group Home rules by December 31, 2017 to amend R9-3-408 and address other substantive issues that may arise in the

interim. The Department did not complete the expected course of action as reported.

In December 2016, the Department listed the Child Care Group Home rulemaking on its 2017 Regulatory Agenda. In May 2017, the Department drafted an exception request for approval to amend R9-3-408 and a Notice of Docket Opening. Unfortunately, the Department's 2017 Regulatory Agenda was affected by requests to undertake other rulemakings related to new legislation and the Governor's Emergency Declaration to address the national opioid epidemic. The rulemakings included: (1) emergency rulemakings for Opioid Prescribing and Treatment and Opioid Reporting; (2) exempt rulemaking for Emergency Medical Service; and (3) regular rulemakings for Medical Marijuana and Pregnancy and Newborn and Infant Screening.

As other rulemakings were approved, the Department considered delaying the regular rulemaking for Chapter 3, Article 4 to make A.A.C. R9-3-408 consistent with Laws 2012, Ch. 314. After reviewing the Chapter 3 rules and comparing the rules with the 2017 Child Care Facilities five-year-review report, which are very similar to the child care group home rules, the Department decided to postpone the Chapter 3, Article 4 regular rulemaking for the following reasons:

1. The 2017 Child Care Facilities five-year-review report review identified several other changes that are consistent with child care group home rules and should be made to the child care group home rules.
2. The statutes and rules for expedited rulemakings were being changed in 2017 to simplify expedited rulemakings based a five-year-review report and to remove the requirement for an EIS. Reference 23 A.A.R. 2265, effective August 2, 2017, and 24 A.A.R. 3095, effective October 9, 2018.
3. The regular rulemaking, as proposed in the 2014 five-year-review report, would amend two subsections in R9-3-408 to address “child restraints” and would require the Department to draft an EIS.
4. Child care group homes are required to comply with A.R.S. § 28-907 and are to ensure that enrolled child who are transported are secured and restrained in a matter consistent with Arizona statutes.

The Department reasoned, based on its review, that the better use of resources would be to postponing the regular rulemaking amending R9-3-408, and rather, complete an expedited rulemaking based on this 2019 five-year-review report.

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

The Department, based on its analysis of the rules and the 2014 five-year-review report, believes that the rules provide significant benefits to certificate holders for having a simplified application process; is no longer required to submit renewal applications; and having rules that are consistent with industry standards. Additionally, enrolled children and parents receive a significant benefit from modernized requirements that ensure better food preparations, child discipline and separation practices, and being taught “habits of good nutrition.” Enrolled children and parents also benefit from having child care group home staff members who are adequately trained

and are held to stringent fingerprinting requirements. The Department benefits from having a simplified application process and increased fees, even though the fees do not fully fund its Child Care Group Home Programs. The Department does not consider the licensing fee increase a significant burden to certificate holder since the requirement to pay a late fee was removed and certificate holders most likely pass the increased cost onto enrolled children's parents. In addition, the Department added in rule a process for certificate holders to receive a discounted certificate fee, based on funding, by electing to participate in a Department-approved program. The Department believes affected persons benefit significantly from rules that are understandable, clear, effective, and ensure the health and safety of enrolled children. The Department has determined that the probable benefits of the rules outweigh the probable costs of the rules. The Department also believes that the rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

12. **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)?

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The Department, in compliance with A.R.S. § 36-897.01, certifies child care group homes. A child care group home is specific to the certificate holder and is valid only for the location occupied at the time the certificate was issued. A general permit is not applicable and is not used.

14. **Proposed course of action**

If possible, please identify a month and year by which the agency plans to complete the course of action.

The Department plans to amend the rules in 9 A.A.C. 16, Article 5 to address matters identified in this five-year-review report in an expedited rulemakings. The Department plans to submit a Notice of Final Expedited Rulemaking to the Council by June 30, 2020.

TITLE 9. HEALTH SERVICES
CHAPTER 3. DEPARTMENT OF HEALTH SERVICES
CHILD CARE GROUP HOMES

ARTICLE 1. GENERAL

Section

- R9-3-101. Definitions
- R9-3-102. Time-frames
 - Table 1.1. Time-frames (in days)
- R9-3-103. Individuals to Act for Applicant or Certificate Holder

ARTICLE 2. CERTIFICATION

Section

- R9-3-201. Application for a Certificate
- R9-3-202. Fingerprinting and Central Registry Background Check Requirements
- R9-3-203. Certification Fees
- R9-3-204. Invalid Certificate
- R9-3-205. Changes Affecting a Certificate
- R9-3-206. Inspections; Investigations
- R9-3-207. Denial, Revocation, or Suspension of a Certificate

ARTICLE 3. OPERATING A CHILD CARE GROUP HOME

Section

- R9-3-301. Certificate Holder and Provider Responsibilities
- R9-3-302. Staff Training
- R9-3-303. Enrollment of Children
- R9-3-304. Enrolled Child Immunization Requirements
- R9-3-305. Admission and Release of Enrolled Children
- R9-3-306. Pesticides
- R9-3-307. Illness and Infestation
- R9-3-308. Suspected Abuse or Neglect of an Enrolled Child
- R9-3-309. Medications
- R9-3-310. Accident and Emergency Procedures

ARTICLE 4. PROGRAM AND EQUIPMENT STANDARDS

Section

- R9-3-401. General Program, Equipment, and Health and Safety Standards

- R9-3-402. Supplemental Standards for Napping or Sleeping
- R9-3-403. Supplemental Standards for Care of an Enrolled Infant or One- or Two-Year-Old Child
- R9-3-404. Supplemental Standards for Care of an Enrolled Child with Special Needs
- R9-3-405. Discipline and Guidance
- R9-3-406. General Nutrition and Menu Standards

Table 4.1.Meals and Snacks Required to Be Served to Enrolled Children

Table 4.2.Meal Pattern Requirements for Children

- R9-3-407. General Food Service and Food Handling Standards
- R9-3-408. Field Trips and Other Trips Away from the Child Care Group Home

ARTICLE 5. PHYSICAL ENVIRONMENT STANDARDS

Section

- R9-3-501. General Physical Environment Standards
- R9-3-502. Outdoor Activity Area Standards
- R9-3-503. Swimming Pool Standards
- R9-3-504. Fire Safety, Gas Safety, and Emergency Standards
- R9-3-505. General Safety Standards
- R9-3-506. General Cleaning and Sanitation Standards
- R9-3-507. Diaper-Changing Standards
- R9-3-508. Pet and Animal Standards

ARTICLE 1. GENERAL

R9-3-101. Definitions

In addition to the definitions in A.R.S. § 36-897 and unless the context indicates otherwise, the following definitions apply in this Chapter:

1. “Abuse” has the meaning in A.R.S. § 8-201.
2. “Accident” means an unexpected occurrence that:
 - a. Causes physical injury to an enrolled child, and
 - b. May or may not be an emergency.
3. “Accredited” means approved by the:
 - a. New England Association of Schools and Colleges,
 - b. Middle States Association of Colleges and Secondary Schools,
 - c. North Central Association of Colleges and Schools,
 - d. Northwest Association of Schools and Colleges,
 - e. Southern Association of Colleges and Schools, or
 - f. Western Association of Colleges and Schools.
4. “Activity” means an action planned by a certificate holder or staff member and performed by an enrolled child while supervised by a staff member.
5. “Adaptive device” means equipment used to augment an individual’s use of the individual’s arms, legs, sight, hearing, or other physical part or function.
6. “Adult” means an individual 18 years of age or older.
7. “Age-appropriate” means consistent with a child’s age and age-related stage of physical growth and mental development.
8. “Applicant” means an individual or business organization requesting one of the following:
 - a. A certificate under R9-3-201, or
 - b. Approval of a change affecting a certificate under R9-3-205.
9. “Application” means the documents that an applicant is required to submit to the Department to request a certificate or approval of a request for a change affecting a certificate.
10. “Business organization” has the same meaning as “entity” in A.R.S. § 10-140.
11. “Capacity” means the maximum number of enrolled children authorized by the Department to be present at a child care group home during hours of operation.
12. “Certificate” means the written authorization issued by the Department to operate a child care group home in Arizona.
13. “Certificate holder” means a person to whom the Department has issued a certificate.
14. “Change in ownership” means a transfer of controlling legal or controlling equitable interest and authority in the operation of a child care group home.

15. “Child” means any individual younger than 13 years of age.
16. “Child care experience” means an individual’s documented work with children in:
 - a. A child care facility or a child care group home that was licensed, certified, or approved by a state in the United States or by one of the Uniformed Services of the United States;
 - b. A public school, a charter school, a private school, or an accommodation school; or
 - c. A public or private educational institution authorized under the laws of another state where instruction was provided for any grade or combination of grades between pre-kindergarten and grade 12.
17. “Child care services” means the range of activities and programs provided by a certificate holder to an enrolled child, including personal care, supervision, education, guidance, and transportation.
18. “Child with special needs” means:
 - a. A child with a documented diagnosis from a physician, physician assistant, or registered nurse practitioner of a physical or mental condition that substantially limits the child in providing self-care or performing manual tasks or any other major life function such as walking, seeing, hearing, speaking, breathing, or learning;
 - b. A child with a “developmental disability” as defined in A.R.S. § 36-551; or
 - c. A “child with a disability” as defined in A.R.S. § 15-761.
19. “Clean” means:
 - a. To remove dirt or debris by methods such as washing with soap and water, vacuuming, wiping, dusting, or sweeping; or
 - b. Free of dirt and debris.
20. “Communicable disease” has the meaning in A.A.C. R9-6-101.
21. “Compensation” means money or other consideration, including goods, services, vouchers, time, government or public expenditures, government or public funding, or another benefit, that is received as payment.
22. “Controlling person” has the meaning in A.R.S. § 36-881.
23. “Corporal punishment” means any physical act used to discipline a child that inflicts pain to the body of the child, or that may result in physical injury to the child.
24. “CPR” means cardiopulmonary resuscitation.
25. “Credit hour” means an academic unit earned through an accredited college or university for completing the equivalent of one hour of class time each week during a semester or equivalent shorter course term, as designated by the accredited college or university.
26. “Days” means calendar days, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, or state holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or state holiday.

27. “Designated agent” means an individual who is authorized by an applicant or certificate holder to receive communications from the Department, including legal service of process, and to file or sign documents on behalf of the applicant or certificate holder.
28. “Developmentally appropriate” means consistent with a child’s physical, emotional, social, cultural, and cognitive development, based on the child’s age and family background and the child’s personality, learning style, and pattern and timing of growth.
29. “Discipline” means the on-going process of helping a child develop self-control and assume responsibility for the child’s own actions.
30. “Documentation” means information in written, photographic, electronic, or other permanent form.
31. “Emergency” means a potentially life-threatening occurrence involving an enrolled child or staff member that requires an immediate response or medical treatment.
32. “Endanger” means to expose an individual to a situation where physical or mental injury to the individual may occur.
33. “Enrolled child” means a child:
 - a. Who is not a resident; and
 - b. Who has been placed by a parent, who may be a staff member, to receive child care services at the child care group home.
34. “Fall zone” means the surface under and around a piece of equipment onto which a child falling from or exiting from the equipment would be expected to land.
35. “Field trip” means travel for a specific activity to a location away from an area of the child care group home approved for providing child care services.
36. “Food” means a raw, cooked, or processed edible substance or ingredient, including a beverage, used or intended for use in whole or in part for human consumption.
37. “Guidance” means the ongoing direction, counseling, teaching, or modeling of generally accepted social behavior through which a child learns to develop and maintain the self-control, self-reliance, and self-esteem necessary to assume responsibilities, make daily living decisions, and live according to generally accepted social behavior.
38. “Hazard” means a source of endangerment.
39. “High school equivalency diploma” means:
 - a. A document issued by the Arizona Department of Education under A.R.S. § 15-702 to an individual who passes a general educational development test or meets the requirements of A.R.S. § 15-702(B);
 - b. A document issued by another state to an individual who passes a general educational development test or meets the requirements of a state statute equivalent to A.R.S. § 15-702(B); or
 - c. A document issued by another country to an individual who has completed that country’s equivalent of a 12th grade education, as determined by the Department based upon information obtained from American or

foreign consulates or embassies or other governmental entities.

40. “Hours of operation” means the specific days of the week and time period during a day when a certificate holder provides child care services on a regular basis.
41. “Illness” means physical manifestation or signs of sickness such as pain, vomiting, rash, fever, discharge, or diarrhea.
42. “Immediate” means without restriction, delay, or hesitation.
43. “Inaccessible” means:
 - a. Out of an enrolled child’s reach, or
 - b. Locked.
44. “Infant” means
a child 12 months of age or younger.
45. “Infestation” means the presence of lice, pinworms, scabies, or other parasites.
46. “Mat” means a foam pad that has a waterproof cover.
47. “Mechanical restraint” means a device, article, or garment attached or adjacent to a child’s body that the child cannot easily remove and that restricts the child’s freedom of movement or normal access to the child’s body, but does not include a device, article, or garment:
 - a. Used for orthopedic purposes, or
 - b. Necessary to allow a child to heal from a medical condition.
48. “Medication” means a substance prescribed by a physician, physician assistant, or registered nurse practitioner or that is available without a prescription for the treatment or prevention of illness or infestation.
49. “Menu” means a written description of food that a child care group home provides and serves as a meal or snack.
50. “Motor vehicle” has the meaning in A.R.S. § 28-101.
51. “Neglect” has the meaning in A.R.S. § 8-201.
52. “Outbreak” has the meaning in A.A.C. R9-6-101.
53. “Parent” means:
 - a. A natural or adoptive mother or father,
 - b. A legal guardian appointed by a court of competent jurisdiction, or
 - c. A “custodian” as defined in A.R.S. § 8-201.
54. “Perishable food” means food that becomes unfit for human consumption if not stored to prevent spoilage.
55. “Person” has the meaning in A.R.S. § 1-215.
56. “Personal items” means those articles of property that belong to an enrolled child and are brought to the child care group home for that enrolled child’s exclusive use, such as clothing, a blanket, a sheet, a toothbrush, a pacifier, a hairbrush, a comb, a washcloth, or a towel.
57. “Physician” means an individual licensed as a doctor of:
 - a. Allopathic medicine under A.R.S. Title 32, Chapter 13;

- b. Naturopathic medicine under A.R.S. Title 32, Chapter 14;
 - c. Osteopathic medicine under A.R.S. Title 32, Chapter 17;
 - d. Homeopathic medicine under A.R.S. Title 32, Chapter 29; or
 - e. Allopathic, naturopathic, osteopathic, or homeopathic medicine under the laws of another state.
58. “Physician assistant” means:
- a. The same as in A.R.S. § 32-2501, or
 - b. An individual licensed as a physician assistant under the laws of another state.
59. “Premises” means a child care group home’s residence and the surrounding property, including any structures on the property, that can be enclosed by a single unbroken boundary line that does not encompass property owned or leased by another person.
60. “Registered nurse practitioner” means:
- a. The same as in A.R.S. § 32-1601, or
 - b. An individual licensed as a registered nurse practitioner under the laws of another state.
61. “Regular basis” means at recurring, fixed, or uniform intervals.
62. “Residence” means a dwelling, such as a house, used for human habitation.
63. “Resident” means an individual who uses a child care group home as the individual’s principal place of habitation for 30 days or more during the calendar year.
64. “Sanitize” means to use heat, a chemical agent, or a germicidal solution to disinfect and reduce pathogen counts, including bacteria, viruses, mold, and fungi.
65. “School-age child” means a child who attends:
- a. A public school, as defined for “school” in A.R.S. § 15-101; or
 - b. A private school, as defined in A.R.S. § 15-101.
66. “Separate” means to exclude a child from and have the child physically move away from other children, while keeping the child under supervision.
67. “Signed” means affixed with an individual’s signature or, if the individual is unable to write the individual’s name, with a symbol representing the individual’s signature.
68. “Sippy cup” means a lidded drinking container that is designed to be leak-proof or leak-resistant and from which a child drinks through a spout or straw.
69. “Space utilization” means the designated use of specific areas on the premises for providing child care services.
70. “Staff member” means an individual who works at a child care group home providing child care services, regardless of whether compensation is received by the individual in return for providing child care services, and includes a provider.

71. “Supervision” means:
- a. For a child who is awake, knowledge of and accountability for the actions and whereabouts of the child, including the ability to see or hear the child at all times, to interact with the child, and to provide guidance to the child;
 - b. For a child who is asleep, knowledge of and accountability for the actions and whereabouts of the child, including the ability to see or hear the child at all times and to respond to the child;
 - c. For a staff member who is not an adult, knowledge of and accountability for the actions and whereabouts of the staff member and the ability to interact with and provide guidance to the staff member; or
 - d. For an individual other than a child or staff member, knowledge of and accountability for the actions and whereabouts of the individual, including the ability to see and hear the individual when the individual is in the presence of an enrolled child and the ability to intervene in the individual’s actions to prevent harm to enrolled children.

72. “Swimming pool” has the meaning in A.A.C. R18-5-201.

73. “Training” means instruction received through:

- a. Completion of a live or computerized conference, seminar, lecture, workshop, class, or course; or
- b. Watching a video presentation and completing a Department-provided form to document the video instruction.

74. “Week” means a seven-day period beginning on Sunday at 12:00 a.m. and ending on Saturday at 11:59 p.m.

75. “Working day” means the period between 8:00 a.m. and 5:00 p.m. on a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday.

R9-3-102. Time-frames

- A. The overall time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Department under this Chapter is set forth in Table 1. The applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. An extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.
- B. The administrative completeness review time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Department under this Chapter is set forth in Table 1 and begins on the date that the Department receives an application.
 1. The Department shall send a notice of administrative completeness or deficiencies to the applicant within the administrative completeness review time-frame.
 - a. A notice of deficiencies shall list each deficiency and the information or items needed to complete the application.
 - b. The administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice of deficiencies is sent until the date that the Department receives all of the missing information or items from the applicant.

- c. If an applicant fails to submit to the Department all of the information or items listed in the notice of deficiencies within 180 days after the date that the Department sent the notice of deficiencies, the Department shall consider the application withdrawn.
 - 2. If the Department issues a certificate or other approval to the applicant during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.
- C. The substantive review time-frame described in A.R.S. § 41-1072 is set forth in Table 1 and begins on the date of the notice of administrative completeness.
- 1. As part of the substantive review for an application for a certificate, the Department shall conduct an inspection that may require more than one visit to the child care group home or premises.
 - 2. As part of the substantive review for a request for approval of a change affecting a certificate that requires a change in the use of physical space at a child care group home, the Department shall conduct an inspection that may require more than one visit to the child care group home.
 - 3. The Department shall send a certificate or a written notice of approval or denial of a certificate or other request for approval to an applicant within the substantive review time-frame.
 - 4. During the substantive review time-frame, the Department may make one comprehensive written request for additional information, unless the Department and the applicant have agreed in writing to allow the Department to submit supplemental requests for information.
 - a. If the Department determines that an applicant, a child care group home, or the premises are not in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter, the Department shall send a comprehensive written request for additional information that includes a written statement of deficiencies stating each statute and rule upon which noncompliance is based.
 - b. An applicant shall submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental request for information, including, if applicable, documentation of the corrections required in a statement of deficiencies, within 30 days after the date of the comprehensive written request for additional information or the supplemental request for information.
 - c. The substantive review time-frame and the overall time-frame are suspended from the date that the Department sends a comprehensive written request for additional information or a supplemental request for information until the date that the Department receives all of the information requested, including, if applicable, documentation of corrections required in a statement of deficiencies.
 - d. If an applicant fails to submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental request for information, including, if applicable, documentation of corrections required in a statement of deficiencies, within the time prescribed in subsection (C)(4)(b), the Department shall deny the application.
 - 5. The Department shall issue a certificate or approval if the Department determines that the applicant and the child care group home or premises are in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 4 and this

Chapter, and the applicant submits documentation of corrections, which is acceptable to the Department, for any deficiencies.

6. If the Department denies a certificate or approval, the Department shall send to the applicant a written notice of denial setting forth the reasons for denial and all other information required by A.R.S. § 41-1076.

Table 1.1. Time-frames (in days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Review Time-frame	Substantive Review Time-frame
Certificate under R9-3-201	A.R.S. § 36-897.01	150	30	120
Approval of Change Affecting Certificate under R9-3-205(B)	A.R.S. §§ 36-897.01 and 36-897.02	75	30	45

R9-3-103. Individuals to Act for Applicant or Certificate Holder

When an applicant or certificate holder is required by this Chapter to provide information on or sign an application form or other document, hold a fingerprint clearance card, or complete Department-provided orientation, the following shall satisfy the requirement on behalf of the applicant or certificate holder:

1. If the applicant or certificate holder is an individual, the individual; and
2. If the applicant or certificate holder is a business organization, the designated agent who:
 - a. Is a controlling person of the business organization,
 - b. Is a U.S. citizen or legal resident, and
 - c. Has an Arizona address.

ARTICLE 2. CERTIFICATION

R9-3-201. Application for a Certificate

An applicant for a certificate shall:

1. Be at least 21 years of age, and
2. Submit to the Department an application packet containing:
 - a. An application on a form provided by the Department that contains:
 - i. The applicant's name and date of birth;
 - ii. The name to be used for the child care group home, if any;
 - iii. The address and telephone number of the residence;

- iv. The mailing address of the applicant, if different from the address of the residence;
 - v. The applicant's contact telephone number, if different from the telephone number of the residence;
 - vi. The applicant's e-mail address;
 - vii. The name of the provider, if different from the applicant;
 - viii. The requested capacity for the child care group home;
 - ix. The anticipated hours of operation for the child care group home;
 - x. Whether the applicant agrees to allow the Department to submit supplemental requests for information;
 - xi. Whether the applicant or any controlling person has been denied a certificate or license to operate a child care group home or child care facility in this state or another state or has had a certificate or license to operate a child care group home or child care facility revoked in this state or another state and, if so:
 - (1) The name of the individual who had the certificate or license denied or revoked,
 - (2) The reason for the denial or revocation,
 - (3) The date of the denial or revocation, and
 - (4) The name and address of the certifying or licensing agency that denied or revoked the certificate or license;
 - xii. A statement that the applicant has read and will comply with A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter;
 - xiii. A statement that the applicant has sufficient financial resources to comply with A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter;
 - xiv. A statement that the information provided in the application packet is accurate and complete; and
 - xv. The applicant's signature and date the applicant signed the application;
- b. A copy of the applicant's:
- i. U.S. passport,
 - ii. Birth certificate,
 - iii. Naturalization documents, or
 - iv. Documentation of legal resident alien status;
- c. A copy of the applicant's valid fingerprint clearance card issued according to A.R.S. Title 41, Chapter 12, Article 3.1;
- d. A copy of the form required in A.R.S. § 36-897.03(B) for the applicant;
- e. A document issued by the Department showing that the applicant has completed Department-provided orientation training that included the Department's role in certifying and regulating child care group homes under A.R.S. Title 36, Chapter 7.1, Article 4, and this Chapter;
- f. A floor plan of the residence where child care services will be provided, showing:
 - i. The location and dimensions of each room in the residence, with designation of the rooms to be used for providing child care services;

- ii. The location of each exit from the residence;
 - iii. The location of each sink and toilet available for use by enrolled children;
 - iv. The location of each smoke detector in the residence; and
 - v. The location of each fire extinguisher in the residence;
- g. A site plan of the premises showing:
- i. The location and dimensions of the outdoor activity area;
 - ii. The height of the fence around the outdoor activity area;
 - iii. The location of each exit from the outdoor activity area;
 - iv. The location of the residence;
 - v. The location of each swimming pool, if applicable;
 - vi. The location and height of the fence around each swimming pool, if applicable;
 - and
 - vii. The location and dimensions of any other building or structure on the premises, if applicable;
- h. If the child care group home is located within one-fourth of a mile of agricultural land:
- i. The names and addresses of the owners or lessees of each parcel of agricultural land located within one-fourth mile of the child care group home, and
 - ii. A copy of an agreement complying with A.R.S. § 36-897.01(B) for each parcel of agricultural land;
 - i. The applicable fee in R9-3-203; and
 - j. If the applicant is a business organization, a form provided by the Department that contains:
 - i. The name, street address, city, state, and zip code of the business organization;
 - ii. The type of business organization;
 - iii. The name, date of birth, title, street address, city, state, and zip code of the designated agent;
 - iv. The name, date of birth, title, street address, city, state, and zip code of each other controlling person;
 - v. A copy of the business organization's articles of incorporation, articles of organization, partnership documents, or joint venture documents, if applicable; and
 - vi. Documentation of good standing issued by the Arizona Corporation Commission and dated no earlier than three months before the date of the application, if applicable.

R9-3-202. Fingerprinting and Central Registry Background Check Requirements

A. A certificate holder shall ensure that:

1. A staff member completes, signs, dates, and submits to the certificate holder before the staff member's starting date of employment or volunteer service:
 - a. The form required in A.R.S. § 36-897.03(B); and
 - b. If required by A.R.S. § 8-804, the form in A.R.S. § 8-804(I); and
2. An adult resident completes, signs, dates, and submits to the certificate holder before the resident's starting date of residency or the date of certification of the child care group home the form required in A.R.S. § 36-897.03(B).

- B.** A certificate holder shall maintain documentation of a valid fingerprint clearance card issued under A.R.S. § 41-1758.03.
- C.** Except as provided in A.R.S. § 41-1758.03, a certificate holder shall ensure that a staff member or adult resident submits to the certificate holder a copy of:
1. The staff member's or adult resident's valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1; or
 2. The fingerprint clearance card application that staff member or adult resident submitted to the Department of Public Safety under A.R.S. § 41-1758.02:
 - a. For the staff member, within seven working days after the staff member's starting date of employment or volunteer service; and
 - b. For the adult resident, within seven working days after the resident's starting date of residency or the date of certification of the child care group home.
- D.** A certificate holder shall ensure that each individual who is a staff member or an adult resident submits to the certificate holder a copy of the individual's valid fingerprint clearance card each time the fingerprint clearance card is issued or renewed.
- E.** If a staff member or resident possesses a fingerprint clearance card that was issued before the staff member or resident became a staff member or resident at the child care group home, a certificate holder shall:
1. Contact the Department of Public Safety within seven working days after the individual becomes a staff member or resident to determine whether the fingerprint clearance card is valid; and
 2. Document this determination, including the name of the staff member or resident, the date of contact with the Department of Public Safety, and whether the fingerprint clearance card is valid.
- F.** If required by A.R.S. § 8-804, before an individual's starting date of employment or volunteer service, a certificate holder shall comply with the submission requirements in A.R.S. § 8-804(C) for the individual.
- G.** A certificate holder shall not allow an adult individual to be a staff member or a resident if the individual:
1. Has been denied a fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1, and has not received an interim approval under A.R.S. § 41-619.55;
 2. Receives an interim approval under A.R.S. § 41-619.55 but is subsequently denied a good cause exception under A.R.S. § 41-619.55 and a fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1;
 3. Is a parent or guardian of a child adjudicated to be a dependent child as defined in A.R.S. § 8-201;
 4. Has been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state;
 5. Has had a license to operate a child care facility or certificate to operate a child care group home in this state or another state revoked for reasons related to the endangerment of the health and safety of children;

6. If applicable, has stated on the form required in A.R.S. § 8-804(I) that the individual is currently under investigation for an allegation of abuse or neglect or has a substantiated allegation of abuse or neglect and has not subsequently received a central registry exception according to A.R.S. § 41-619.57; or
7. If applicable, is disqualified from employment or volunteer service as a staff member according to A.R.S. § 8-804 and has not subsequently received a central registry exception according to A.R.S. § 41-619.57.

R9-3-203. Certification Fees

- A. Except as provided in subsection (B), the certification fee for a certificate holder is \$1,000.
- B. If a certificate holder participates in a Department-approved program, the Department may discount the certification fee, based on available funding.
- C. A certificate holder shall submit to the Department, every three years and no more than 60 days before the anniversary date of the child care group home's certificate:
 1. A form provided by the Department that contains:
 - a. The certificate holder's name;
 - b. The child care group home's name, if applicable, and certificate number; and
 - c. Whether the certificate holder intends to submit the applicable fee:
 - i. With the form, or
 - ii. According to the payment plan in subsection (C)(2)(b); and
 2. Either:
 - a. The applicable fee in subsection (A) or (B), or
 - b. One-half of the applicable fee in subsection (A) or (B) with the form and the remainder of the applicable fee due no later than 120 days after the anniversary date of the child care group home's certificate.

R9-3-204. Invalid Certificate

If a certificate holder does not submit the certification fee as required in R9-3-203(C)(2), the certificate to operate a child care group home is no longer valid, and the child care group home is operating without a certificate.

R9-3-205. Changes Affecting a Certificate

- A. For an intended change in a certificate holder's name or the name of a child care group home:
 1. The certificate holder shall send the Department written notice of the name change at least 30 days before the intended date of the name change; and
 2. Upon receipt of the written notice required in subsection (A)(1), the Department shall issue an amended certificate that incorporates the name change but retains the anniversary date of the certificate.
- B. At least 30 days before the date of an intended change in a child care group home's space utilization or capacity, a certificate holder shall submit to the Department a written request for approval of the intended change that includes:
 1. The certificate holder's name;
 2. The child care group home's name, if applicable;

3. The name, telephone number, e-mail address, and fax number of a point of contact for the request;
 4. The child care group home's certificate number;
 5. The type of change intended:
 - a. Space utilization, or
 - b. Capacity;
 6. A narrative description of the intended change; and
 7. The following additional information, as applicable:
 - a. If requesting a change in capacity, the square footage of the outdoor activity area and the square footage of the indoor areas where child care services will be provided;
 - b. If requesting a change that involves a modification of the residence that requires a building permit, a copy of the building permit;
 - c. If requesting a change in space utilization that affects individual rooms:
 - i. A floor plan of the residence that complies with R9-3-201(2)(f) and shows the intended changes, and
 - ii. The square footage of each affected room; and
 - d. If requesting a change in space utilization that affects the outdoor activity area:
 - i. A site plan of the premises that complies with R9-3-201(2)(g) and shows the intended changes, and
 - ii. The square footage of the intended outdoor activity area.
- C. The Department shall review a request submitted under subsection (B) according to R9-3-102. If the intended change is in compliance with A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter, the Department shall send the certificate holder an approval of the request and, if necessary, an amended certificate that incorporates the change but retains the anniversary date of the current certificate.
- D. A certificate holder shall not implement any change in subsection (B) until the Department issues an approval or amended certificate.
- E. At least 30 days before the date of a change in ownership, a certificate holder shall send the Department written notice of the change in ownership.
- F. A person planning to assume operation of a child care group home shall obtain a new certificate as prescribed in R9-3-201 before beginning operation of the child care group home.
- G. A certificate holder changing a child care group home's location shall:
1. Apply for a new certificate as prescribed in R9-3-201, and
 2. Obtain a new certificate from the Department before beginning operation of the child care group home at the new location.
- H. Within 30 days after the date of a change in the business organization information provided under R9-3-201(2)(j), other than a change in ownership, a certificate holder that is a business organization shall send the Department written notice of the change.

R9-3-206. Inspections; Investigations

- A. An applicant, certificate holder, or provider shall allow the Department immediate access to all areas of the premises that may affect the health, safety, or welfare of an enrolled child or to which an enrolled child may have access during hours of operation.
- B. A certificate holder or provider shall permit the Department to interview each staff member or enrolled child outside of the presence of others as part of an investigation.

R9-3-207. Denial, Revocation, or Suspension of a Certificate

- A. The Department may deny, revoke, or suspend a certificate to operate a child care group home if an applicant or certificate holder:
 1. Provides false or misleading information to the Department;
 2. Is the parent or guardian of a child adjudicated to be a dependent child as defined in A.R.S. § 8-201;
 3. Has been denied a certificate or license to operate a child care group home or child care facility in any state, unless the denial was based on the individual's failure to complete the certification or licensing process according to a required time-frame;
 4. Has had a certificate or license to operate a child care group home or child care facility revoked or suspended in any state for reasons that relate to endangerment of the health and safety of children;
 5. Has been denied a fingerprint clearance card or has had a fingerprint clearance card suspended or revoked under A.R.S. Title 41, Chapter 12, Article 3.1; or
 6. Fails to substantially comply with any provision in A.R.S. Title 36, Chapter 7.1, Article 4 or this Chapter.
- B. In determining whether to deny, suspend, or revoke a certificate, the Department shall consider the threat to the health and safety of enrolled children at a child care group home based on the factors listed in A.R.S. § 36-897.06.

ARTICLE 3. OPERATING A CHILD CARE GROUP HOME

R9-3-301. Certificate Holder and Provider Responsibilities

- A. A certificate holder shall:
 1. Designate a provider who:
 - a. Lives in the residence;
 - b. Is 21 years of age or older;
 - c. Has a high school diploma, high school equivalency diploma, associate degree, or bachelor degree;
 - d. Meets one of the following:
 - i. Has completed at least three credit hours in child growth and development, nutrition, psychology, or early childhood education;
 - ii. Has completed at least 60 hours of training in child growth and development, nutrition, psychology, early childhood education, or management of a child care business; or
 - iii. Has at least 12 months of child care experience; and

- e. Has completed Department-provided orientation training that includes the Department's role in certifying and regulating child care group homes under A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter;
2. Ensure that each staff member is 16 years of age or older;
3. Ensure that each resident 12 years of age or older and each staff member submits, on or before the starting date of residency, employment, or volunteer services, one of the following as evidence of freedom from infectious active tuberculosis:
 - a. Documentation of a negative Mantoux skin test or other tuberculosis screening test recommended by the U.S. Centers for Disease Control and Prevention, administered within 12 months before the starting date of residency, employment, or volunteer service, that includes the date and the type of tuberculosis screening test; or
 - b. If the resident or staff member has had a positive Mantoux skin test or other tuberculosis screening test, a written statement that the resident or staff member is free from infectious active tuberculosis that is signed and dated by a physician, physician assistant, or registered nurse practitioner within six months before the starting date of residency, employment, or volunteer service; and
4. Ensure that the provider:
 - a. Supervises or assigns an adult staff member to supervise each staff member who is not an adult;
 - b. Maintains on the premises a file for each staff member, for 12 months after the date the staff member last worked at the child care group home, containing:
 - i. The staff member's name, date of birth, home address, and telephone number;
 - ii. The staff member's starting date of employment or volunteer service;
 - iii. The staff member's ending date of employment or volunteer service, if applicable;
 - iv. The staff member's written statement attesting to current immunity against measles, rubella, diphtheria, mumps, and pertussis;
 - v. The form required in A.R.S. § 36-897.03(B);
 - vi. For an adult staff member, a copy of the staff member's valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1;
 - vii. Documents required by subsection (A)(3);
 - viii. Documentation of the requirements in A.R.S. § 36-897.03(C);
 - ix. If applicable:
 - (1) The form required in A.R.S. § 8-804(I);
 - (2) Documentation of the submission required in A.R.S. § 8-804(C) and the information received as a result of the submission; and
 - (3) Documentation of the completion of the Department-provided orientation training specified in subsection (A)(1)(e), if applicable;
 - x. Documentation of the training required in R9-3-302; and

- xi. Documentation of a high school diploma, high school equivalency diploma, associate degree, or bachelor degree, if applicable;
 - c. Maintains on the premises a file for each resident, for 12 months after the date the resident last resided at the child care group home, containing:
 - i. The resident's name and date of birth;
 - ii. The resident's relationship to the provider;
 - iii. The date the resident began residing at the child care group home;
 - iv. The date the resident last resided at the child care group home, if applicable;
 - v. A written statement by the resident or, if the resident is a minor, the provider attesting to the resident's current immunity against measles, rubella, diphtheria, mumps, and pertussis;
 - vi. If the resident is an adult, the form required in A.R.S. § 36-897.03(B);
 - vii. If the resident is an adult, the documents required by R9-3-202(C)(2) or R9-3-202(D); and
 - viii. If the resident is 12 years of age or older, the documents required by subsection (A)(3);
 - d. Prepares a dated attendance record for each day and ensures that each staff member records on the attendance record the staff member's start time and end time of providing child care services for the child care group home;
 - e. Maintains on the premises the dated attendance record required in subsection (A)(4)(d) for 12 months after the date on the attendance record;
 - f. Except as specified in R9-3-408, provides child care services only in areas:
 - i. Designated as provided in R9-3-201(2)(f)(i) or R9-3-201(2)(g)(i), or
 - ii. Approved under R9-3-205(C);
 - g. Does not engage in outside employment during hours of operation or operate another business at or out of the residence during hours of operation;
 - h. Does not allow another staff member to engage in or operate another business at or out of the residence during the staff member's assigned work hours at the child care group home;
 - i. Does not allow the operation of another business on the premises during hours of operation unless the operation of the business does not involve persons coming onto the premises during hours of operation because of the business; and
 - j. Does not allow the cultivation of medical marijuana on the premises.
- B.** A certificate holder shall ensure that all of the records required to be maintained by this Chapter either are written in English or, if written in a language other than English, include an English translation.
- C.** A certificate holder shall:
- 1. Secure and maintain general liability insurance of at least \$100,000 for the child care group home; and
 - 2. Maintain on the premises documentation of the insurance coverage required in subsection (C)(1).
- D.** A certificate holder shall ensure that:

1. An adult staff member with one of the following is on the premises and acting on behalf of the certificate holder when the provider is not present at the child care group home:
 - a. At least six months of child care experience;
 - b. Two or more credit hours in child growth and development, nutrition, psychology, or early childhood education; or
 - c. At least 30 hours of training in child growth and development, nutrition, psychology, or early childhood education; and
 2. At least one adult staff member, in addition to the provider or the staff member specified in subsection (D)(1), is on the premises when six or more enrolled children are at the child care group home.
- E.** A certificate holder shall ensure that a parent of an enrolled child or an individual designated in writing by the parent of an enrolled child is allowed immediate access during hours of operation to the areas of the premises where the enrolled child is receiving child care services.
- F.** A certificate holder shall:
1. Prepare a document that includes the following information:
 - a. The name and contact telephone number of the provider;
 - b. The hours of operation of the child care group home;
 - c. Charges, fees, and payment requirements for child care services;
 - d. Whether medications are administered at the child care group home and, if so, a description of what the parent is required to give to the child care group home;
 - e. Whether enrolled children go on field trips under the supervision of a staff member;
 - f. Whether the child care group home provides transportation for enrolled children to or from school, a school bus stop, or other locations;
 - g. The mechanism by which a staff member will verify that an individual contacting the child care group home by telephone claiming to be the parent of an enrolled child is the enrolled child's parent;
 - h. A statement that a parent has access to the areas on the premises where the parent's enrolled child is receiving child care services;
 - i. A statement that inspection reports for the child care group home are available for review at the child care group home; and
 - j. The local address and contact telephone number for the Department; and
 2. Ensure that a staff member provides the document required in subsection (F)(1) to a parent of an enrolled child.
- G.** A certificate holder shall ensure that a staff member posts in a place that can be conspicuously viewed by individuals entering or leaving the child care group home:
1. The child care group home certificate;
 2. The name of the provider;

3. The name of the staff member designated to act on behalf of the certificate holder when the provider is not present at the child care group home;
 4. The hours of operation for the child care group home;
 5. The weekly activity schedule required in R9-3-401(B)(4)(b);
 6. The amount of time in minutes enrolled children may watch television, videos, or DVDs at the child care group home; and
 7. The weekly menu, required in R9-3-406(F), before the first meal or snack of the week.
- H.** A certificate holder shall ensure that a staff member supervises any individual who is not a staff member and is on the premises where enrolled children are present.
- I.** A certificate holder shall ensure that a staff member who has current training in first aid and CPR is present during hours of operation when an enrolled child is on the premises or on a trip away from the premises under the supervision of a staff member.
- J.** A certificate holder shall ensure that if a staff member or resident lacks documentation of immunization or evidence of immunity that complies with A.A.C. R9-6-704 for a communicable disease listed in A.A.C. R9-6-702(A):
 1. The staff member or resident is excluded from the child care group home between the start and end of an outbreak of the communicable disease at the child care group home, or
 2. The child care group home is closed until the end of an outbreak at the child care group home.
- K.** Within 72 hours after changing a provider, a certificate holder shall send the Department written notice of the change, including the name of the new provider.
- L.** Except as provided in subsections (M) and (N), a certificate holder shall notify the Department in writing of a planned change in a child care group home's hours of operation at least three days before the date of the planned change, including:
 1. The certificate holder's name;
 2. The child care group home's certificate number; and
 3. The current and intended hours of operation.
- M.** A certificate holder is not required to notify the Department of a change in a child care group home's hours of operation when the change in the child care group home's hours of operation is due to the occurrence of a state or federal holiday on a day of the week the child care group home regularly provides child care services.
- N.** When the premises of a child care group home are left unoccupied during hours of operation or the child care group home is temporarily closed due to an unexpected event, a certificate holder shall ensure that a staff member notifies the Department before leaving the child care group home unoccupied or closing the child care group home, stating the period of time during which the child care group home will be unoccupied or closed.

R9-3-302. Staff Training

- A.** Within 10 days after the starting date of employment or volunteer service, a certificate holder shall provide, and each staff member shall complete, training for new staff members that includes all of the following:

1. Names, ages, and developmental stages of enrolled children;
 2. Health needs, nutritional requirements, any known allergies, and information about adaptive devices of enrolled children;
 3. Guiding and disciplining children;
 4. Hand washing techniques;
 5. Diapering techniques and toileting, if any enrolled children are in diapers or require assistance in using the toilet;
 6. Sudden infant death syndrome awareness, if child care services are provided to an infant or a one-year-old child;
 7. Preparing, serving, and storing food;
 8. Preparing, handling, and storing infant formula and breast milk, if any enrolled children are fed infant formula or breast milk;
 9. Recognizing signs of illness and infestation;
 10. Detecting, preventing, and reporting child abuse or neglect;
 11. Responding to accidents and emergencies;
 12. Sun safety;
 13. Procedures for trips away from the child care group home, if applicable; and
 14. Staff responsibilities as required by A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter.
- B.** A certificate holder shall ensure that a staff member's completion of the training required by subsection (A) is documented and signed by the provider, including the date of completion of the training.
- C.** A certificate holder shall ensure that each staff member completes a total of 12 or more actual hours of training every 12 months after becoming a staff member in two or more of the following:
1. Child growth and development, which may include sudden infant death prevention;
 2. Developmentally appropriate activities;
 3. Nutrition and developmentally appropriate eating habits;
 4. Responding to accidents and emergencies, including CPR and first aid for infants and children;
 5. Recognizing signs of illness and infestation;
 6. Detecting, preventing, and reporting child abuse or neglect;
 7. Guiding and disciplining children; and
 8. Availability of community services and resources, including those available to children with special needs.
- D.** A certificate holder shall ensure that a staff member submits to the certificate holder documentation of training received as required by subsection (C) as the training is completed.
- E.** A certificate holder shall ensure that a staff member required by R9-3-301(I) meets all of the following:
1. The staff member obtains first aid training specific to infants and children;
 2. The staff member obtains CPR training specific to infants and children, which includes a demonstration of the staff member's ability to perform CPR;
 3. The staff member maintains current training in first aid and CPR; and

4. The staff member provides the certificate holder with a copy of the front and back of the current card issued by the agency or instructor as proof of completion of the requirements of this subsection.

R9-3-303. Enrollment of Children

A. A certificate holder shall require that a child be enrolled by the child's parent or by an individual authorized in writing by the child's parent.

B. Except as required in A.R.S. § 36-3009, before a child receives child care services at a child care group home, a certificate holder shall require the individual enrolling the child to

complete a Department-provided Emergency, Information, and Immunization Record card containing:

1. The child's name, home address, city, state, zip code, sex, and date of birth;
2. The date of the child's enrollment;
3. The name, home address, city, state, zip code, and contact telephone number of each parent of the child;
4. The name and contact telephone number of at least two individuals authorized by the child's parent to collect the child from the child care group home or to be contacted if the child's parent cannot be contacted;
5. The name and contact telephone number of the child's physician, physician assistant, or registered nurse practitioner;
6. Written authorization for emergency medical care of the child;
7. The name of the individual to be contacted in case of injury or sudden illness of the child;
8. A written description provided by a child's parent of the nutritional and dietary needs of the child;
9. A written description provided by the child's parent noting the child's susceptibility to illness, physical conditions of which a staff member should be aware, and any individual requirements for health maintenance; and
10. The dated signature of the individual completing the Emergency, Information, and Immunization Record card.

C. A certificate holder shall maintain a current Emergency, Information, and Immunization Record card for each enrolled child on the premises in a place that provides a staff member ready access to the card in the event of an emergency at, or evacuation of, the child care group home.

D. When a child is disenrolled from a child care group home, the certificate holder shall ensure that a staff member:

1. Enters the date of disenrollment on the child's Emergency, Information, and Immunization Record card; and
2. Maintains the records in subsection (D)(1) for 12 months after the date of disenrollment on the premises in a place separate from the current Emergency, Information, and Immunization Record cards.

R9-3-304. Enrolled Child Immunization Requirements

A. A certificate holder shall not permit an enrolled child to receive child care services at a child care group home until the child care group home receives:

1. An immunization record for the enrolled child with the information required in 9 A.A.C. 6, Article 7, stating that the enrolled child has received all current, age-appropriate immunizations required under 9 A.A.C. 6, Article 7, that is:

- a. Provided by a physician, physician assistant, registered nurse practitioner, or another individual authorized by state law to administer immunizations; or
 - b. Generated from the Arizona State Immunization Information System, which is the Department's child immunization reporting system established in A.R.S. § 36-135; or
2. An exemption affidavit for the enrolled child provided by the enrolled child's parent that contains:
 - a. A statement, signed by the enrolled child's physician, physician assistant, or registered nurse practitioner, that the immunizations required by 9 A.A.C. 6, Article 7 would endanger the enrolled child's health or medical condition; or
 - b. A statement, signed by the enrolled child's parent, that the enrolled child is being raised in a religion whose teachings are in opposition to immunization.
- B.** A certificate holder shall ensure that a staff member attaches an enrolled child's written immunization record or exemption affidavit, required in subsection (A), to the enrolled child's Emergency, Information, and Immunization Record card, required in R9-3-303(B).
- C.** A certificate holder shall ensure that a staff member updates an enrolled child's written immunization record required in subsection (A)(1)(a) each time the enrolled child's parent provides the child care group home with a written statement from the enrolled child's physician, physician assistant, or registered nurse practitioner that the enrolled child has received an age-appropriate immunization required by 9 A.A.C. 6, Article 7.
- D.** If an enrolled child's immunization record indicates that the enrolled child has not received an age-appropriate immunization required by 9 A.A.C. 6, Article 7, a certificate holder shall ensure that a staff member:
 1. Notifies the enrolled child's parent in writing that the enrolled child may attend the child care group home for not more than 15 days after the date of the notification unless the enrolled child's parent complies with the immunization requirements in 9 A.A.C. 6, Article 7; and
 2. Documents on the enrolled child's Emergency, Information, and Immunization Record card the date on which the enrolled child's parent is notified of an immunization required by the Department.
- E.** For an outbreak of a disease listed in A.A.C. R9-6-702(A) at a child care group home, a certificate holder shall:
 1. Not allow an enrolled child to attend the child care group home between the start and end of the outbreak if the enrolled child lacks documentation of immunization or evidence of immunity to the disease that complies with A.A.C. R9-6-704, and
 2. Permit the enrolled child to attend the child care group home if a parent of the enrolled child provides any of the documents in A.A.C. R9-6-704 for the enrolled child.

R9-3-305. Admission and Release of Enrolled Children

- A.** A certificate holder shall ensure that:

1. An enrolled child is signed into and signed out from the child care group home by:
 - a. The enrolled child's parent;
 - b. An individual authorized in writing or by telephone by the enrolled child's parent; or

- c. The enrolled child, if the enrolled child is a school-age child and the enrolled child's parent has given written permission for the enrolled child to self-admit or self-release;
 - 2. The individual signing the enrolled child into or out from the child care group home:
 - a. Records the time of the enrolled child's arrival or departure, and
 - b. Signs the attendance record with at least the first initial of the individual's first name and the individual's last name; and
 - 3. The attendance record is maintained on the premises for 12 months from the date of the attendance record.
- B.** If an enrolled child gives a staff member written permission for the enrolled child to self-admit or self-release, the certificate holder shall ensure that the staff member verifies permission with the enrolled child's parent before the enrolled child is allowed to self-admit or self-release.
- C.** If an individual who is unknown to a staff member present comes to sign out an enrolled child, the certificate holder shall ensure that before releasing the child to the individual the staff member reviews:
- 1. The enrolled child's Emergency, Information, and Immunization Record card to verify that the enrolled child's parent has authorized the individual to sign out the child; and
 - 2. A driver's license or other picture identification to verify the individual's identity.

R9-3-306. Pesticides

Except as prescribed by A.R.S. § 36-898(C), a certificate holder shall ensure that a staff member makes the following pesticide information available in writing to the parent of an enrolled child, upon the parent's request, at least 48 hours before a pesticide application occurs on the premises:

- 1. The brand, concentration, rate of application, and any use restrictions required by the label of the herbicide or specific pesticide;
- 2. The date and time of the pesticide application;
- 3. The pesticide label and the material safety data sheet; and
- 4. The name and telephone number of the pesticide business licensee and the name of the licensed applicator.

R9-3-307. Illness and Infestation

- A.** A certificate holder shall ensure that an enrolled child is excluded from the child care group home when:
- 1. A staff member determines that the enrolled child's illness:
 - a. Prevents the enrolled child from participating in activities without experiencing discomfort or aggravation of symptoms, or
 - b. Results in a greater need for care than staff members can provide without compromising the health or safety of other enrolled children, or
 - 2. The child's exclusion is required under 9 A.A.C. 6, Article 3
- B.** If an enrolled child exhibits signs of illness or infestation that require exclusion from the child care group home under subsection (A), a certificate holder shall ensure that a staff member:

1. Immediately separates the enrolled child from other enrolled children;
 2. Notifies the individual designated by the parent on the enrolled child's Emergency, Information, and Immunization Record card to be contacted in case of the enrolled child's injury or illness that the enrolled child needs to be picked up from the child care group home; and
 3. Makes a written record of the notification and places it in the enrolled child's file.
- C. A certificate holder shall ensure that a staff member or resident who has signs or symptoms of illness or infestation is excluded from the child care group home when required under 9 A.A.C. 6, Article 3.
- D. If a certificate holder is notified that an enrolled child, staff member, or resident has an infestation or a communicable disease, other than human immunodeficiency virus or a sexually transmitted disease, the certificate holder shall:
1. Provide written notice of potential exposure to each staff member and to a parent of each enrolled child within 24 hours after the certificate holder receives notice of the communicable disease or infestation;
 2. Maintain the written notice required in subsection (D)(1) on the premises for 12 months after the written notice is provided; and
 3. Provide notice to the local health agency if required under 9 A.A.C. 6, Article 2.

R9-3-308. Suspected Abuse or Neglect of an Enrolled Child

A certificate holder shall ensure that:

1. The certificate holder or a staff member immediately reports suspected abuse or neglect of an enrolled child to Child Protective Services, established within the Arizona Department of Economic Security under A.R.S. Title 8, Chapter 10, Article 1, or to a local law enforcement agency, as required by A.R.S. § 13-3620;
2. If a staff member or resident is suspected of abuse or neglect of an enrolled child, the certificate holder also reports the suspected abuse or neglect to the Department; and
3. Documentation of a report required in subsection (1) or (2) is maintained on the premises for 12 months after the date of the report.

R9-3-309. Medications

- A. A certificate holder shall ensure that a document is prepared and maintained on the premises that specifies:
1. Whether prescription or nonprescription medications are administered to enrolled children; and
 2. If prescription or nonprescription medications are administered, the requirements in subsection (B) for administering the prescription or nonprescription medications.
- B. If prescription or nonprescription medications are administered at a child care group home, a certificate holder shall ensure that:
1. The provider or another staff member designated in writing by the provider is responsible for:
 - a. Administering medications at the child care group home,
 - b. Storing medications at the child care group home,

- c. Supervising the ingestion of medications, and
 - d. Documenting the administration of medications;
2. At any given time, only one designated staff member at the child care group home is responsible for the duties described in subsection (B)(1);
 3. The designated staff member does not administer a medication to an enrolled child unless the child care group home receives written authorization on a completed Department-provided authorization form that includes:
 - a. The child's first and last names;
 - b. The name of the medication;
 - c. The prescription number, if any;
 - d. Instructions for administration specifying:
 - i. The dosage,
 - ii. The route of administration,
 - iii. The first and last dates that the medication is to be administered, and
 - iv. The times and frequency of administration;
 - e. The reason for the medication;
 - f. The signature of the child's parent; and
 - g. The date of signature; and
 4. The designated staff member:
 - a. Measures liquid medications for oral administration using a measuring cup, spoon, or dropper specifically made for measuring liquid medication;
 - b. Administers prescription medications provided by an enrolled child's parent to the enrolled child only from a container dispensed by a pharmacy and accompanied by a pharmacy-generated prescription label that includes the child's first and last names and administration instructions;
 - c. Administers nonprescription medications provided by an enrolled child's parent to the enrolled child only from an original manufacturer's container labeled with the enrolled child's first and last names;
 - d. Does not administer a medication that has been transferred from one container to another;
 - e. Does not administer a nonprescription medication to an enrolled child inconsistent with the instructions on the nonprescription medication's label, unless the child care group home receives written administration instructions from the enrolled child's physician, physician assistant, or registered nurse practitioner;
 - f. Documents each administration of medication to an enrolled child on the Department-provided form required in subsection (B)(3) including:
 - i. The name of the enrolled child;
 - ii. The name and amount of medication administered and the prescription number, if any;
 - iii. The date and time the medication was administered; and
 - iv. The signature of the staff member who administered the medication to the enrolled child; and

- g. Maintains the record on the premises for 12 months after the date the medication is administered.
- C. A certificate holder shall allow an enrolled child to receive an injection at the child care group home only after obtaining written authorization from a physician, physician assistant, or registered nurse practitioner. The certificate holder shall maintain the written authorization on the premises for 12 months after the date of the last injection.
- D. An individual authorized by state law to give injections may give an injection to an enrolled child. In an emergency, an individual may give an injection to an enrolled child according to A.R.S. §§ 32-1421(A)(1) and 32-1631(2).
- E. A certificate holder shall return unused prescription or nonprescription medication to a parent when the medication is no longer being administered to the enrolled child or has expired, whichever comes first, or dispose of the medication according to state and federal laws, if the child is no longer enrolled at the child care group home and the certificate holder is unable to locate the child's parent.
- F. Except as provided in subsection (G), a certificate holder shall ensure that:
 1. Medication belonging to an enrolled child is stored in a locked, leak-proof storage cabinet or container that is used only for storing medications belonging to enrolled children; and
 2. Medication belonging to a staff member or resident is stored in a locked, leak-proof storage cabinet or container that is separate from the storage container for enrolled children's medications.
- G. A certificate holder shall ensure that a staff member's or enrolled child's prescription medication necessary to treat life-threatening symptoms is kept in a location inaccessible to enrolled children except when the prescription medication is administered to treat the life-threatening symptoms.
- H. A certificate holder shall ensure that a child care group home does not stock a supply of prescription or nonprescription medications for administration to enrolled children.

R9-3-310. Accident and Emergency Procedures

- A. A certificate holder shall ensure that a child care group home has a first-aid kit on the premises that contains at least the following items, in a quantity sufficient to meet the needs of the enrolled children at the child care group home:
 1. Sterile bandages including:
 - a. Adhesive bandages of assorted sizes,
 - b. Sterile gauze pads, and
 - c. Sterile gauze rolls,
 2. Antiseptic solution or sealed antiseptic wipes,
 3. Single-use non-porous gloves,
 4. Reclosable plastic bags of at least one-gallon size,
 5. Scissors, and
 6. Adhesive or self-adhering tape.
- B. A certificate holder shall ensure that the first aid kit required in subsection (A) is accessible to staff members but inaccessible to enrolled children.

- C. If, while receiving child care services at a child care group home, an enrolled child has an accident, injury, or emergency that, based on an evaluation by a staff member, does not require medical treatment by a physician, physician assistant, or registered nurse practitioner, the certificate holder shall ensure that first aid treatment as needed is provided to the enrolled child by an individual with current training in first aid.
- D. If, while receiving child care services at a child care group home, an enrolled child has an accident, injury, or emergency that, based on an evaluation by a staff member, requires medical treatment by a physician, physician assistant, or registered nurse practitioner, a certificate holder shall ensure that a staff member:
 1. Within 30 minutes after the accident, injury, or emergency, notifies the individual designated by the parent on the enrolled child's Emergency, Information, and Immunization Record card to be contacted in case of the enrolled child's injury or illness;
 2. Documents:
 - a. A description of the accident, injury, or emergency, including the date, time, and location of the accident, injury, or emergency;
 - b. The method used to notify the designated individual; and
 - c. The time the designated individual was notified; and
 3. Maintains documentation required in subsection (D)(2) on the premises for 12 months after the date of the child's disenrollment.
- E. A certificate holder shall notify the Department orally or in writing within 24 hours after an enrolled child's death at the child care group home during hours of operation.

ARTICLE 4. PROGRAM AND EQUIPMENT STANDARDS

R9-3-401. General Program, Equipment, and Health and Safety Standards

- A. In addition to complying with the requirements in this Chapter, a certificate holder shall ensure that the health, safety, or welfare of an enrolled child is not placed at risk of harm.
- B. A certificate holder shall ensure that:
 1. A staff member:
 - a. Supervises each enrolled child at all times,
 - b. Plays and communicates with an enrolled child throughout the day, and
 - c. Responds immediately to signs of distress from an enrolled child;
 2. The areas of the child care group home approved for providing child care services are maintained free from hazards;
 3. The toys, materials, and equipment for use by enrolled children:
 - a. Include, as appropriate to the ages of the enrolled children at the child care group home:
 - i. Arts supplies,

- ii. Manipulatives to enhance small motor development,
 - iii. Indoor and outdoor equipment to enhance large motor development,
 - iv. Creative play materials,
 - v. Books, and
 - vi. Musical instruments;
 - b. Are sufficient in number and type to meet the needs of the enrolled children in attendance at the child care group home;
 - c. Are accessible to enrolled children; and
 - d. Are maintained free from hazards and in a condition that allows the toys, materials, and equipment to be used for their original purpose;
4. The activities at the child care group home are:
- a. Structured to meet the age and developmental level of each enrolled child; and
 - b. Based upon a written weekly schedule that includes:
 - i. Routines, such as meals, snacks, and rest periods, that follow a familiar and consistent pattern;
 - ii. If weather and air quality permit, outdoor activities to enhance large muscle development;
 - iii. Stories, music, dancing, singing, and reading;
 - iv. Listening and talking opportunities; and
 - v. Creative activities such as water play, cutting and pasting, painting, coloring, dramatic play, and playing with blocks;
5. Clean clothing is available to an enrolled child; and
6. Drinking water is available to enrolled infants and one- or two-year-old children and is accessible to older enrolled children at all times.

C. A certificate holder shall ensure that a staff member:

1. Monitors an enrolled child for overheating or overexposure to the sun and, if an enrolled child exhibits signs of overheating or overexposure to the sun, notifies a staff member who has current training in first aid to evaluate the enrolled child;
2. When an enrolled child's clothing is wet or soiled:
 - a. Except for an enrolled child who can change the enrolled child's own clothing, changes the enrolled child's wet or soiled clothing;
 - b. If the clothing is soiled with feces, empties the feces into a flush toilet without rinsing the clothing;
 - c. Stores the enrolled child's wet or soiled clothing in a sealed plastic bag labeled with an identifier that is specific to the enrolled child; and
 - d. Sends the enrolled child's wet or soiled clothing home with the enrolled child or the enrolled child's parent;

3. Bathes an enrolled child at the child care group home only if the child care group home has received written permission from the enrolled child's parent;
4. Except as specified in subsection (C)(5), labels the personal items of an enrolled child with an identifier that is specific to the enrolled child and stores the personal items separately from the personal items of other enrolled children and residents;
5. Stores diapering products in a location that is inaccessible to enrolled children but accessible for diaper changing; and
6. If a parent of an enrolled child permits or asks a staff member to apply sunscreen, diapering products, or other substances to the skin of an enrolled child, obtains:
 - a. The sunscreen, diapering products, or other substances from the enrolled child's parent; or
 - b. If the child care group home supplies the sunscreen, diapering products, or other substances, written permission from the enrolled child's parent for the application of the specific sunscreen, diapering products, or other substances.

R9-3-402. Supplemental Standards for Napping or Sleeping

A. A certificate holder shall ensure that:

1. Each enrolled child who naps or sleeps at the child care group home is furnished with a bed, cot, mat, or crib that accommodates the enrolled child's height and weight;
2. The bed, cot, mat, or crib is not used by another individual while in use by the enrolled child;
3. The cot, mat, or bed's mattress is covered with a clean sheet that is laundered when soiled, at least once every seven days, and before use by a different enrolled child;
4. The crib mattress is covered with a clean fitted-sheet designed for the crib mattress size that is laundered when soiled, at least once every 24 hours, and before use by a different enrolled child; and
5. A clean blanket or sheet is available for each enrolled child.

B. A certificate holder shall not allow an enrolled child to use:

1. A waterbed,
2. The upper bed of a bunk bed, or
3. A stacked crib.

C. A certificate holder shall ensure that a crib used by an enrolled child:

1. Has bars or openings spaced no more than 2 3/8 inches apart;
2. Has a crib mattress that is:
 - a. Measured to fit not more than 1/2 inch from the crib side, and
 - b. Commercially waterproofed or covered with a waterproof crib mattress cover;
3. Is cleaned and sanitized when soiled; and
4. Does not contain bumper pads, pillows, comforters, sheepskins, stuffed toys, or other soft products when an enrolled child is in the crib.

D. When enrolled children are present at a child care group home during hours of operation, a certificate holder shall ensure that a staff member:

1. Remains awake until all enrolled children are asleep, and
2. Is allowed to sleep only:
 - a. During the hours of 8:00 p.m. to 5:00 a.m., and
 - b. If the staff member can hear and respond to an enrolled child waking from sleep.

R9-3-403. Supplemental Standards for Care of an Enrolled Infant or One- or Two-Year-Old Child

A. A certificate holder shall ensure that:

1. A staff member:
 - a. Does not allow an enrolled infant or one- or two-year-old child to spend more than 30 consecutive minutes of time while awake in a crib, playpen, swing, feeding chair, infant seat, or other confining piece of equipment;
 - b. Allows each enrolled infant to maintain an individual pattern of sleeping, waking, and eating, unless the enrolled infant's parent has instructed otherwise;
 - c. If providing a bottle or sippy cup to an enrolled infant or one- or two-year-old child before the enrolled infant or one- or two-year-old child naps or sleeps:
 - i. Ensures that only water is in the bottle or sippy cup unless the written instructions required by subsection (A)(3)(b) state otherwise;
 - ii. Removes the used bottle or sippy cup from the enrolled infant or one- or two-year-old child's crib, bed, cot, or mat as soon as the enrolled infant or one- or two-year-old child finishes drinking or falls asleep; and
 - iii. Cleans the used bottle or sippy cup before the bottle or sippy cup is reused;
 - d. Checks the diaper of each enrolled infant or one- or two-year-old child throughout the day and changes a diaper as soon as it is wet or soiled;
 - e. Ensures that toys provided for an enrolled infant or one- or two-year-old child are too large to swallow; and
 - f. Does not permit an enrolled infant to use a walker;
2. When putting an enrolled infant to sleep, a staff member:
 - a. Places the enrolled infant on the enrolled infant's back to sleep, unless the enrolled infant's physician, physician assistant, or registered nurse practitioner has instructed otherwise in writing;
 - b. Does not use a positioning device that restricts movement, unless the enrolled infant's physician, physician assistant, or registered nurse practitioner has instructed otherwise in writing; and
 - c. Does not use a mechanical restraint on the enrolled infant in a crib;
3. When feeding an enrolled infant, a staff member:
 - a. Prepares and stores the enrolled infant's formula, breast milk, or other food according to written instructions from the enrolled infant's parent;

- b. Feeds formula, breast milk, or other food to the enrolled infant according to current written instructions from the enrolled infant's parent; and
 - c. If the enrolled infant is younger than six months of age or cannot hold a bottle for feeding, holds the enrolled infant for feeding; and
4. When feeding an enrolled infant who is no longer being held for feeding or an enrolled one- or two-year-old child, a staff member:
 - a. Seats the enrolled infant or one- or two-year-old child in a feeding chair or at a table with a chair that allows the enrolled infant or one- or two-year-old child to reach food while sitting; and
 - b. If the feeding chair is manufactured with a safety strap, fastens the safety strap around the enrolled infant or one- or two-year-old child while the enrolled infant or one- or two-year-old child is seated in the feeding chair.

B. A certificate holder shall ensure that a staff member:

1. Consults with an enrolled child's parent to establish a plan for toilet training for the enrolled child,
2. Implements the toilet training plan,
3. Provides the parent with information about the enrolled child's progress in toilet training, and
4. Ensures that toilet training is not forced on the enrolled child.

R9-3-404. Supplemental Standards for Care of an Enrolled Child with Special Needs

A. Before an enrolled child with special needs receives child care services at a child care group home, the certificate holder shall ensure that the child care group home obtains from the enrolled child's parent written instructions for providing care for the enrolled child, including as applicable for the enrolled child:

1. A medication schedule,
2. Nutrition and feeding instructions,
3. Instructions for medical equipment or adaptive devices used by the enrolled child,
4. Emergency instructions,
5. Toileting and personal hygiene instructions,
6. Identification of specific child care services to be provided at the child care group home, and
7. Instructions for fire and emergency evacuation drills.

B. A certificate holder shall ensure that:

1. At least one staff member receives instructions from the parent of an enrolled child with special needs that enables the staff member to interact with, feed, and care for the enrolled child with special needs;
2. Documentation of the instructions required in subsection (B)(1) is maintained on the premises for 12 months after the child is disenrolled;
3. When tube feeding an enrolled child, a staff member only uses:
 - a. Commercially prepackaged formula in a ready-to-use state, stored according to directions on the package;

- b. Formula prepared by the enrolled child's parent and brought to the child care group home in an unbreakable container; or
 - c. Breast milk brought to the child care group home in an unbreakable container;
 - 4. Only a staff member who received the instructions required in subsection (B)(1):
 - a. Feeds an enrolled child who requires tube feeding using the enrolled child's tube-feeding apparatus, and
 - b. Cleans the enrolled child's tube-feeding apparatus; and
 - 5. A staff member:
 - a. Assists an enrolled child with special needs to enable the enrolled child to participate in activities at the child care group home; and
 - b. Ensures that the enrolled child is provided with developmentally appropriate toys, materials, and equipment.
- C. In addition to complying with the requirements in R9-3-408, a certificate holder shall ensure that a staff member transporting an enrolled child with special needs in a wheelchair in a motor vehicle operated by the child care group home ensures that:
- 1. The enrolled child's wheelchair is manufactured to be secured in a motor vehicle;
 - 2. The enrolled child's wheelchair is secured in the motor vehicle using a minimum of four anchorages attached to the motor vehicle floor, and four securing devices, such as straps or webbing that have buckles and fasteners, that attach the wheelchair to the anchorages;
 - 3. The enrolled child is secured in the wheelchair by means of a wheelchair restraint that is a combination of pelvic and upper body belts intended to secure a passenger in a wheelchair; and
 - 4. The enrolled child's wheelchair is placed in a position in the motor vehicle that does not prevent access to the enrolled child in the wheelchair or passage to the front and rear of the motor vehicle.

R9-3-405. Discipline and Guidance

- A. A certificate holder shall ensure that a staff member:
- 1. Establishes and maintains reasonable guidelines and limits for enrolled children's behavior and applies them consistently;
 - 2. Teaches, models, and encourages orderly conduct, self-control, and age-appropriate behavior;
 - 3. When disciplining an enrolled child:
 - a. Explains to the enrolled child why the particular behavior is not allowed,
 - b. Suggests an alternate behavior to the enrolled child, and
 - c. Assists the enrolled child to become engaged in an alternate activity; and
 - 4. If an enrolled child's behavior may result in harm to self or others, holds the enrolled child without undue force until the enrolled child regains self-control or composure.
- B. A certificate holder shall ensure that a staff member does not use or allow:
- 1. A method of discipline that could cause harm to the health, safety, or welfare of an enrolled child;
 - 2. Corporal punishment;

3. Discipline associated with:
 - a. Eating, napping, sleeping, or toileting;
 - b. Medication;
 - c. Mechanical restraint;
 - d. Humiliation; or
 - e. Fear; or
 4. Discipline administered to an enrolled child by an individual who is not a staff member.
- C. A certificate holder may allow a staff member to separate an enrolled child older than two years of age from other children for unacceptable behavior according to the following:
1. A separation period may not last longer than three minutes after the enrolled child has regained control or composure, and
 2. A staff member may not allow an enrolled child to be separated for longer than 10 minutes without the staff member interacting with the enrolled child.
- D. A staff member may not discipline the staff member's own child in a manner inconsistent with subsections (A) through (C) during hours of operation.

R9-3-406. General Nutrition and Menu Standards

- A. This Section does not apply to infants.
- B. A certificate holder shall ensure that meals and snacks are served to enrolled children in compliance with Table 4.1.
- C. When a child care group home provides food for enrolled children, the certificate holder shall ensure that:
1. Each meal or snack is prepared and served according to the meal pattern requirements in Table 4.2;
 2. Second servings of food are served to each enrolled child at meal time and snack time, if requested by the enrolled child;
 3. The same food item, other than milk, is not served more than once in a single day;
 4. During each week, meals include a variety of foods from each food category in the meal pattern requirements in Table 4.2;
 5. Unless an enrolled child's parent requests otherwise, milk served to the enrolled child is:
 - a. Fat-free or 1% low-fat milk for an enrolled child older than two years of age; and
 - b. Whole milk for an enrolled child two years of age or younger;
 6. Only pasteurized milk is served;
 7. Reconstituted dry milk is not served to meet the fluid milk requirement;
 8. Juice served to enrolled children for a meal or snack is pasteurized full-strength 100% vegetable juice, fruit juice, or fruit and vegetable juice combination from an original, commercially filled container or reconstituted from a concentrate according to manufacturer directions;
 9. A beverage sweetened with any kind of sugar product is not provided by the child care group home; and

10. High fat or high sugar food items such as muffins, brownies, donuts, pastries, croissants, cakes, or cookies are served to satisfy a meal or snack category no more than twice each week.
- D.** If a parent who provides food for the parent's enrolled child does not provide milk or juice for the enrolled child, the certificate holder shall provide milk or juice to the enrolled child unless doing so would be inconsistent with a modified diet prescribed for the enrolled child by the child's parent, physician, physician assistant, or registered nurse practitioner.
- E.** A certificate holder shall ensure that a staff member maintains a supply of food sufficient to serve the meals and snacks required by this Section to be served to each enrolled child attending the child care group home in a single day.
- F.** A certificate holder shall ensure that a staff member:
1. Prepares a weekly menu specifying the foods to be served at each meal and snack on each day,
 2. Dates each menu, and
 3. Writes food substitutions on a posted menu no later than the morning of the day of the meal or snack to which the substitution applies.

Table 4.1. Meals and Snacks Required to Be Served to Enrolled Children

Times Enrolled Child Is at Child Care Group Home	Child Required to Be Served
Before 8:00 a.m.	Breakfast, if requested by parent or child
Between 8:00 a.m. and 11:00 a.m.	At least one snack
Between 11:00 a.m. and 1:00 p.m.	Lunch
Between 1:00 p.m. and 5:00 p.m.	At least one snack
Between 5:00 p.m. and 7:00 p.m., if staying beyond 7:00 p.m.	Dinner
Between 7:00 p.m. and 9:00 p.m., if staying beyond 9:00 p.m.	At least one snack

Table 4.2. Meal Pattern Requirements for Children

Food Components	Ages 1 through 2 years	Ages 3 through 5 years	Ages 6 years and older
Breakfast:			
1. Milk, fluid	1/2 cup	3/4 cup	1 cup
2. Vegetable, fruit, or full-strength juice	1/4 cup	1/2 cup	1/2 cup
3. Bread and bread alternates (whole grain or enriched):			
Bread	1/2 slice	1/2 slice	1 slice
or cornbread, rolls, muffins, or biscuits	1/2 serving	1/2 serving	1 serving
or cold dry cereal (volume or weight, whichever is less)	1/4 cup	1/3 cup	3/4 cup
or cooked cereal, pasta, noodle products, or cereal grains	1/4 cup	1/4 cup	1/2 cup
Lunch or Supper:			
1. Milk, fluid	1/2 cup	3/4 cup	1 cup
2. Vegetable and/or fruit (2 or more kinds)	1/4 cup total	1/2 cup total	3/4 cup total
3. Bread and bread alternates (whole grain or enriched):			
Bread	1/2 slice	1/2 slice	1 slice
or cornbread, rolls, muffins, or biscuits	1/2 serving	1/2 serving	1 serving
or cold dry cereal (volume or weight, whichever is less)	1/4 cup	1/3 cup	3/4 cup
or cooked cereal, pasta, noodle products, or cereal grains	1/4 cup	1/4 cup	1/2 cup
4. Meat or meat alternates:			
Lean meat, fish, or poultry (edible portion as served)	1 oz.	1 1/2 oz.	2 oz.
or cheese	1 oz.	1 1/2 oz.	2 oz.
or egg	1/2 egg	3/4 egg	1 egg
or cooked dry beans or peas*	1/4 cup	3/8 cup	1/2 cup
or peanut butter, soy nut butter, or other nut or seed butter	2 tbsp**	3 tbsp**	4 tbsp**
or peanuts, soy nuts, tree nuts, or seeds	1/2 oz.**	3/4 oz.**	1 oz.**
or an equivalent quantity of any combination of the above meat/meat alternates			
or yogurt	4 oz.	6 oz.	8 oz.

Snack: (select 2 of these 4 components)***			
1. Milk, fluid	1/2 cup	1/2 cup	1 cup
2. Vegetable, fruit, or full-strength juice	1/2 cup	1/2 cup	3/4 cup
3. Bread and bread alternates (whole grain or enriched):			
Bread	1/2 slice	1/2 slice	1 slice
or cornbread, rolls, muffins, or biscuits	1/2 serving	1/2 serving	1 serving
or cold dry cereal (volume or weight, whichever is less)	1/4 cup	1/3 cup	3/4 cup
or cooked cereal, pasta, noodle products, or cereal grains	1/4 cup	1/4 cup	1/2 cup
4. Meat or meat alternates:			
Lean meat, fish, or poultry (edible portion as served)	1/2 oz.	1/2 oz.	1 oz.
or cheese	1/2 oz.	1/2 oz.	1 oz.
or egg	1/2 egg	1/2 egg	1/2 egg
or cooked dry beans or peas*	1/8 cup	1/8 cup	1/4 cup
or peanut butter, soy nut butter, or other nut or seed butter	1 tbsp	1 tbsp	2 tbsp
or peanuts, soy nuts, tree nuts, or seeds	1/2 oz.	1/2 oz.	1 oz.
or an equivalent quantity of any combination of the above meat/meat alternates			
or yogurt	2 oz.	2 oz.	4 oz.

* In the same meal service, dried beans or dried peas may be used as a meat alternate or as a vegetable; however, such use does not satisfy the requirement for both components.

** At lunch and supper, no more than 50% of the requirement shall be met with nuts, seeds, or nut butters. Nuts, seeds, or nut butters shall be combined with another meat or meat alternative to fulfill the requirement. Two tablespoons of nut butter or one ounce of nuts or seeds equals one ounce of meat.

*** Juice may not be served when milk is served as the only other component.

R9-3-407. General Food Service and Food Handling Standards

A. A certificate holder shall ensure that:

1. Except as provided in subsection (B), each staff member washes the staff member's hands with soap and running water before handling food, after handling potentially hazardous food, and before serving food;
2. Except as provided in subsection (B), enrolled children, except infants and children with special needs who cannot wash their own hands, wash their hands with soap and running water before and after handling or eating food;
3. A staff member:

- a. Washes with a washcloth, paper towel, disposable wipe, or soap and running water the hands of an enrolled infant or child with special needs who cannot wash the child's own hands before and after the enrolled infant or child with special needs handles or eats food; and
 - b. If using a washcloth, paper towel, or disposable wipes, uses each washcloth, paper towel, or disposable wipe only once before it is laundered or discarded;
4. A staff member:
 - a. Encourages, but never forces, an enrolled child to eat;
 - b. Assists each enrolled child who needs assistance with eating; and
 - c. Teaches self-feeding skills and habits of good nutrition to each enrolled child as necessary;
5. Food served to an enrolled child younger than five years of age is prepared so as not to present a choking hazard;
6. Each enrolled child is supplied with drinking and eating utensils for the child's own use;
7. Each enrolled child's bottle or sippy cup is marked with an identifier that is specific to the enrolled child;
8. An enrolled child is not allowed to drink from the bottle, sippy cup, cup, or glass of another individual;
9. An enrolled child is not allowed to eat food directly off the floor, carpet, or ground;
10. An enrolled child's parent is notified when the child consistently refuses to eat or exhibits unusual eating behavior;
11. Each staff member is informed of a modified diet prescribed for an enrolled child by the child's parent, physician, physician assistant, or registered nurse practitioner;
12. The food served to an enrolled child is consistent with a modified diet prescribed for the child by the child's parent, physician, physician assistant, or registered nurse practitioner;
13. After each use, non-single-use utensils and equipment used in preparing, eating, or drinking food are:
 - a. Washed in an automatic dishwasher and air dried or heat dried; or
 - b. Washed in hot soapy water, rinsed in clean water, and air dried or heat dried;
14. Single-use utensils and equipment are disposed of after being used;
15. Perishable foods are covered and stored in a refrigerator;
16. A refrigerator at the child care group home maintains a temperature of 41° F or below, as shown by a thermometer kept in the refrigerator at all times;
17. A freezer at the child care group home maintains a temperature of 0° F or below, as shown by a thermometer kept in the freezer at all times;
18. Foods are prepared as close as possible to serving time and, if prepared in advance, are either:
 - a. Cold held at a temperature of 45° F or below or hot held at a temperature of 130° F or above until served, or
 - b. Cold held at a temperature of 45° F or below and then reheated to a temperature of at least 165° F before being served;
19. Fresh milk is served from the original, commercially filled container to a container used for meal service or a cup, and unused portions are not returned to the original container;

20. Food leftover from a meal where enrolled children pass a serving container from individual to individual or from the provider's family meal is not served to an enrolled child;
and
 21. A food is not served past its expiration date or after it has begun to spoil.
- B.** If soap and running water are not available at the location where food is served, such as on a field trip, a staff member may use disposable wipes or hand sanitizer as a substitute for washing hands with soap and running water.

R9-3-408. Field Trips and Other Trips Away from the Child Care Group Home

- A.** A certificate holder shall only allow a staff member to take an enrolled child away from an area of the child care group home approved for providing child care services during hours of operation with written permission from the enrolled child's parent as follows:
1. For a trip to drop off the enrolled child at or pick up the enrolled child from the enrolled child's school, bus stop, or another location, the written permission shall include:
 - a. The enrolled child's name;
 - b. The location where the enrolled child will be dropped off or picked up;
 - c. The time at which the enrolled child will be dropped off or picked up;
 - d. The time period, not to exceed 12 months, during which the permission is given; and
 - e. The dated signature of the enrolled child's parent; and
 2. For a field trip, the written permission shall include:
 - a. The enrolled child's name;
 - b. A description of the field trip;
 - c. The name of the field trip destination, if applicable;
 - d. The street address and, if available, the telephone number of the field trip destination, if applicable;
 - e. Either:
 - i. The date or dates of the field trip; or
 - ii. The time period, not to exceed 12 months, during which the permission is given;
 - f. The projected time of departure from the child care group home;
 - g. The projected time of arrival back at the child care group home; and
 - h. The dated signature of the enrolled child's parent.
- B.** A certificate holder shall ensure that a staff member maintains a copy of the written permission required in subsection (A) for 12 months after:
1. For a trip under subsection (A)(1), the date of the last trip; and
 2. For a trip under subsection (A)(2), the last date for which permission was given.
- C.** A certificate holder shall ensure that:
1. Each motor vehicle used by an individual to transport an enrolled child:
 - a. Is maintained in a mechanically safe condition;

- b. Is free from hazards;
 - c. Is registered by the Arizona Department of Transportation as required by A.R.S. Title 28, Chapter 7;
 - d. Has documentation of current motor vehicle insurance coverage maintained inside the motor vehicle;
 - e. Has an operational heating system;
 - f. Has an operational air-conditioning system; and
 - g. Is equipped with:
 - i. A first-aid kit that meets the requirements in R9-3-310; and
 - ii. Two large, clean towels or blankets;
2. An enrolled child is not transported in a truck bed, camper, or trailer attached to a motor vehicle; and
 3. The Department is notified by telephone or other equally expeditious means within 24 hours after a motor vehicle accident that involves a motor vehicle transporting an enrolled child, including a description of the accident.
- D.** A certificate holder shall ensure that an individual who drives a motor vehicle used to transport an enrolled child:
1. Is 18 years of age or older, and
 2. Holds a valid driver's license.
- E.** A certificate holder shall ensure that an individual transporting an enrolled child in a motor vehicle:
1. Requires that each door be locked before the motor vehicle is set in motion and keeps the doors locked while the motor vehicle is in motion;
 2. Does not permit an enrolled child to be seated in front of a motor vehicle's air bag;
 3. Requires that each enrolled child remain seated and entirely inside the motor vehicle while the motor vehicle is in motion;
 4. Requires that each enrolled child younger than five years of age is secured in a child passenger restraint system, as required under A.R.S. § 28-907, before the motor vehicle is set in motion and while the motor vehicle is in motion;
 5. Requires that each enrolled child who is five years of age or older is secured with an individual adjustable lap belt or an individual integrated lap and shoulder belt, as required under A.R.S. § 28-909, before the motor vehicle is set in motion and while the motor vehicle is in motion;
 6. Does not permit an enrolled child to open or close a door or window in the motor vehicle;
 7. Sets the emergency parking brake and removes the ignition keys from the motor vehicle before exiting the motor vehicle;
 8. Ensures that each enrolled child is loaded into or unloaded from the motor vehicle away from moving traffic at curbside or in a driveway, parking lot, or other location designated for this purpose; and
 9. Does not use audio headphones or a telephone while the motor vehicle is in motion.
- F.** A certificate holder shall ensure that a staff member taking enrolled children off the premises:
1. Carries the following:

- a. A copy of the Emergency, Information, and Immunization Record card, including the attached immunization record, for each enrolled child accompanying the staff member; and
 - b. Drinking water in an amount sufficient to meet the needs of each individual going off the premises and sufficient cups or other drinking receptacles so that each individual can drink from a different cup or receptacle; and
2. Accounts for each enrolled child while the enrolled child is off the premises.

ARTICLE 5. PHYSICAL ENVIRONMENT STANDARDS

R9-3-501. General Physical Environment Standards

A. A certificate holder shall ensure that a child care group home has:

1. At least 30 square feet of floor space in indoor areas of the child care group home approved for providing child care services for each enrolled child, not including the following:
 - a. A kitchen,
 - b. A bathroom,
 - c. A laundry room,
 - d. A workshop room,
 - e. A hallway, or
 - f. A garage that has not been converted into living space;
2. If there are up to 10 enrolled children at the child care group home, excluding enrolled children who are in diapers, indoor bathroom facilities with at least one working toilet and one working sink available for use by enrolled children;
3. If there are more than 10 enrolled children at the child care group home, excluding enrolled children who are in diapers, indoor bathroom facilities with at least two working toilets and two working sinks available for use by enrolled children;
4. At least two unobstructed, usable exits to the outside available for use by enrolled children; and
5. An outdoor activity area.

B. A certificate holder shall ensure that each indoor area of the child care group home approved for providing child care services is maintained at a temperature between 68° F and 82° F during hours of operation.

C. A certificate holder shall ensure that the lighting in each indoor area of the child care group home approved for providing child care services is sufficient to enable a staff member to see each enrolled child in the indoor area.

R9-3-502. Outdoor Activity Area Standards

A. Except as provided in subsection (B), a certificate holder shall ensure that the child care group home has an outdoor activity area that:

1. Is on the premises;

2. Is at least 500 square feet in size;
 3. Is adjacent to the residence;
 4. Includes shaded areas large enough to accommodate all enrolled children occupying the outdoor activity area at any time; and
 5. Except as provided in subsection (D), is enclosed by a fence that:
 - a. Is at least 4 feet high;
 - b. Is secured to the ground;
 - c. Does not have any vertical or horizontal open space that exceeds 4 inches at any point, including any space on a gate; and
 - d. Has a gate from which an individual may exit the outdoor activity area.
- B.** The outdoor activity area of a child care group home may be less than 500 square feet if:
1. The outdoor activity area is at least 375 square feet in size; and
 2. The certificate for the child care group home was issued:
 - a. Before September 30, 2011, and the size of the outdoor activity area is not less than the size of the outdoor activity area on September 29, 2011; and
 - b. On or after September 30, 2011, and the capacity of the child care group home is limited so that the outdoor activity area provides at least 50 square feet per each enrolled child.
- C.** A certificate holder shall ensure that:
1. A staff member:
 - a. Keeps the gate in the fence surrounding an outdoor activity area closed while enrolled children are in the outdoor activity area, and
 - b. Arranges play equipment in an outdoor activity area to eliminate hazards and to minimize conflict between children using the play equipment;
 2. If a child can fall more than 48 inches from a climbing structure, swing, or slide in an outdoor activity area to the ground below, the climbing structure, swing, or slide:
 - a. Has one of the following covering the fall zone of the climbing structure, swing, or slide:
 - i. At least 6 inches of fine loose sand, pea gravel, wood fiber product, or other resilient material; or
 - ii. A shock-absorbing unitary surfacing material manufactured for such use in outdoor activity areas; and
 - b. Unless manufactured to be tip-resistant, as stated in the manufacturer's description of the climbing structure, swing, or slide, is anchored securely to the ground with anchors that are installed below the ground and are covered by the resilient material required in subsection (C)(2)(a)(i) or (ii); and
 3. If a child can fall between 24 and 48 inches from a climbing structure, swing, or slide in an outdoor activity area to the ground below, the climbing structure, swing, or slide has covering the fall zone of the climbing structure, swing, or slide non-dormant, growing grass or the resilient material required in subsection (C)(2)(a)(i) or (ii).

D. If the property adjoining an outdoor activity area has a swimming pool that is not enclosed by a fence that complies with the requirements of R9-3-503(B), the certificate holder shall ensure that the fence around the outdoor activity area complies with the requirements of R9-3-503(B).

R9-3-503. Swimming Pool Standards

A. A certificate holder shall ensure that a swimming pool used by an enrolled child at a child care group home:

1. Contains water that meets one of the following chemical disinfection standards:
 - a. A free chlorine residual between 1.0 and 3.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test;
 - b. A free bromine residual between 2.0 and 4.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test; or
 - c. An oxidation-reduction potential equal to or greater than 650 millivolts; and
2. Is equipped with the following:
 - a. An operational water circulation system that clarifies and disinfects the swimming pool water continuously and that includes at least:
 - i. A removable strainer,
 - ii. Two swimming pool inlets located on opposite sides of the swimming pool, and
 - iii. A drain located at the swimming pool's lowest point and covered by a grating that cannot be removed without using tools;
 - b. An operational vacuum cleaning system; and
 - c. The following items, which shall be accessible whenever the swimming pool is in use:
 - i. A ring buoy attached to a 1/2 inch diameter rope at least 25 feet in length, and
 - ii. A shepherd's crook.

B. A certificate holder shall ensure that a swimming pool at the child care group home is totally enclosed by a fence that:

1. Separates the swimming pool from all other outdoor activity areas;
2. Is secured to the ground;
3. Is at least 5 feet high;
4. Has a self-closing, self-latching, lockable gate; and
5. Does not have any vertical or horizontal open space that exceeds 4 inches at any point, including any space on a gate

C. A certificate holder shall ensure that:

1. On each day an enrolled child uses a swimming pool at the child care group home, a staff member tests the swimming pool's water quality at least once for compliance with subsection (A)(1), and records the results of the water quality tests in a log that includes each testing date and test result;
2. A swimming pool is not used by an enrolled child if a water quality test shows that the swimming pool water does not comply with subsection (A)(1);

3. Each gate on a fence around a swimming pool on the premises is locked whenever the swimming pool is not in use;
 4. Swimming pool chemicals are kept in a locked storage area; and
 5. Swimming pool machinery, including a vacuum cleaning system, is inaccessible to enrolled children.
- D.** A certificate holder shall ensure that a staff member does not allow an enrolled child to use or have access to a wading pool.
- E.** Before an enrolled child is allowed to swim at the child care group home, a certificate holder shall ensure that:
1. The enrolled child's parent has given written permission for swimming; and
 2. An individual who has current lifeguard certification that includes a demonstration of the individual's ability to perform CPR is stationed at the swimming pool in a location that enables the individual to see clearly all parts of the swimming pool, including the bottom, at all times while enrolled children are using the swimming pool.

R9-3-504. Fire Safety, Gas Safety, and Emergency Standards

- A.** A certificate holder shall ensure that:
1. The house number of the child care group home's residence is painted or posted on the premises so that it is visible from the street;
 2. A smoke detector is installed in each indoor area of the child care group home approved for providing child care services and in each hallway of the child care group home's residence;
 3. Each smoke detector required under subsection (A)(2):
 - a. Is maintained in an operable condition; and
 - b. Is either battery operated or, if hard-wired into the electrical system of the child care group home's residence, has a back-up battery;
 4. The child care group home's residence has at least two portable fire extinguishers:
 - a. One of which is labeled as rated at least 1A-10-BC by the Underwriters Laboratories and is mounted and maintained in the kitchen, and
 - b. One of which is labeled as rated at least 2A-10-BC by the Underwriters Laboratories and is maintained in a location accessible to staff members in an area of the child care group home approved for providing child care services;
 5. Each electrical outlet in an area of the child care group home approved for providing child care services is covered with a safety plug cover or insert when not in use;
 6. An appliance, light, or other device with a frayed or spliced electrical cord is not used at the child care group home;
 7. An electrical cord, including an extension cord, is not run under a rug or carpeting, over a nail, or from one room to another at the child care group home;
 8. Each electrical, cable, or telephone outlet at the child care group home is covered with a face plate;
 9. A wood-burning stove, the interior of a fireplace, or a chiminea is inaccessible to enrolled children when in use;

10. An unvented space heater or open-flame space heater is not used in the child care group home's residence during hours of operation;
 11. An electric portable heater is not used in the child care group home's residence during hours of operation unless the electric portable heater:
 - a. Has:
 - i. Either a non-porous casing or a grill with a mesh small enough to prevent cloth or a child's finger from entering the casing,
 - ii. A tilt switch that shuts off power to the electric portable heater if the electric portable heater tips over,
 - iii. An automatic shutoff control to prevent overheating, and
 - iv. A thermostat control; and
 - b. Is plugged directly into a wall outlet;
 12. A candle or incense is not burned in the child care group home's residence during hours of operation; and
 13. Smoking is not permitted in the residence during hours of operation or in the presence or sight of enrolled children.
- B.** A certificate holder shall ensure that a staff member:
1. Tests the battery for each smoke detector required under subsection (A)(2) each month,
 2. Makes a record of each test performed,
 3. Replaces a smoke detector battery that is no longer charged, and
 4. Maintains the record of the test on the premises for 12 months after the date of the test.
- C.** A certificate holder shall:
1. Replace a disposable fire extinguisher when its indicator reaches the red zone; and
 2. Ensure that each rechargeable fire extinguisher in the child care group home's residence:
 - a. Is serviced at least once every 12 months, and
 - b. Has a tag attached to the fire extinguisher that specifies the date of the last servicing and the identification of the person who serviced the fire extinguisher.
- D.** If there are gas pipes that run from a gas meter to an appliance or location on the premises:
1. Before an applicant for a child care group home is issued a certificate by the Department, the applicant shall obtain a gas inspection report by a licensed plumber or individual authorized by the local jurisdiction that verifies there are no gas leaks in the gas pipes that run from the gas meter to any appliance or location on the premises; and
 2. A certificate holder shall ensure that:
 - a. Each unused natural gas outlet at the child care group home has its valves removed by and is capped at the wall or floor by a licensed plumber or individual authorized by the local jurisdiction;

- b. A licensed plumber or individual authorized by the local jurisdiction conducts a gas inspection that verifies there are no gas leaks in the gas pipes that run from the gas meter to any appliance or location on the premises at least once every 12 months after the date of the certificate; and
- c. A copy of a current gas inspection report, including documentation of any repairs or corrections required by the gas inspection report, is maintained on the premises.

E. A certificate holder shall:

- 1. Prepare a fire and emergency plan, consisting of:
 - a. The child care group home's address and telephone number;
 - b. A list of emergency telephone numbers, including 9-1-1 and a poison control center;
 - c. A document or documents that include the contact telephone number for a parent of each enrolled child; and
 - d. An evacuation plan for the child care group home, including a floor plan of the child care group home's residence on which lines have been drawn showing the evacuation path from each area of the child care group home approved for providing child care services;
- 2. Maintain the fire and emergency plan in a location accessible to staff members; and
- 3. Post a copy of the floor plan showing the evacuation paths from the residence in each indoor area of the child care group home approved for providing child care services.

F. A certificate holder shall ensure that:

- 1. An unannounced fire and emergency evacuation drill is conducted at least once each month;
- 2. During the fire and emergency evacuation drill, each staff member and enrolled child at the child care group home is evacuated from the child care group home according to the evacuation plan;
- 3. Each fire and emergency evacuation drill is conducted at a different time of day than the previous fire and emergency evacuation drill;
- 4. A record is made of each fire and emergency evacuation drill, including:
 - a. The date of the fire and emergency evacuation drill, and
 - b. The time of the fire and emergency evacuation drill; and
- 5. The record of the fire and emergency evacuation drill is maintained on the premises for 12 months after the date of the fire and emergency evacuation drill.

R9-3-505. General Safety Standards

- A. A certificate holder shall ensure that the following are cared for only on the ground floor of the child care group home's residence:**
 - 1. An enrolled infant,
 - 2. An enrolled child younger than five years of age, and
 - 3. An enrolled child who uses a wheelchair or is not able to walk.
- B. Except as provided in subsection (A)(3), a certificate holder may allow a staff member to care for an enrolled child five years of age or older on a floor above or below the ground floor of the child care group home's residence if one**

of the two unobstructed, usable exits to the outside required in R9-3-501(A)(4) from the floor on which child care services are provided leads to the ground level outside without passing through the ground floor.

C. If the residence of a child care group home is a mobile home, a manufactured home, or a factory-built building, as defined in A.R.S. § 41-2142, the certificate holder shall ensure that:

1. The skirting around the mobile home, manufactured home, or factory-built building is permanently attached and surrounds the entire perimeter of the residence; and
2. Each stairway or ramp to the mobile home, manufactured home, or factory-built building has railings.

D. A certificate holder shall ensure that:

1. A stairway that leads to a floor or room outside of the areas of the child care group home approved for providing child care services is separated from the areas of the child care group home approved for providing child care services by either a door or gate that is kept closed during hours of operation;
2. A glass window, mirror, or other glass surface that is located lower than 36 inches above the floor, a sliding glass door, or another type of glass partition that is located lower than 36 inches above the floor:
 - a. Is made of safety glass that has been manufactured, fabricated, or treated to prevent the glass from shattering or flying when struck or broken;
 - b. Is shielded by a barrier to prevent impact by or physical injury to an enrolled child; or
 - c. Has conspicuous markings located at a child's eye level;
3. Firearms kept at the child care group home are unloaded, out of the view of enrolled children, and stored in separate locked areas, locked cabinets, or locked containers away from the locked areas, locked cabinets, or locked containers in which ammunition is stored;
4. The child care group home has at least one operable telephone available for use by a staff member;
5. Except as provided in R9-3-503(C)(4) and subsection (D)(6)(d), the following are stored in a labeled container separate from food storage areas and are inaccessible to an enrolled child:
 - a. Materials and chemicals labeled as a toxic substance, and
 - b. Substances that have a child warning label and may be a hazard to a child;
6. Flammable liquids are stored:
 - a. In an original container;
 - b. Separate from food storage areas;
 - c. Away from any heat-producing appliance or equipment, such as a water heater or furnace; and
 - d. Except for hand sanitizers being provided for use, in a location inaccessible to enrolled children;
7. Each window blind cord or curtain cord at the child care group home is anchored to a wall or inaccessible to an enrolled child;
8. Each fan in an area of the child care group home approved for providing child care services is inaccessible to an enrolled child; and
9. An enrolled child does not have access to the following on the premises:

- a. Lawn mowers, ladders, toilet brushes, plungers, and other equipment that may be a hazard to a child;
- b. An air conditioner, evaporative cooler, heat pump, or furnace;
- c. A hot tub or spa;
- d. A pond or fountain;
- e. An irrigation ditch, abandoned mine, or well; or
- f. A trampoline.

R9-3-506. General Cleaning and Sanitation Standards

A certificate holder shall ensure that:

1. All areas of the child care group home approved for providing child care services and the furnishings, equipment, supplies, materials, utensils, and toys in those areas are kept clean and free of insects and vermin;
2. All equipment, materials, and toys used by or accessible to enrolled children are cleaned and disinfected as often as necessary to maintain them in a clean and disinfected condition and, for items used by infants or one- or two-year-old children, at least once every 24 hours;
3. All plumbing fixtures at the child care group home are maintained in operating condition;
4. The plumbing at the child care group home supplies sufficient water pressure to meet the child care group home's toileting and cleaning needs;
5. Each bathroom used by an enrolled child at the child care group home has the following within the reach of enrolled children:
 - a. Mounted toilet tissue,
 - b. Soap contained in a dispenser, and
 - c. Singly dispensed paper towels;
6. A staff member washes the staff member's hands with soap and running water after toileting;
7. An enrolled child, other than an enrolled child with special needs who cannot wash the enrolled child's own hands, washes the enrolled child's hands with soap and running water after toileting;
8. After an enrolled child with special needs who cannot wash the enrolled child's own hands uses the toilet, a staff member washes the enrolled child's hands with a washcloth, paper towel, or disposable wipes, using each washcloth, paper towel, or disposable wipe on only one enrolled child and only one time before it is laundered or discarded;
9. Each toilet bowl and sink in a child care group home available for use by enrolled children is cleaned and disinfected daily or, if necessary, more often;
10. A bathtub is cleaned and disinfected before being used to bathe an enrolled child and, if used to bathe more than one enrolled child in one day, between each use;
11. Food waste at the child care group home is stored in a covered waterproof container that is clean and lined with a plastic bag; and
12. Food waste and other refuse is removed from the residence daily or, if necessary, more often.

R9-3-507. Diaper-Changing Standards

- A. A certificate holder shall ensure that a staff member changes diapers only on a nonabsorbent, sanitizable diaper changing surface that:
1. Is kept clear of items not required for diaper changing;
 2. Is in an area of the child care group home approved for providing child care services, but not in a kitchen or eating area; and
 3. Provides access to running water and dispensed soap within 15 feet.
- B. A certificate holder shall ensure that:
1. A staff member:
 - a. Cleans, sanitizes, and dries a diaper-changing surface using a single-use paper towel before and after each diaper change;
 - b. Washes the staff member's hands with soap and running water before and after each diaper change;
 - c. Wears single-use non-porous gloves during each diaper change;
 - d. Washes an enrolled child's hands with soap and running water or with a washcloth or disposable wipe after the enrolled child's diaper is changed and uses each washcloth or disposable wipe on only one child and only one time before it is laundered or discarded; and
 - e. Documents the daily diaper changes for each enrolled child in a dated diaper-changing log after changing the enrolled child's diaper;
 2. The diaper-changing log is maintained on the premises for 12 months after the date of the last diaper change recorded in the diaper-changing log;
 3. Soiled cloth diapers or plastic pants from an enrolled child are:
 - a. If soiled with feces, emptied into a flush toilet without rinsing the cloth diapers or plastic pants;
 - b. Placed in a plastic bag labeled with an identifier that is specific to the enrolled child;
 - c. Stored in a waterproof container that is tightly covered and lined with a plastic bag; and
 - d. Sent home with the enrolled child's parent; and
 4. Soiled disposable diapers and disposable training pants are:
 - a. Stored in a waterproof container that is tightly covered and lined with a plastic bag; and
 - b. Removed from the diaper-changing area and discarded in an outside waste receptacle once daily or, if necessary, more often.

R9-3-508. Pet and Animal Standards

A certificate holder shall ensure that:

1. Each dog, cat, or ferret at the child care group home has a current vaccination against rabies;
2. Documentation of current vaccination against rabies, required in subsection (1), is maintained on the premises;
3. All pet and animal habitats at the child care group home are kept clean;
4. When kept in an area of the child care group home approved for providing child care services, a bird is:

- a. Kept in a cage during hours of operation, and
 - b. Not kept in the kitchen or an eating area of the child care group home;
5. Pets and animals are controlled so that the cleanliness of the child care group home is maintained and no enrolled child, staff member, or other individual at the child care group home is endangered;
 6. All animals, except cats and dogs, are kept in enclosures that are inaccessible to enrolled children, except as an activity, during hours of operation;
 7. A reptile in a child care group home is:
 - a. Kept in a tank, container, or other enclosure that is:
 - i. Inaccessible to enrolled children,
 - ii. Not located in an area of the child care group home approved for providing child care services, and
 - iii. Not brought into or through areas of the child care group home approved for providing child care services;
 - b. Not taken out of the tank, container or other enclosure at any time during hours of operation;
 - c. Not brought into areas of the child care group home approved for providing child care services at any time; and
 - d. Not used as part of an activity;
 8. Each pet dish is inaccessible to enrolled children during hours of operation;
 9. Receptacles for pet feces and urine, such as litter boxes, are inaccessible to enrolled children;
 10. Pet feces in an outdoor activity area are cleaned up before enrolled children are permitted in the outdoor activity area; and
 11. Enrolled children and staff members wash their hands with soap and running water after an activity involving animals.

36-132. Department of health services; functions; contracts

- A. The department, in addition to other powers and duties vested in it by law, shall:
1. **Protect the health of the people of the state.**
 2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
 3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
 4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
 5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
 6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
 7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.
 8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.
 9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.
 10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.
 11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.
 12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.
 13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local

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- health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.
- 14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).
 - 15. Recruit and train personnel for state, local and district health departments.
 - 16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.
 - 17. License and regulate health care institutions according to chapter 4 of this title.
 - 18. Issue or direct the issuance of licenses and permits required by law.
 - 19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.
 - 20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:
 - (a) Screening in early pregnancy for detecting high-risk conditions.
 - (b) Comprehensive prenatal health care.
 - (c) Maternity, delivery and postpartum care.
 - (d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.
 - (e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.
 - 21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.
- B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.
- C. The department, 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.
- D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

36-136. Powers and duties of director; compensation of personnel

- A. The director shall:
 - 1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
 - 2. Perform all duties necessary to carry out the functions and responsibilities of the department.
 - 3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
 - 4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
 - 5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of 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

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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

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standards. The rules shall provide an exemption relating to food or drink that is:

- (a) Served at a noncommercial social event such as a potluck.
- (b) Prepared at a cooking school that is conducted in an owner-occupied home.
- (c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
- (d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.
- (e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.
- (f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.
- (g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts.
Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

- (h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.
- (i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.
6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply,

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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

Attachment A - Child Care Group Homes

- control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.
- 13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.
 - 14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".
- J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.
- K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.
- L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.
- M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.
- N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.
- O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.
- P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.
- Q. For the purposes of this section:
- 1. "Cottage food product":
 - (a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

Attachment A - Child Care Group Homes

- (b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.
- 2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

36-897. Definitions

In this article, unless the context otherwise requires:

- 1. "Child care group home" means a residential facility in which child care is regularly provided for compensation for periods of less than twenty-four hours per day for not less than five children but no more than ten children through the age of twelve years.
- 2. "Department" means the department of health services.
- 3. "Provider" means the certificate holder or a person the certificate holder designates in writing who, pursuant to applicable statutes and rules, is to be responsible for direct daily supervision, operation and maintenance of the child care group home.
- 4. "Substantial compliance" means that the nature or number of violations revealed by any type of inspection or investigation of an applicant for certification as a child care group home or a certified child care group home does not pose a direct risk to the life, health or safety of children.

36-897.01. Certification; application; fees; rules; fingerprinting; renewal; exemption from rule making

- A. A child care group home shall be certified by the department. An application for a certificate shall be made on a written or electronic form prescribed by the department and shall contain all information required by the department.
- B. If a child care group home is within one-fourth mile of agriculture land, the application shall include the names and addresses of the owners and lessees of any agricultural land within one-fourth mile of the facility. Within ten days after receipt of an application for a certificate, the department shall notify the owners and lessees of agricultural land as listed on the application. The department shall deny a certificate that affects agricultural land regulated pursuant to section 3-365, except that the owner of the agricultural land may agree to comply with the buffer zone requirements of section 3-365. If the owner agrees in writing to comply with the buffer zone requirements and records the agreement in the office of the county recorder as a restrictive covenant running with the title to the land, the department may issue a certificate to the child care group home to be located within the affected buffer zone. The agreement may include any stipulations regarding the child care group home, including conditions for future expansion of the facility and changes in the operational status of the facility that will result in a breach of the agreement. This subsection applies to the renewal of a certificate for a child care group home located in the same location if the child care group home certificate was not previously issued under this subsection.
- C. The director, by rule, may establish and collect fees for child care group homes and a late filing fee. Beginning January 1, 2010, ninety per cent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the health services licensing fund established by section 36-414 and ten per cent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.
- D. Pursuant to available funding the department shall collect annual fees.
- E. Beginning January 1, 2010, subject to the availability of monies, the department may establish a discount program

Attachment A - Child Care Group Homes

- for certification fees paid by child care group homes, including a public health discount program.
- F. The department shall issue an initial certificate if the department determines that the applicant and the applicant's child care group home are in substantial compliance with the requirements of this article and department rules and the facility agrees to carry out a plan acceptable to the director to eliminate any deficiencies.
 - G. A certificate is valid unless it is revoked or suspended or the licensee does not pay the licensure fee and may be renewed by submitting the certification fee as prescribed by the department pursuant to subsection C of this section.
 - H. In order to ensure that the equipment and services of a child care group home and the good character of an applicant are conducive to the welfare of children, the department by rule shall establish the criteria for granting, denying, suspending and revoking a certificate.
 - I. The director shall adopt rules and prescribe forms as may be necessary for the proper administration and enforcement of this article.
 - J. The certificate shall be conspicuously posted in the child care group home for viewing by parents and the public.
 - K. Current department inspection reports shall be kept at the child care group home and shall be made available to parents on request.
 - L. A certificate is not transferable and is valid only for the location occupied at the time it is issued.
 - M. An application for an initial certificate shall include:
 - 1. The form that is required pursuant to section 36-897.03, subsection B and that is completed by the applicant.
 - 2. A copy of a valid fingerprint clearance card issued to the applicant pursuant to section 41-1758.07.
 - N. The department of health services shall notify the department of public safety if the department of health services receives credible evidence that a person who possesses a valid fingerprint clearance card either:
 - 1. Is arrested for or charged with an offense listed in section 41-1758.07, subsection B.
 - 2. Falsified information on any form required by section 36-897.03.
 - O. Certificate holders may pay fees by installment payments based on procedures established by the department.
 - P. The department shall review its actual costs to administer this article at least once every two years. If the department determines that its administrative costs are lower than the fees it has collected pursuant to this section, it shall adjust fees.
 - Q. If the department lowers fees, the department may refund or credit fees to licensees.
 - R. Fee reductions are exempt from the rule making requirements of title 41, chapter 6.

36-897.02. Standards of care; monitoring

- A. The department by rule shall establish standards of care for child care group homes. These rules shall include minimum programmatic, personnel, supervision of children, training, physical environment and financial stability standards.
- B. At least two adults shall be present in the child care group home when six to ten children are cared for in the home.
- C. For purposes of certification of the child care group home, the provider's own children shall not be counted.
- D. The total number of children present in a child care group home at any given time for whom compensation is received shall not exceed ten.
- E. The total number of children present in a child care group home at any given time, including children related to the provider, shall not exceed fifteen.
- F. The department shall monitor the operation of a child care group home at least two times each year to ensure that the child care group home is meeting department standards of care.

36-897.03. Child care group homes; child care personnel; fingerprints; definition

- A. Child care personnel, including volunteers, shall submit the form prescribed in subsection B of this section to the employer and shall have valid fingerprint clearance cards issued pursuant to section 41-1758.07 or shall apply for a fingerprint clearance card within seven working days of employment or beginning volunteer work.
- B. Applicants, certificate holders and child care personnel shall attest on forms that are provided by the department that:
 - 1. They are not awaiting trial on or have never been convicted of or admitted in open court or pursuant to a plea agreement committing any of the offenses listed in section 41-1758.07, subsection B or C in this state or similar offenses in another state or jurisdiction.
 - 2. They are not parents or guardians of a child adjudicated to be a dependent child as defined in section 8-201.
 - 3. They have not been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state or had a license to operate a child care facility or a certificate to operate a child care group home revoked for reasons that relate to the endangerment of the health and safety of children.
- C. The provider shall make documented, good faith efforts to contact previous employers of child care personnel to obtain information or recommendations that may be relevant to an individual's fitness to work in a certified child care group home.
- D. The director may adopt rules prescribing the exclusion from child care group homes of individuals whose presence may be detrimental to the welfare of children.
- E. The forms required by subsection B of this section are confidential.
- F. A person who is awaiting trial on or who has been convicted of or who has admitted in open court or pursuant to a plea agreement to committing a criminal offense listed in section 41-1758.07, subsection B or subsection B, paragraph 2 or 3 of this section is prohibited from being employed in any capacity in a child care group home.
- G. A person who is awaiting trial on or who has been convicted of or who has admitted in open court or pursuant to a plea agreement to committing a criminal offense listed in section 41-1758.07, subsection C shall not work in a child care group home without direct visual supervision unless the person has applied for and received the required fingerprint clearance card pursuant to section 41-1758 and is registered as child care personnel. A person who is subject to this subsection shall not be employed in any capacity in a child care group home if that person is denied the required fingerprint clearance card.
- H. The employer shall notify the department of public safety if the employer receives credible evidence that any child care personnel either:
 - 1. Is arrested for or charged with an offense listed in section 41-1758.07, subsection B.
 - 2. Falsified information on the form required by subsection B of this section.
- I. For the purposes of this section, "child care personnel" means all employees of and persons who are eighteen years of age or older and who reside in a child care group home that is certified by the department.

36-897.04. Exemptions

- A. This article does not apply to the care given to children by or in:
 - 1. The homes of their own parents.
 - 2. A religious institution conducting a nursery in conjunction with its religious services.
 - 3. A unit of the public school system.
 - 4. A regularly organized private school engaged in an educational program which may be attended in substitution for public school pursuant to section 15-802.

Attachment A - Child Care Group Homes

5. Any facility that provides training only in specific subjects, including dancing, drama, music, self-defense or religion.
6. Any facility that provides only recreational or instructional activity to school age children who may come to and go from that facility at their own volition.
- B. If regularly organized private schools exempt under subsection A, paragraph 4 of this section provide child care beyond public school hours or for children who are not regularly enrolled in kindergarten programs or grades one through twelve, that portion of the school providing this care shall be considered a child care group home and is subject to this article.

36-897.05. Inspection of child care group homes

- A. The department or designated local health departments or its agents may at any time visit, during hours of operation, and inspect a child care group home in order to determine whether it is certified and is being conducted in compliance with applicable law, this article and rules adopted pursuant to this article.
- B. The department shall visit each child care group home as often as necessary to assure continued compliance with this article and the rules adopted pursuant to this article. At least one unannounced visit shall be made annually.

36-897.06. Civil penalty; collection

- A. The director may impose a civil penalty on a person who violates this article or rules adopted pursuant to this article in an amount of not more than one hundred dollars for each violation. Each day that a violation occurs constitutes a separate violation. The director may issue a notice that includes the proposed amount of the civil penalty assessment. A person may appeal the assessment by requesting an administrative hearing. If a person requests a hearing to appeal an assessment, the director shall not take further action to enforce and collect the assessment until the hearing process is complete. The director shall impose a civil penalty only for those days on which the violation has been documented by the department.
- B. In determining the civil penalty pursuant to subsection A, the department shall consider the following:
 1. Repeated violations of statutes or rules.
 2. Patterns of noncompliance.
 3. Types of violations.
 4. Severity of violations.
 5. Potential for and occurrences of actual harm.
 6. Threats to health and safety.
 7. Number of children affected by the violations.
 8. Number of violations.
 9. Size of the facility.
 10. Length of time during which violations have been occurring.
- C. If a civil penalty imposed pursuant to subsection A of this section is not paid, the attorney general or a county attorney shall file an action to collect the civil penalty in a justice court or the superior court in the county in which the violation occurred.
- D. Civil penalties collected pursuant to subsection A of this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.
- E. The department shall develop an instrument that documents compliance and noncompliance of child care group

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homes according to the criteria prescribed in its rules governing child care group home certification. Blank copies of the instrument, which shall be in standardized form, shall be made available to the public.

36-897.07. Training program

The director shall establish a training program to provide training for child care group homes and users of child care group home services, technical assistance materials for child care group homes and information to enhance consumer awareness.

36-897.08. Intermediate sanctions; notification of compliance; hearing

- A. If the director has reasonable cause to believe that a child care group home is in violation of this article or a rule adopted pursuant to this article and that the health or safety of the children is endangered, on written notice to the child care group home the director may impose one or more of the following intermediate sanctions until the child care group home is in substantial compliance:
 1. Immediately restrict admissions to the child care group home.
 2. Terminate specific services that the child care group home may offer.
 3. Reduce the child care group home's capacity.
- B. A child care group home sanctioned pursuant to this section shall notify the department in writing when it is in substantial compliance. On receipt of notification the department shall conduct an inspection. If the department determines that the child care group home is in substantial compliance the director shall immediately rescind the sanctions. If the department determines that the child care group home is not in substantial compliance the sanctions remain in effect. The child care group home may then notify the department of substantial compliance not sooner than fourteen days after the date of that inspection. If the department determines on the return inspection that the child care group home is still not in substantial compliance the sanctions remain in effect. Thereafter, a child care group home may notify the department of substantial compliance not sooner than thirty days after the date of the last inspection. A child care group home shall make all notifications of substantial compliance by certified mail. The department shall conduct all inspections required pursuant to this subsection within fourteen days after receipt of notification of substantial compliance. If the department does not conduct an inspection within this time period, the sanctions have no further effect.
- C. On written request by a person who has been sanctioned pursuant to this section the director or the director's designee shall conduct a hearing to review the sanctions. A request for a hearing shall be made by certified mail within ten days after receipt of notice of the sanctions. The office of administrative hearings shall conduct an administrative hearing within seven business days after the notice of appeal has been filed with the office of administrative hearings.
- D. A hearing conducted pursuant to this section shall comply with the requirements of title 41, chapter 6, article 10.

36-897.09. Operating without a certificate; notice; hearing; violation; classification

- A. If the department has reasonable cause to believe that a person is operating a child care group home without a certificate, it shall notify that person to cease operation within ten days of receiving the notice. The department shall give notice either by certified mail or by personal service. The notice shall state that the person may make a written request for a hearing before the director or the director's designee pursuant to title 41, chapter 6, article 10.
- B. If a person fails to cease operation, the department may request that the county attorney of the county in which the home is located enforce this article. The department may also notify the attorney general who shall immediately

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- seek a restraining order and an injunction against the home.
- C. A person who continues to operate a child care group home without certification ten days after receiving notice pursuant to this section is guilty of a class 1 misdemeanor.

36-897.10. Pending action or sale; effect on licensure

- A. The department shall not act on an application for certification of a currently certified child care group home while any enforcement or court action related to child care group home certification is pending against that group home's current certificate holder.
- B. The director may continue to pursue any court, administrative or enforcement action against the certificate holder even if the group home is in the process of being sold or transferred to a new owner.
- C. The department shall not approve a change in group home ownership unless it determines that there has been a transfer of legal and equitable interests, control and authority in the group home so that persons other than the transferring certificate holder, that certificate holder's agent or other parties exercising authority or supervision over the group home's daily operations or staff are responsible for and have control over the group home.

36-897.11. Injunctions; definition

- A. If the department believes that a child care group home is operating under conditions that may cause serious harm to children, the department shall notify the attorney general or the county attorney of the county in which the child care group home is located who shall immediately seek a restraining order and injunction against the home.
- B. For the purposes of this section, "serious harm" means a substantial physical injury.

36-897.12. Inspection of records

- A. Records maintained by the department for child care group homes are available to the public for review and copying.
- B. Personally identifiable information that relates to a child, parent or guardian is confidential. The department shall disclose this information only as follows:
1. Pursuant to a court order.
 2. Pursuant to a written consent signed by the parent or guardian.
 3. To a law enforcement officer who requires it for official purposes.
 4. To an official of a governmental agency who requires it for official purposes.
- C. The department shall enter into the child care group home's case file, contiguous to the form containing the reported violations, those documents that verify correction of reported violations.

36-897.13. Use of sunscreen in child care group homes

A school-age child who attends a child care group home in this state may possess and use a topical sunscreen product without a note or prescription from a licensed health care professional.

STATE BOARD OF PHYSICAL THERAPY (F19-1204)

Title 4, Chapter 24, Articles 1-5, Board of Physical Therapy



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: December 3, 2019

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

FROM: Council Staff

DATE: November 6, 2019

SUBJECT: BOARD OF PHYSICAL THERAPY (F19-1204)

Title 4, Chapter 24, Articles 1-5, Board of Physical Therapy

Summary:

This Five Year Review Report (5YRR) from the Board of Physical Therapy (Board) relates to rules in Title 4, Chapter 24, Articles 1-5 governing the Board of Physical Therapy. As the Board states in its 5YRR, the “purpose of the Board is to protect the public health and safety by promoting the safe and professional practice of physical therapy.”

The rules in this Chapter address the following:

- **Article 1 (General Provisions);**
- **Article 2 (Licensing Provisions);**
- **Article 3 (Practice of Physical Therapy);**
- **Article 4 (Continuing Competence); and**
- **Article 5 (Public Participation Procedures).**

In the last 5YRR for these rules in 2014, the Board indicated it would conduct a rulemaking regarding dry needling and amend the rules regarding continuing competence to require physical therapist assistants to complete continuing competence activities and expand acceptable competence activities. The Board completed the dry-needling exempt rulemaking in

2015 (21 A.A.R. 924, June 26, 2015) and the continuing competence rulemaking in 2019 (25 A.A.R. 404, February 22, 2019).

Proposed Action:

The Board states that it intends to complete a rulemaking that addresses the issues identified in this 5YRR by the end of December 2020. Specifically, the Board intends to update references to incorporated materials, amend sections to ensure they are consistent with applications, and amend R4-24-304 (Adequate Patient Records) to reference a patient's current functional status.

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

Yes. The Agency cites to applicable general and specific statutory authority for these rules.

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

The Arizona Physical Therapy Board protects public health and safety by promoting the safe and professional practice of physical therapy. The Board licenses and certifies qualified applicants as physical therapists and physical therapist assistants. It also receives, investigates, and adjudicates complaints against licensees and certificate holders. The Board states that it received no information indicating that its assessment of the economic impact of these rules in its last 5YRR was incorrect.

No Economic, Small Business, and Consumer Impact Statement (EIS) was prepared during the 2015 exempt rulemaking regarding dry needling (21 A.A.R. 924, June 26, 2015).

In the February 2019 rulemaking regarding continuing competence (25 A.A.R. 404, February 22, 2019), the Board amended the rules to add a continuing competence requirement for certified physical therapist assistants (PTAs) to be consistent with the Physical Therapy Licensure Compact (Compact). The EIS prepared in connection with that rulemaking acknowledged that the continuing competence requirement would impose an economic burden on PTAs who would be required to complete 10 hours of continuing competence during each 2-year compliance period. However, the Board determined that those costs were minimal. The Board states that the benefit to out-of-state PTAs seeking to practice in Arizona under the Compact, Arizonans needing physical therapy services, and Arizona PTAs seeking to practice out-of-state under the Compact outweighed any costs. The Board states that it did not receive any information that its assessment of the economic impact during this rulemaking was incorrect.

The Board currently licenses 5,446 physical therapists and certifies 1,776 physical therapist assistants. During FY 2019, the Board received applications for initial licensure

from 891 individuals. The Board states that it collected \$954,151 in licensing fees in FY 2019 because 2019 was a license renewal year. It was appropriated \$499,600 in FY 2019. There are currently five accredited physical therapy programs in Arizona and seven physical therapist assistant programs.

Stakeholders include: the Board, physical therapists, physical therapy assistants, physical therapy certification programs in Arizona, physical therapy patients, 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?

Yes. The Board states that the rules establish minimum standards for being licensed as a physical therapist and also establish minimum standards regarding lawful practice, patient care management, and adequate patient records. The rules are meant to protect the general and regulated public. The Board states that the current rules impose the least burden on stakeholders. The requirements are necessary to achieve the underlying regulatory objective of the rules, which is to protect those receiving physical therapy services. The Board states that by making an application and complying with the rules, those who obtain licensure, certification, or registration as a physical therapist, physical therapist assistant, or business entity have personally determined that the benefits of being licensed outweigh the costs associated with the licensure and regulatory process.

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

No. The Board 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 Board indicates that the rules are mostly consistent with other rules and statutes. However, the 5YRR identifies recent legislation which affects these rules and may require amendments to the rules to make them consistent with these statutory changes.

The Board indicates that the rules are generally clear, concise, understandable, and effective. However, the following rules could be improved:

- **R4-24-313** (Professional Standards of Care and Training and Education Qualifications for Delivery of Dry Needling Skilled Intervention): this rule contains passive language and other inconsistencies with current rule writing standards;
- **R4-24-201(A)(2)** (Application for a Physical Therapist License) and **R4-24-207(A)(2)** (Application for a Physical Therapist Assistant Certificate): these rules would be more understandable if the requirement to include a valid fingerprint clearance card with an application is added; and

- **R4-24-304(B) and (C)** (Adequate Patient Records): the Board intends to add “the patient’s current functional status” to the information required under this rule.

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

Yes. The Board indicates that the rules are enforced as written.

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

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?

The Board indicates that the following rules were made after July 29, 2010 and deal with the issuance of a regulatory permit, license, or agency authorization:

- **R4-24-201 (Application for a Physical Therapist License);**
- **R4-24-202 (Reinstatement of License or Certificate);**
- **R4-24-203 (Foreign-educated Applicant Requirements);**
- **R4-24-207 (Application for a Physical Therapist Assistant Certificate);**
- **R4-24-208 (License or Certificate Renewal; Address Change);**
- **R4-24-210 (Business Entity Registration; Display of Registration Certificate); and**
- **R4-24-211 (Renewal of Business Entity Registration).**

The Board states that its statutes, specifically, A.R.S. §§ 32-2022 (Qualifications for licensure and certification; fingerprint clearance card), 32-2025 (Interim permits), 32-2026 (Licensure or certification by endorsement), 32-2027 (License or certificate renewal; suspension), and 32-2030 (Business entities; patient records; protocol; exemptions; rules) require individualized licenses to be issued. Thus, a general permit is not applicable and is not used.

9. Conclusion

The Board seeks to complete a rulemaking that will address the issues identified in this report by the end of December 2020. Specifically, the Board will update materials incorporated by reference, amend Sections to ensure they are consistent with applications, and amend R4-24-304 (Adequate Patient Records) to reference a patient’s current functional status. This rulemaking would result in rules that are more clear, concise, understandable, and effective.

The Board includes a detailed justification for the December 2020 timeframe to complete this rulemaking. Council staff notes that while this justification is plausible, staff encourages the Council to inquire as to whether such a rulemaking could be completed faster. Council staff recommends approval of this report.



ARIZONA STATE BOARD OF PHYSICAL THERAPY

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Executive Director

September 25, 2019

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Board of Physical Therapy
4 A.A.C. 24, Articles 1 through 5
Five-year-review Report

Dear Ms Sornsin:

The Five-year-review Report of the Board of Physical Therapy for 4 A.A.C. 24, Articles 1 through 5, which is due under an extension at the end of November 2019, is enclosed.

The Board of Physical Therapy certifies it is in compliance with A.R.S. § 41-1091.

For questions about this report, please contact Karen Donahue at 602-274-1361 or karen.donahue@ptboard.az.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen B. PT".

Karen Donahue PT, DPT
Executive Director

Five-year-review Report
A.A.C. Title 4. Professions and Occupations
Chapter 24. Board of Physical Therapy
Articles 1 through 5
Submitted for December 3, 2019

INTRODUCTION

The purpose of the Board is to protect the public health and safety by promoting the safe and professional practice of physical therapy. The Arizona Physical Therapy Practice Act establishes the standards for the practice of physical therapy, continuing competence and testing, and defines the scope and limitations of practice. The Board licenses and certifies qualified applicants as physical therapists and physical therapist assistants; and receives, investigates and adjudicates complaints against licensees and certificate holders. The Board currently licenses 5,446 physical therapists and certifies 1,776 physical therapist assistants. During FY2019, the Board received applications for initial licensure from 891 individuals. The Board collected \$954,151 in licensing fees because 2019 was a license renewal year. The Board was appropriated \$499,600 during FY2019. The Board received 47 complaints last year and disciplined 26 licensees or certificate holders. There are currently five accredited physical therapy programs in Arizona and seven physical therapist assistant programs.

In Laws 2014, Chapter 220, the legislature added a requirement that the Board make rules regarding professional standards of care and training qualifications for a physical therapist who engages in dry needling. The Board made the required rule by an exempt rulemaking that went into effect on July 1, 2015 (See 21 A.A.R. 924, June 26, 2015).

Since the Board's last 5YRR, the legislature amended its statutes once (See Laws 2016, Chapter 299). The legislature added A.R.S. § 32-2053, the Physical Therapy Licensure Compact, which allows eligible licensed physical therapists and certified physical therapist assistants to work in a Compact member state other than their home state without going

through the usual process for licensure or certification in the remote state. In 2019, the Board amended its rules to ensure they are consistent with Compact requirements regarding continuing competence.

Statute that generally authorizes the agency to make rules: A.R.S. § 32-2003(A)(5)

1. Specific statute authorizing the rule:

- R4-24-101. Definitions: A.R.S. § 32-2003(A)(5)
- R4-24-103. Board Officers: A.R.S. § 32-2003(A)(8)
- R4-24-104. Confidential Information and Records: A.R.S. §§ 32-2045(E) and 32-2051
- R4-24-107. Fees: A.R.S. § 32-2029
- R4-24-201. Application for a Physical Therapist License: §§ 32-2022 and 32-2026
- R4-24-202. Reinstatement of License or Certificate: A.R.S. § 32-2028
- R4-24-203. Foreign-educated Applicant Requirements: A.R.S. § 32-2022(B) and (E)
- R4-24-204. Supervised Clinical Practice: A.R.S. §§ 32-2001(4), 32-2022(B)(7), and 32-2025
- R4-24-205. Examination Scores: A.R.S. §§ 32-2003(A)(2), 32-2022, and 32-2024
- R4-24-207. Application for a Physical Therapist Assistant Certificate: A.R.S. §§ 32-2022(D) and 32-2026
- R4-24-208. License or Certificate Renewal; Address Change: A.R.S. §§ 32-2027 and 32-2044(23)
- R4-24-209. Time-frames for Board Approvals: A.R.S. §§ 41-1072 through 41-1079
- Table 1. Time-frames (in days): A.R.S. §§ 41-1072 through 41-1079
- R4-24-210. Business Entity Registration; Display of Registration Certificate: A.R.S. § 32-2030
- R4-24-211. Renewal of Business Entity Registration: A.R.S. §§ 32-2030(D) and 32-2051(G)
- R4-24-212. Regulation of a Business Entity: A.R.S. §§ 32-2030 and 32-2045(D)
- R4-24-213. Business Entity Participation: A.R.S. § 32-2030(K)
- R4-24-301. Lawful Practice: A.R.S. § 32-2041
- R4-24-302. Use of Titles: A.R.S. § 32-2042

- R4-24-303. Patient Care Management: A.R.S. §§ 32-2043 and 32-2044
- R4-24-304. Adequate Patient Records: A.R.S. §§ 32-2043 and 32-2044
- R4-24-305. Complaints and Investigations: A.R.S. § 32-2045
- R4-24-306. Hearings: A.R.S. § 32-2046
- R4-24-307. Subpoenas: A.R.S. § 32-2045(A)(3)
- R4-24-308. Rehearing or Review of Board Decisions: A.R.S. § 41-1092.09
- R4-24-309. Disciplinary Actions: A.R.S. § 32-2047
- R4-24-310. Substance Abuse Recovery Program: A.R.S. § 32-2050
- R4-24-311. Display of License; Disclosure: A.R.S. § 32-2051
- R4-24-312. Mandatory Reporting Requirement: A.R.S. § 32-3208
- R4-24-313. Professional Standards of Care and Training and Education Qualifications for Delivery of Dry Needling Skilled Intervention: A.R.S. §§ 32-2001 and 32-2044(25)
- R4-24-401. Continuing Competence Requirements for Renewal: A.R.S. § 32-2003(A)(7)
- R4-24-402. Continuing Competence Activities: A.R.S. § 32-2003(A)(7)
- R4-24-403. Activities Not Eligible for Continuing Competence Credit: A.R.S. § 32-2003(A)(7)
- R4-24-502. Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statement; Objection to a Section Based Upon Economic, Small Business, or Consumer Impact: A.R.S. §§ 41-1003, 41-1033, and 41-1056.01
- R4-24-506. Written Criticism of Rule: A.R.S. §§ 41-1003 and 41-1056(A)(2)

2. Objective of the rule:

R4-24-101. Definitions: The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition.

R4-24-103. Board Officers: The objective of this rule is to specify the officers the Board will elect and the primary duty of the president and vice-president.

R4-24-104. Confidential Information and Records: The objective of this rule is to specify that both the information regarding an applicant, licensee, or certificate holder and diagnosis and treatment records are confidential.

R4-24-107. Fees: The objective of the rule is to specify the fees the Board charges for its licensing activities.

R4-24-201. Application for a Physical Therapist License: The objective of this rule is to specify the content of an application for a physical therapist license including information required to be submitted directly to the Board by third parties.

R4-24-202. Reinstatement of License or Certificate: The objective of this rule is to specify applicable conditions and the procedure for applying to have a license or certificate reinstated after the license or certificate has lapsed.

R4-24-203. Foreign-educated Applicant Requirements: The objective of this rule is to specify the special requirements applicable to a foreign-educated applicant.

R4-24-204. Supervised Clinical Practice: The objective of this rule is to specify the conditions under which the Board will issue an interim permit, the responsibilities of the licensee who supervises an interim-permit holder, and the requirements for an interim-permit holder to become licensed or certified.

R4-24-205. Examination Scores: The objective of this rule is to specify the scores an applicant must obtain on a national examination and a jurisprudence examination before the Board will license or certify the applicant.

R4-24-207. Application for a Physical Therapist Assistant Certificate: The objective of this rule is to outline the procedure for applying for a certificate as a physical therapist assistant.

R4-24-208. License or Certificate Renewal; Address Change: The objective of this rule is to specify the procedure for biennial renewal of a license or certificate and to reiterate the statutory requirement that the Board have current information regarding a licensee's or certificate holder's name and home and business address.

R4-24-209. Time-frames for Board Approvals: The objective of this rule is to specify the time frames within which the Board will review and act on an application for licensure, certification, or registration.

Table 1. Time-frames (in days): The objective of this rule is to specify in table form the time frames within which the Board will act on a license, certificate, or registration application.

R4-24-210. Business Entity Registration; Display of Registration Certificate: The objective of this rule is to specify the content of an application for a business entity that offers physical therapy services to register with the Board and to provide notice that a registered business entity is required to publicly display the registration certificate.

R4-24-211. Renewal of Business Entity Registration: The objective of this rule is to specify the procedure for biennial renewal of a business entity registration and the consequences of failing to renew timely.

R4-24-212. Regulation of a Business Entity: The objective of this rule is to provide notice that a business entity is subject to the same complaint, investigation, and discipline process as any other licensee.

R4-24-213. Business Entity Participation: The objective of this rule is to provide notice to business entities that procedures in the Arizona Administrative Procedure Act apply to them.

R4-24-301. Lawful Practice: The objective of this rule is to specify the information a licensee is required to provide to a referring practitioner, requirements regarding patient records, and patients' rights.

R4-24-302. Use of Titles: The objective of this rule is to specify the manner in which a licensee or certificate holder is required to denote licensure or certification, to indicate the manner in which a licensee may denote academic degrees or professional specialty certification, and to indicate the manner in which a licensee or certificate holder is required to denote retired status.

R4-24-303. Patient Care Management: The objective of this rule is to identify the patient care management responsibilities of a physical therapist, supervision of assistive personnel, qualification of a physical therapist assistant to perform selected treatment interventions, the requirements for a physical therapist to provide general supervision of a physical therapist assistant, and the recordkeeping responsibilities of a physical therapist assistant working under general supervision.

R4-24-304. Adequate Patient Records: The objective of this rule is to specify the general manner in which a licensee is to maintain a patient record and provide detail regarding the information that must be in the patient record at various points in the licensee-patient relationship.

R4-24-305. Complaints and Investigations: The objective of this rule is to clarify against whom a complaint may be made, the form in which a complaint is to be made, and the manner in which the Board responds to a complaint.

R4-24-306. Hearings: The objective of this rule is to inform an individual against whom a complaint has been filed what to expect at an informal hearing before the Board.

R4-24-307. Subpoenas: The objective of this rule is to specify the procedure for obtaining and serving or objecting to a subpoena and the circumstances under which the Board will quash or modify a subpoena.

R4-24-308. Rehearing or Review of Board Decisions: The objective of this rule is to specify the procedures and standards for requesting a rehearing or review of a Board decision.

R4-24-309. Disciplinary Actions: The objective of this rule is to reiterate that Board records regarding disciplinary actions are public records and to provide guidance regarding working under a restricted license or certificate. The rule also indicates that an applicant whose previous license or certificate was revoked must appear before the Board before the Board acts on the application.

R4-24-310. Substance Abuse Recovery Program: The objective of this rule is to specify the circumstances under which the Board will allow a licensee or certificate holder to enter into a substance abuse recovery program rather than taking disciplinary action against the licensee or certificate holder.

R4-24-311. Display of License; Disclosure: The objective of this rule is to require that a licensee or certificate holder display or make available to the public evidence of the license or certificate. It also specifies information that must be disclosed to the public or a patient.

R4-24-312. Mandatory Reporting Requirement: The objective of the rule is to protect the public by requiring a licensee or certificate holder notify the Board within 10 days after being charged with certain crimes.

R4-24-313. Professional Standards of Care and Training and Education Qualifications for Delivery of Dry Needling Skilled Intervention: The objective of this rule is to establish the training and education qualifications of a physical therapist that provides the skilled intervention of dry needling and to specify the nature of a course that results in qualification.

R4-24-401. Continuing Competence Requirements for Renewal: The objective of this rule is to establish the continuing competence requirements for license and certificate renewal.

The rule also provides information regarding waiver and audit of compliance with the requirement.

R4-24-402. Continuing Competence Activities: The objective of this rule is to categorize activities that may be used to satisfy the continuing competence requirement and establish limits regarding use of the various categories of activities.

R4-24-403. Activities Not Eligible for Continuing Competence Credit: The objective of this rule is to specify activities that may not be used to satisfy the continuing competence requirement.

R4-24-502. Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statement; Objection to a Section Based Upon Economic, Small Business, or Consumer Impact: The objective of this rule is to specify the manner in which an individual may petition the Board to make, amend, or repeal a rule, review an existing practice or substantive policy statement, or object to a rule based on its economic impact.

R4-24-506. Written Criticism of Rule: The objective of this rule is to specify the manner in which an individual may criticize an existing rule and the grounds on which the criticism may be based.

3. Are the rules effective in achieving their objectives? Yes
However, the Board believes the rules would be more effective if the materials incorporated by reference in R4-24-101 are updated to current standards.
4. Are the rules consistent with other rules and statutes? Mostly yes
 - Under Laws 2019, Chapter 299, the legislature added A.R.S. § 32-3226 requiring health profession regulatory boards to have for each licensee an address of record the Board can disclose to the public and a telephone number and e-mail address the Board can disclose to those seeking patient records. The statute also requires the Board to designate associations of licensed health professionals to which the Board will disclose the contact information and address of record for licensees. This statutory change may require the Board to amend rules regarding application for

initial and renewal physical therapist license, physical therapist assistant certification, and business entity registration.

- Under Laws 2019, Chapter 195, the legislature added A.R.S. § 32-3124 regarding a temporary license for health professionals. The statute authorizes the Board to issue a temporary license for use while the Board completes processing an application for licensure. Because the added statute indicates a temporary license may be issued only to an applicant who is licensed in another state and because the Board participates in the Physical Therapy Licensure Compact, which allows a licensee from one Compact state to practice in another Compact State, the Board decided it was not necessary for the Board to issue temporary licenses.

Laws 2019, Chapter 195, also adds A.R.S. § 32-3123 authorizing a health profession regulatory board to delegate certain licensing functions to the Board's executive director. The Board decided to make this delegation and will make any rule necessary to implement the statutory authorization.

- Under Laws 2019, Chapter 166, the legislature amended A.R.S. § 13-904 regarding suspension of civil rights and occupational disabilities. The amendment prohibits an agency from denying, except in certain circumstances, a license to an individual who has a criminal conviction that occurred more than seven years ago, excluding any time of incarceration. The Board's applications for licensure require disclosure of criminal convictions as a means of assessing an applicant's "good moral character", as required by statute (See A.R.S. § 32-2022). These may need to be modified.

5. Are the rules enforced as written? Yes

6. Are the rules clear, concise, and understandable? Mostly yes

The Board determined the rules are general clear, concise, and understandable but R4-24-313 contains passive language and other inconsistencies with current rule writing standards.

The Board believes R4-24-201(A)(2) and R4-24-207(A)(2) would be more understandable if the requirement to include a valid fingerprint clearance card with an application is added.

To avoid inconsistency with actual applications, the Board believes the detail in R4-24-201(A)(1) and R4-24-207(A)(1) should be deleted.

The Board intends to add “the patient’s current functional status” to the information required under R4-24-304(B) and (C).

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 completed two rulemakings since its last 5YRR was approved by Council. The Board received no information indicating its assessment of the economic impact of the rules reviewed in 2014 was incorrect.

July 2015 rulemaking: 21 A.A.R. 924, June 26, 2015

In this rulemaking, the Board amended R4-24-208 and made R4-24-313 addressing standards of care and education qualifications for licensees who engage in the practice of dry needling. Because the rulemaking was made under an exemption from the APA, no economic, small business, and consumer impact statement was prepared. The Board indicated the standards established were the least restrictive possible while providing necessary protections for the public. At the time of last renewal, 997 licensees (approximately 18 percent) indicated they had completed the training required to engage in dry needling. The Board has received no information suggesting the assessment of the economic impact of the rules is incorrect.

February 2019 rulemaking: 25 A.A.R. 404, April 6, 2019

To be consistent with the Physical Therapy Licensure Compact, in this rulemaking the Board added a continuing competence requirement for certified physical therapist assistants (PTAs). The economic, small business, and consumer impact statement prepared with this rulemaking was available for review. In the EIS, the Board acknowledged the rulemaking would impose an economic burden of PTAs required to complete 10 hours of continuing competence during each two-year compliance period.

The Board assessed the costs of continuing competence activities, including any time away from work to attend, were minimal, a cost of doing business, and possibly passed to consumers of physical therapy services. By making the rules consistent with the Compact, an economic benefit was provided to out-of-state physical therapists and PTAs who wish to work in Arizona under the Compact, to Arizona citizens needing physical therapy services, and to Arizona licensees wishing to work in other Compact states. The Board has received no information suggesting this assessment of the economic impact of the rules is incorrect.

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 2014 5YRR, the Board indicated it would make a rule regarding dry needling and amend the rules regarding continuing competence to require physical therapist assistants to complete continuing competence activities and expand acceptable competence activities. The dry-needling rulemaking was completed in 2015. The continuing-competence rulemaking was completed in 2019.

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 believes the rules impose the least burden on persons regulated by them. By making application and complying with the rules, those who obtain licensure, certification, or registration as a physical therapist, physical therapist assistant, or business entity indicate they have personally determined that the benefits of being licensed outweigh the costs associated with the licensure and regulatory process. The rules establish minimum standards for being licensed by the Board and, as specified in statute, require that an application be submitted (See A.R.S. § 2022(B)), fees paid (See A.R.S. § 32-2029), examinations taken (See A.R.S. 32-2022(A)), licenses renewed biennially (See A.R.S. § 32-2027), and

continuing competence maintained (See A.R.S. 32-2044(24)). To protect both the general and regulated public, the rules also establish minimum standards regarding lawful practice, patient care management, and adequate patient records. All of these requirements impose economic burdens on those who wish to provide physical therapy services. However, the requirements are necessary to achieve the underlying regulatory objective, which is to protect the health and safety of the public that receives physical therapy services.

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

There are no corresponding federal laws.

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: Yes

The following rules were made after July 29, 2010, and deal with issuance of a regulatory permit, license, or agency authorization: R4-24-201, R4-24-202, R4-24-203, R4-24-207, R4-24-208, R4-24-210, and R4-24-211. The Board's statutes (See A.R.S. §§ 32-2022, 32-2025, 32-2026, 32-2027, and 32-2030), require individualized licenses be issued so a general permit is not applicable.

14. Proposed course of action:

The Board intends to complete a rule making that addresses the issues identified in this report by the end of December 2020. In particular, the Board will update materials incorporated by reference, amend Sections to ensure they are consistent with applications, and amend R4-24-304 to reference a patient's current functional status.

The Board believes completing the necessary rulemaking in one year is doable but challenging. The Arizona Administrative Procedure Act contains time frames with which the Board must comply (See A.R.S. § 41-1023(B) requiring 30 days after publication of the Notice of Proposed Rulemaking for public comment and scheduling an oral proceeding and A.R.S. § 41-1032(A) requiring 60 days after filing for a rule approved by the Council to go into effect). The Board is also constrained by the time the Office of the Secretary of State requires to publish materials (currently three weeks from submission) and the Governor's

Regulatory Review Council requires to review materials (currently about six weeks). The Governor's Office current practice is to require a draft NPR before considering a request for an exemption to the rulemaking moratorium. The Governor's Office does not have a time frame within which it acts on a request for an exemption. These factors mean the time from when the Board has a draft NPR ready to file until the final rules go into effect is at least eight months. Getting to the point of having a draft NPR is the most time consuming part of a rulemaking (See A.R.S. § 41-1023(A) regarding meeting informally with stakeholders and soliciting comments regarding proposed changes) especially for a Board that meets monthly and must direct attention to its licensing and regulatory responsibilities.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT1

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 24. BOARD OF PHYSICAL THERAPY

1. Identification of the rulemaking:

Under Laws 2016, Chapter 299, the legislature enacted A.R.S. § 32-2053, the Physical Therapy Licensure Compact. The Compact allows eligible licensed physical therapists and certified physical therapist assistants to work in a Compact member state other than their home state without going through the usual process for licensure or certification in the remote state. The Compact provides that Compact privileges will become available when a certain number of states pass legislation enacting the Compact. The required number of states was reached in 2017. Member states are required to ensure their statutes and rules are consistent with Compact requirements. One Compact requirement relates to continuing competence. The Board's current rules require that physical therapists (PTs) complete 20 hours of continuing competence during each two-year compliance period. To be consistent with the Compact requirement, this rulemaking adds a requirement that physical therapist assistants (PTAs) complete 10 hours of continuing competence during each two-year compliance period.

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

Until the rulemaking is completed, the Board's rules will not be consistent Compact requirements although the legislature enacted A.R.S. § 32-2053, making the state a Compact state.

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

It is not good government for the Board to have rules that are inconsistent with the legislature's intent when A.R.S. § 32-2053 was enacted.

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

When the rulemaking is completed, the Board's rules will be consistent with legislative intent and the Compact.

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

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

The rulemaking imposes some economic costs on certified PTAs who wish to renew certification. They are now required to obtain 10 hours of continuing competence during the two-year compliance period before renewal. Each hour of continuing competence comes with costs such as the costs of the continuing competence activity and time off from providing physical therapy services. These costs, which are a cost of doing business, are minimal and may be passed to consumers of physical therapy services.

The rulemaking provides an economic benefit to PTs and PTAs who choose to work in Arizona under the Compact. They will not be required to obtain an Arizona license or certificate to do so. It also benefits Arizona PTs and PTAs who are able to work in other Compact states without incurring the cost of obtaining a license or certificate in those states.

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: Karen Donahue, Executive Director

Address: Board of Physical Therapy

1740 West Adams, Suite 2450

Phoenix, AZ 85007

Telephone: (602) 274-1361

Fax: (602) 274-1378

E-mail: Karen.donahue@ptboard.az.gov

Web site: www.ptboard.az.gov

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

Arizona certified PTAs, Arizona licensed PTs and certified PTAs who choose to work in another state under the Compact, PTs and PTAs who choose to work in Arizona under the Compact, and the Board will be directly affected by, bear the costs of, and directly benefit from the rulemaking.

There are currently 1,728 certified PTAs in Arizona. Under the rulemaking, each certified PTA will be required to obtain 10 hours of continuing competence during each two-year compliance period. There are many providers of continuing competence activities. This creates numerous opportunities for PTAs to obtain free or low-cost continuing competence

credits. However, a PTA incurs the cost associated with not providing physical therapy services while attending a continuing competence activity even if the activity is free or low-cost. The Board believes this cost is minimal, a cost of doing business, and necessary to protect public health and safety.

During FY2017, the Board received 742 applications for licensure or certification by endorsement. Through October FY2018, there have been 221 applications by endorsement. The Board expects the Compact will reduce applications by endorsement by approximately 20 percent. There will be cost savings for those able to work in Arizona without having to obtain a license or certificate. A decrease in applications will have minor impact on the state's general fund.

There are currently 5,150 licensed PTs in Arizona. They and the certified PTAs will be eligible to work in other Compact states without incurring the cost of obtaining a license or certificate from the other states. This may increase the opportunities for employment by Arizona PTs and PTAs and ease the ability to move for improved job opportunities.

The Board will exercise limited jurisdiction over PTs and PTAs who work in Arizona under the Compact. If the Board receives a complaint about a Compact licensee or certificate holder, the Board will conduct an investigation and if the Board determines disciplinary action is necessary, the only available action is to revoke the Compact privilege. Further disciplinary action would be determined by the state in which the license or certificate was obtained.

The Board incurred the cost of completing this rulemaking and will incur the cost of implementing and enforcing it. The Board has the benefit of having rules that are consistent with legislative intent when A.R.S. § 32-2053 was enacted.

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 benefits are described in item 4. The Board will not require an additional FTE to implement and enforce the rules.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:
No political subdivision is directly affected by the rulemaking.
- c. Costs and benefits to businesses directly affected by the rulemaking:
Arizona certified PTAs, Arizona licensed PTs and certified PTAs who choose to work in another state under the Compact, and PTs and PTAs who choose to work in Arizona under the Compact are businesses directly affected by the rulemaking. Their costs and benefits are described in item 4.

6. Impact on private and public employment:

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

7. Impact on small businesses²:

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

Arizona certified PTAs, Arizona licensed PTs and certified PTAs who choose to work in another state under the Compact, and PTs and PTAs who choose to work in Arizona under the Compact are small businesses directly affected by the rulemaking.

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

Certified PTAs will incur the cost of obtaining 10 hours of continuing competence during each two-year compliance period.

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

The rulemaking primarily provides economic benefits for PTs and PTAs by increasing employment opportunities and making it easier to move from one jurisdiction to another.

The Board believes it is not possible to reduce the minimal cost associated with a certified PTA obtaining 10 hours of continuing competence during each two-year compliance period. The requirement is necessary to allow Arizona to participate fully in the Compact and obtain the economic benefits associated with participation.

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

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

9. Probable effects on state revenues:

The Board expects the number of applicants for licensure or certification by endorsement to decrease by approximately 20 percent. This will result in a minor decrease in state revenues.

10. Less intrusive or less costly alternative methods considered:

Less intrusive or less costly alternative methods are not possible if Arizona is to participate fully in and obtain the economic benefits of the Compact.

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

Arizona Administrative CODE

4 A.A.C. 24 Supp. 19-1

www.azsos.gov

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of January 1, 2019 through March 31, 2019

Title 4



TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 24. BOARD OF PHYSICAL THERAPY

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

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

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Questions about these rules? Contact:

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The release of this Chapter in Supp. 19-1 replaces Supp. 15-2, 1-19 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

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. 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, 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.



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Administrative Rules Division

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TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 24. BOARD OF PHYSICAL THERAPY

Authority: A.R.S. § 32-2002 et seq.

ARTICLE 1. GENERAL PROVISIONS

Article 1 consisting of Sections R4-24-101 through R4-24-109 adopted effective June 3, 1982 (Supp. 82-3).

Former Article 1 consisting of Sections R4-24-01 through R4-24-06 repealed effective June 3, 1982 (Supp. 82-3).

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Article 2 consisting of Sections R4-24-201 through R4-24-203 adopted effective June 3, 1982 (Supp. 82-3).

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Former Article 3 consisting of Sections R4-24-301 through

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ARTICLE 1. GENERAL PROVISIONS**R4-24-101. Definitions**

In addition to the definitions in A.R.S. § 32-2001, in this Chapter:

1. “Accredited” means accredited by a nationally recognized accreditation organization.
2. “Accredited educational program” means a physical therapist or physical therapist assistant educational program that is accredited by:
 - a. The Commission on Accreditation of Physical Therapy Education, or
 - b. An agency recognized as qualified to accredit physical therapist or physical therapist assistant programs by either the U.S. Department of Education or the Council on Higher Education Accreditation at the time of the applicant’s graduation.
3. “Administratively suspend,” as used in A.R.S. § 32-2027, means the Board places a license or certificate issued under A.R.S. Title 32, Chapter 19 and this Chapter on suspended status because the license or certificate was not renewed timely.
4. “Applicant” means an individual or business entity seeking an initial or renewal license, initial or renewal certificate, initial or renewal registration, interim permit, or reinstatement from the Board.
5. “Applicant packet” means the forms and additional information the Board requires to be submitted by an applicant or on the applicant’s behalf.
6. “Campus” means a facility and immediately adjacent buildings.
7. “College Board” means an association composed of schools, colleges, universities, and other educational organizations across the United States that is responsible for the development of assessment tests that are used to provide college credit or for college placement.
8. “College level examination program” means services offered by the College Board for an individual to demonstrate college-level achievement by taking an examination approved by the College Board.
9. “Compliance period” means a two-year license renewal cycle that ends August 31 of even-numbered years.
10. “Continuing competence” means maintaining the professional skill, knowledge, and ability of a physical therapist or physical therapist assistant by successfully completing scholarly and professional activities related to physical therapy.
11. “Course” means an organized subject matter in which instruction is offered within a specified period of time.
12. “Course evaluation tool” means the Coursework Evaluation Tool for Foreign Educated Physical Therapists who Graduated after June 30, 2009, Fifth Edition, 2004 (effective July 1, 2009), published by the Federation of State Boards of Physical Therapy, 124 West Street, South Alexandria, VA, 22314, incorporated by reference and on file with the Board. This incorporation by reference contains no future editions or amendments.
13. “Credential evaluation” means a written assessment of a foreign-educated applicant’s general and professional educational course work.
14. “Credential evaluation agency” means an organization that evaluates a foreign-educated applicant’s education and provides recommendations to the Board about whether the applicant’s education is substantially equivalent to physical therapy education provided in an accredited educational program.
15. “Days” means calendar days.
16. “Endorsement” means a procedure for granting an Arizona license or certificate to an applicant already licensed as a physical therapist or certified as a physical therapist assistant in another jurisdiction of the United States.
17. “ETS” means Educational Testing Service, an organization that provides educational learning and assessment services, including the Test of English as a Foreign Language Program.
18. “Facility” means a building where:
 - a. A physical therapist is engaged in the practice of physical therapy;
 - b. An applicant, licensee, or certificate holder is engaged in a supervised clinical practice; or
 - c. A physical therapist assistant performs physical therapy-related tasks delegated by an onsite supervisor.
19. “Foreign-educated applicant” means an individual who graduated from a physical therapist educational program outside the United States, Puerto Rico, District of Columbia, or a U.S. territory.
20. “Functional limitation” means restriction of the ability to perform a physical action, activity, or task in an efficient, typically expected or competent manner.
21. “Good moral character” means the applicant has not taken any action that is grounds for disciplinary action against a licensee or certificate holder under A.R.S. § 32-2044.
22. “Hour” means 60 minutes.
23. “iBT” means internet-based TOEFL.
24. “National disciplinary database” means the disciplinary database of the U.S. Department of Health and Human Services’ Health Integrity and Protection Data Base, which contains previous or current disciplinary actions taken against a licensed physical therapist or certified physical therapist assistant by state licensing agencies.
25. “National examination” means an examination produced by the Federation of State Boards of Physical Therapy or an examination produced by the American Physical Therapy Association.
26. “On call,” as used in the definition of “general supervision” prescribed under A.R.S. § 32-2001, means a supervising physical therapist is able to go to the location at which and on the same day that a physical therapist assistant provides a selected treatment intervention if the physical therapist, after consultation with the physical therapist assistant, determines that going to the location is in the best interest of the patient.
27. “Onsite supervisor” means a physical therapist who provides onsite supervision as defined in A.R.S. § 32-2001.
28. “Physical Therapist Assistant Clinical Performance Instrument” means the document used to assess an individual’s knowledge, skills, and attitudes to determine the individual’s readiness to work as a physical therapist assistant that is published by the American Physical Therapy Association, Division of Education, March 1998, 1111 North Fairfax Street, Alexandria, VA 22314-1488 and incorporated by reference and on file with the Board. This incorporation by reference contains no future editions or amendments.
29. “Physical Therapist Clinical Performance Instrument” means the document used to assess an individual’s knowledge, skills, and attitudes to determine the individual’s readiness to practice physical therapy that is published by the American Physical Therapy Association, Division of Education, December 1997, 1111 North Fairfax Street, Alexandria, VA 22314-1488 and incorporated

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- by reference and on file with the Board. This incorporation by reference contains no future editions or amendments.
30. "Physical therapy services" means any of the actions stated in the definition of practice of physical therapy in A.R.S. § 32-2001.
31. "Qualified translator" means an individual, other than an applicant, who is:
- a. An officer or employee of an official translation bureau or government agency;
 - b. A professor or instructor who teaches a translated language in an accredited college or university in the United States;
 - c. An American consul in the country where the translated document is issued or another individual designated by the American consul in the country where the translated document is issued, or
 - d. A consul general or diplomatic representative of the United States or individual designated by the consul general or diplomatic representative.
32. "Readily available," as used in the definition of "general supervision" prescribed under A.R.S. § 32-2001, means a supervising physical therapist is able to respond within 15 minutes to a communication from a physical therapist assistant providing a selected treatment intervention under general supervision.
33. "Recognized standards of ethics" means the *Code of Ethics* (amended June 2000) and the accompanying *Guide for Professional Conduct* (amended January 2004) of the American Physical Therapy Association, 1111 North Fairfax Street, Alexandria, VA 22314-1488, which is incorporated by reference and on file with the Board. This incorporation includes no later editions or amendments.
34. "Supervised clinical practice" means the period of time a physical therapist is engaged in the practice of physical therapy or a physical therapist assistant is engaged in work as a physical therapist assistant after being issued an interim permit by the Board.
35. "Supervising physical therapist" means an individual licensed under this Chapter who provides onsite or general supervision to assistive personnel.
36. "Suspend" means the Board places a license, certificate, permit, or registration in a status that restricts the holder of the license, certificate, permit, or registration from practicing as a physical therapist, working as a physical therapist assistant, or offering physical therapy services.
37. "TOEFL" means test of English as a foreign language.
38. "Week" means the period beginning on Sunday at 12:00 a.m. and ending the following Saturday at 11:59 p.m.

Historical Note

Adopted effective June 3, 1982 (Supp. 82-3). Amended effective April 10, 1986 (Supp. 86-2). Amended effective May 7, 1990 (Supp. 90-2). Amended effective March 14, 1996 (Supp. 96-1). Amended by final rulemaking at 5 A.A.R. 2988, effective August 12, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 307, effective January 13, 2003 (Supp. 03-1). Amended by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006 (Supp. 06-2). Amended by final rulemaking at 13 A.A.R. 1640, effective June 30, 2007 (Supp. 07-2). Amended by final rulemaking at 15 A.A.R. 1788, effective December 5, 2009 (Supp. 09-4). Amended by final rulemaking at 18 A.A.R. 841, effective May 11, 2012 (Supp. 12-1). Amended by final rulemak-

ing at 25 A.A.R. 404, effective April 6, 2019 (Supp. 19-1).

R4-24-102. Expired**Historical Note**

Adopted effective June 3, 1982 (Supp. 82-3). Former Section R4-24-102 repealed, former Section R4-24-103 renumbered and amended as Section R4-24-102 effective April 10, 1986 (Supp. 86-2). Former Section R4-24-102 renumbered to R4-24-103; new Section R4-24-102 adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 3897, effective July 31, 2004 (Supp. 04-3).

R4-24-103. Board Officers

The Board shall elect a president, vice-president, and secretary at its first regular Board meeting each year.

1. The president shall preside at all Board meetings.
2. When the president is unable to preside at a Board meeting, the vice-president shall preside.

Historical Note

Adopted effective June 3, 1982 (Supp. 82-3). Former Section R4-24-103 renumbered and amended as Section R4-24-102, former Section R4-24-104 renumbered and amended as Section R4-24-103 effective April 10, 1986 (Supp. 86-2). Former Section R4-24-103 renumbered to Section R4-24-204 effective May 7, 1990 (Supp. 90-2). New Section R4-24-103 renumbered from R4-24-102 and amended by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006 (Supp. 06-2).

R4-24-104. Confidential Information and Records

The following information or a record containing this information is confidential and is not provided to the public by the Board:

1. An applicant's, licensee's, or certificate-holder's:
 - a. Social Security number;
 - b. Home address or home telephone number unless the address or telephone number is the only address or telephone number of record;
 - c. Credential evaluation report, education transcript, grades, or examination scores;
 - d. National physical therapist or physical therapist assistant examination score;
 - e. Diagnosis and treatment records; and
2. According to A.R.S. § 32-2045, information or a document related to investigations by the Board until the information or document becomes a public record or as required by law.

Historical Note

Adopted effective June 3, 1982 (Supp. 82-3). Former Section R4-24-104 renumbered and amended as Section R4-24-103 effective April 10, 1986 (Supp. 86-2). New Section R4-24-104 adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006 (Supp. 06-2).

R4-24-105. Expired**Historical Note**

Adopted effective June 3, 1982 (Supp. 82-3). Amended subsection (B) effective April 10, 1986 (Supp. 86-2). Amended effective May 7, 1990 (Supp. 90-2). Amended effective March 14, 1996 (Supp. 96-1). Section repealed;

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new Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 3897, effective July 31, 2004 (Supp. 04-3).

R4-24-106. Repealed**Historical Note**

Adopted effective June 3, 1982 (Supp. 82-3). Amended subsection (A) effective April 10, 1986 (Supp. 86-2). Amended effective May 7, 1990 (Supp. 90-2). Amended effective March 14, 1996 (Supp. 96-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Section repealed by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006 (Supp. 06-2).

R4-24-107. Fees

- A.** Under the authority provided by A.R.S. §§ 32-2029 and 32-2030, the Board establishes and shall collect the following fees, which are not refundable unless A.R.S. § 41-1077 applies:
1. For a physical therapist:
 - a. Application for an original license if the applicant applies on or after September 1 in an even-numbered year and no later than August 31 in an odd-numbered year, \$260;
 - b. Application for an original license if the applicant applies on or after September 1 in an odd-numbered year and no later than August 31 in an even-numbered year, \$190;
 - c. Renewal of an active license, \$160;
 - d. Renewal of an inactive license, \$80;
 - e. Reinstatement of an administratively suspended license, \$100 plus the renewal fee; and
 - f. Duplicate license, \$10.
 2. For a physical therapist assistant:
 - a. Application for an original certificate if the applicant applies on or after September 1 in an even-numbered year and no later than August 31 in an odd-numbered year, \$160;
 - b. Application for an original certificate if the applicant applies on or after September 1 in an odd-numbered year and no later than August 31 in an even-numbered year, \$120;
 - c. Renewal of an active certificate, \$55;
 - d. Renewal of an inactive certificate, \$27.50;
 - e. Reinstatement of an administratively suspended certificate, \$50 plus the renewal fee; and
 - f. Duplicate certificate, \$10.
 3. For a business entity:
 - a. Application for an original registration, \$50;
 - b. Renewal, \$50;
 - c. Late fee, \$25; and
 - d. Duplicate registration, \$10.
- B.** The Board shall accept fees paid by check or money order payable to the Arizona State Board of Physical Therapy.

Historical Note

Adopted effective June 3, 1982 (Supp. 82-3). Amended effective May 7, 1990 (Supp. 90-2). Section R4-24-107 renumbered to R4-24-306 by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Section R4-24-107 renumbered from R4-24-206 by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006 (Supp. 06-2). Amended by final rulemaking at 18 A.A.R. 841, effective May 11, 2012 (Supp. 12-1). Amended by

final rulemaking at 18 A.A.R. 1858, effective July 10, 2012 (Supp. 12-3).

R4-24-108. Repealed**Historical Note**

Adopted effective June 3, 1982 (Supp. 82-3). Repealed effective May 7, 1990 (Supp. 90-2).

R4-24-109. Renumbered**Historical Note**

Adopted effective June 3, 1982 (Supp. 82-3). Amended effective May 7, 1990 (Supp. 90-2). Amended effective March 14, 1996 (Supp. 96-1). Section R4-24-109 renumbered to R4-24-307 by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2).

ARTICLE 2. LICENSING PROVISIONS**R4-24-201. Application for a Physical Therapist License**

- A.** An applicant for a physical therapist license shall submit to the Board an application packet that includes:
1. An application form provided by the Board that is signed, dated, and verified by the applicant and contains:
 - a. The applicant's name, business, residential, and e-mail addresses, business and residential telephone numbers, birth date, and Social Security number;
 - b. The name and address of each university or college attended by the applicant, the dates of attendance, and the date of graduation and degree received, if applicable;
 - c. The name and address of the university or college where the applicant completed an accredited educational program and dates of attendance;
 - d. A statement of whether the applicant has ever been licensed as a physical therapist in any other jurisdiction of the United States or foreign country;
 - e. Professional employment history for the past five years, including the name, address, and telephone number for each place of employment, job title, description of the work completed, and explanation of any breaks in employment, if applicable;
 - f. A statement of whether the applicant has ever been convicted of, pled guilty or no contest to, or entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country and if so, an explanation;
 - g. A statement of whether the applicant has ever had an application for a professional or occupational license, certificate, or registration, other than a driver's license, denied, rejected, suspended, or revoked by any jurisdiction of the United States or foreign country and if so, an explanation;
 - h. A statement of whether the applicant is currently or ever has been under investigation, suspension, or restriction by a professional licensing board in any jurisdiction of the United States or foreign country for any act that occurred in that jurisdiction that would be the subject of discipline under this Chapter and if so, an explanation;
 - i. A statement of whether the applicant has ever been the subject of disciplinary action by a professional association or postsecondary educational institution;
 - j. A statement of whether the applicant has committed any of the actions referenced in the definition of good moral character in R4-24-101;
 - k. A statement of whether the applicant has ever had a malpractice judgment, has a lawsuit currently pend-

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- ing for malpractice, or entered into a settlement from a malpractice suit and if so, an explanation;
1. A statement of whether the applicant is currently more than 30 days in arrears for payment required by a judgment and order for child support in Arizona or any other jurisdiction;
 - m. A statement of whether the applicant has any impairment to the applicant's cognitive, communicative, or physical ability to engage in the practice of physical therapy with skill and safety and if so, an explanation;
 - n. A statement of whether the applicant has, within the past 10 years, used alcohol, any illegal chemical substance, or prescription medications, that in any way has impaired or limited the applicant's ability to practice physical therapy with skill and safety and if so, an explanation;
 - o. A statement of whether the applicant has, within the past 10 years, been diagnosed as having or is being treated for bipolar disorder, schizophrenia, paranoia, or other psychotic disorder that in any way has impaired or limited the applicant's ability to practice physical therapy with skill and safety and if so, an explanation;
 - p. A statement of whether the applicant has ever violated A.R.S. § 32-2044(10); and
 - q. A statement by the applicant attesting to the truthfulness of the information provided by the applicant;
2. A passport photograph of the applicant no larger than 1 1/2 x 2 inches that was taken not more than six months before the date of the application;
 3. Documentation, as described under A.R.S. § 41-1080, of the applicant's U.S. citizenship, alien status, legal residency, or lawful presence in the U.S.; and
 4. The fee required in R4-24-107.
- B.** In addition to the requirements in subsection (A), an applicant shall arrange to have submitted directly to the Board:
1. An official transcript or letter showing that the applicant completed all requirements of an accredited educational program that includes the official seal of the university or college where the applicant completed the accredited educational program and signature of the registrar of the university or college,
 2. Verification of passing a national examination in physical therapy as evidenced by an original notice of examination results, and
 3. Verification of passing a jurisprudence examination as evidenced by an original notice of examination results.
- C.** In addition to the requirements in subsections (A) and (B), an applicant for a physical therapist license by endorsement shall submit to the Board:
1. The name of the licensing or certifying agency of any jurisdiction in which the applicant is currently or has been previously licensed;
 2. A verification of each license, signed and dated by an official of the agency licensing or certifying the applicant, that includes the official seal of the licensing or certifying agency and all of the following:
 - a. The name of the applicant;
 - b. The license number and date of issuance;
 - c. The current status of the license;
 - d. The expiration date of the license;
 - e. A statement of whether the applicant was ever denied a license by the agency and if so, an explanation; and
- f. A statement of whether any disciplinary action is pending or has ever been taken against the applicant and if so, an explanation.
- D.** The Board shall deny a license to an applicant who fails to meet the requirements of this Section or A.R.S. Title 32, Chapter 19. An applicant denied a license may request a hearing under A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Adopted effective June 3, 1982 (Supp. 82-3). Amended subsection (C) and added subsection (D) effective April 10, 1986 (Supp. 86-2). Amended effective May 7, 1990 (Supp. 90-2). Amended effective March 14, 1996 (Supp. 96-1). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2988, effective August 12, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 3418, effective October 4, 2008, (Supp. 08-3). Amended by final rulemaking at 25 A.A.R. 404, effective April 6, 2019 (Supp. 19-1).

R4-24-202. Reinstatement of License or Certificate

- A. An applicant whose Arizona license or certificate is administratively suspended for three consecutive years or less after the date of renewal of the license or certificate may apply for reinstatement of the license or certificate by submitting the application in R4-24-208 and the reinstatement fee and renewal fee required in R4-24-107.
- B. An applicant whose Arizona license or certificate is administratively suspended for more than three consecutive years after the date of renewal of the license or certificate may apply for reinstatement of the license or certificate by submitting the reinstatement fee and renewal fee in R4-24-107, and:
 1. For an applicant educated in the United States requesting reinstatement of a license, the application in R4-24-201(A) and (B);
 2. For a foreign-educated applicant requesting reinstatement of a license, the application in R4-24-203; or
 3. For an applicant requesting reinstatement of a certificate, the application in R4-24-207(A) and (B).
- C. If an applicant submits an application according to subsection (B), the Board shall require the applicant to demonstrate competency by doing one or more of the following:
 1. Practice physical therapy or work as a physical therapist assistant under an interim permit that allows the applicant to participate in a supervised clinical practice,
 2. Complete one or more courses relevant to the practice of physical therapy or the work of a physical therapist assistant,
 3. Complete continuing competence requirements for the period of time of the lapsed license, or
 4. Take and pass a jurisprudence examination or national examination.

Historical Note

Adopted effective June 3, 1982 (Supp. 82-3). Amended subsection (C) effective April 10, 1986 (Supp. 86-2). Amended effective May 7, 1990 (Supp. 90-2). Amended effective March 14, 1996 (Supp. 96-1). Former Section R4-24-202 renumbered to R4-24-204; new Section R4-24-202 adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006 (Supp. 06-2). Subsection (A) corrected at request of the Board, Office File No. M12-209, filed June 8, 2012

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(Supp. 12-1). Amended by final rulemaking at 18 A.A.R. 841, effective May 11, 2012 (Supp. 12-1).

R4-24-203. Foreign-educated Applicant Requirements

- A. A foreign-educated applicant shall meet the requirements in A.R.S. § 32-2022(B) and the following:
1. The applicant shall comply with the requirements in R4-24-201.
 2. The applicant shall ensure that a document required by R4-24-201 or this subsection is:
 - a. Submitted to the Board in English; or
 - b. Accompanied by an original English translation by a qualified translator if the document is submitted to the Board in a language other than English and includes an affidavit of accuracy by the qualified translator affirming:
 - i. The qualified translator has translated the entire document,
 - ii. The qualified translator has not omitted anything from or added to the translation, and
 - iii. The translation is true and accurate.
 3. To meet the requirements in A.R.S. § 32-2022(B)(4), the applicant shall state on the application form whether the applicant's practice as a physical therapist was limited in the country where the professional education occurred. If the applicant's practice was limited in the country where the professional education occurred, the applicant shall submit to the Board documentation of the limitation, or arrange to have documentation of limitation sent directly to the Board, that includes:
 - a. The name, address, and telephone number of the entity that limited the applicant's practice of physical therapy;
 - b. A description of the action or lack of action that led to the limitation on the applicant's practice as a physical therapist;
 - c. A description of the limitation on the applicant's practice of physical therapy; and
 - d. If the limitation is based on citizenship requirements of the country in which the professional education was obtained, the applicant shall provide the Board with the legal reference for the restriction in the laws of the country in which the professional education was obtained, a copy of the referenced laws, and an English translation of the laws that meets the standards in subsection (A)(2)(b).
 4. If English is not the native language of the foreign-educated applicant, to meet the requirements in A.R.S. § 32-2022(B)(6), the applicant shall take and pass either of the following tests no more than 18 months before the date on which the application submitted under R4-24-201 is administratively complete and ensure that the test scores are sent directly to the Board by the testing entity:
 - a. The TOEFL. An applicant who takes the TOEFL passes with the following:
 - i. A score of 560 or more if a paper-based test or a score of 220 or more if a computer-based test;
 - ii. Test of Spoken English with a score of 50 or more; and
 - iii. Test of Written English with a score of 4.5 or more; or
 - b. The iBT. An applicant who takes the iBT passes with an overall test score of a minimum of 100 and a:
 - i. Writing section with a minimum score of 25,
 - ii. Speaking section with a minimum score of 25,

- iii. Reading section with a minimum score of 25, and
 - iv. Listening section with a minimum score of 25.
 5. To demonstrate that the applicant meets uniform criteria for educational requirements according to A.R.S. § 32-2022(E)(3), the applicant shall undergo a credential evaluation to determine that the applicant meets the requirements in the course evaluation tool and arrange to have a credential evaluation report, prepared within 18 months from the date of the application, sent directly to the Board by the credential evaluation agency.
 6. To meet the requirements in A.R.S. § 32-2022(B)(5), the applicant shall obtain a work visa to reside and seek employment in the United States issued by the Bureau of Citizenship and Immigration Services and submit a copy of the work visa to the Board.
- B. After receiving a credential evaluation report from a credential evaluation agency, the Board:
1. If the credential evaluation report does not establish that the education obtained by the foreign-educated applicant is substantially equivalent to the education required of a physical therapist in an accredited education program, may require the applicant to:
 - a. Complete one or more university or college courses and obtain a grade of C or better in each course;
 - b. Complete a college level examination program; or
 - c. If an applicant for a license, complete one or more continuing competence courses; and
 2. Shall issue, within the time-frames stated in Table 1, an interim permit to complete a supervised clinical practice to the applicant if:
 - a. The applicant was required to meet one or more of the requirements in subsection (B)(1) and completes the requirements; or
 - b. The credential evaluation report establishes that the education obtained by the foreign-educated applicant is substantially equivalent to the education required of a physical therapist in an accredited education program; and
 - c. The applicant has passed the national examination and jurisprudence examination; and
 - d. The applicant meets the requirements in A.R.S. Title 32, Chapter 19 and R4-24-201.

Historical Note

Adopted effective June 3, 1982 (Supp. 82-3). Amended subsection (B) effective April 10, 1986 (Supp. 86-2).

Amended effective March 14, 1996 (Supp. 96-1). Section repealed; new Section adopted by final rulemaking at 6

A.A.R. 2399, effective June 9, 2000 (Supp. 00-2).

Amended by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 3418, effective October 4, 2008, (Supp. 08-3). Amended by final rulemaking at 18 A.A.R. 841, effective May 11, 2012 (Supp. 12-1).

R4-24-204. Supervised Clinical Practice

- A. An interim permit holder shall complete a supervised clinical practice under onsite supervision. The supervised clinical practice shall consist of at least 500 hours.
- B. Before an individual is issued an interim permit, the individual shall submit to the Board:
1. A written request for Board approval of the facility where supervised clinical practice will take place that includes:
 - a. The name, address, and telephone number of the facility; and

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- b. A description of the physical therapy services provided at the facility; and
2. The name of the individual who holds an unrestricted license to practice physical therapy in this state and agrees to provide onsite supervision of the individual.
- C. The Board shall approve or deny a request made under subsection (B)(1):
1. After assessing whether the facility provides the opportunity for an interim permit holder to attain the knowledge, skills, and attitudes to be evaluated according to the Physical Therapist Assistant Clinical Performance Instrument or Physical Therapist Clinical Performance Instrument; and
 2. According to the time-frames in Table 1.
- D. An onsite supervisor shall:
1. Observe the interim permit holder during the supervised clinical practice and:
 - a. Rate the interim permit holder's performance, at both the mid-point and completion of the clinical practice, on each of the clinical performance criteria in the Physical Therapist Clinical Performance Instrument or Physical Therapist Assistant Clinical Performance Instrument, including the dates and hours the onsite supervisor provided onsite supervision;
 - b. Recommend following the mid-point rating whether the interim permit holder be allowed to continue the clinical practice and changes needed, if any, to ensure successful completion of the clinical practice; and
 - c. Recommend following the completion rating whether the interim permit holder be licensed or required to complete further supervised clinical practice; and
 2. Submit the ratings on the Physical Therapist Clinical Performance Instrument or Physical Therapist Assistant Clinical Performance Instrument to the Board as follows:
 - a. No later than the 55th day of the clinical practice for the mid-point rating, and
 - b. No later than 30 days after the end of the supervised clinical practice for the completion rating.
- E. After the Board receives the mid-point rating on the Physical Therapist Clinical Performance Instrument or Physical Therapist Assistant Clinical Performance Instrument, the Board shall review the rating and recommendation of the onsite supervisor and decide whether to allow the interim permit holder to continue the clinical practice or recommend changes in the clinical practice to the onsite supervisor.
- F. After the Board receives the completion rating on the Physical Therapist Clinical Performance Instrument or Physical Therapist Assistant Clinical Performance Instrument, the Board:
1. May require the interim permit holder to complete additional onsite supervision under the interim permit if the additional onsite supervision does not cause the interim permit holder to exceed six months from the date the interim permit was issued and:
 - a. The onsite supervisor does not approve one or more of the skills listed on the Physical Therapist Clinical Performance Instrument or Physical Therapist Assistant Clinical Performance Instrument;
 - b. The onsite supervisor recommends that the interim permit holder complete further supervised clinical practice; or
 - c. The Board determines that the interim permit holder has not met the requirements in A.R.S. Title 32, Chapter 19 and this Chapter.

Historical Note

Adopted effective June 3, 1982 (Supp. 82-3). Former Section R4-24-103 renumbered and amended as Section R4-24-102, former Section R4-24-104 renumbered and amended as Section R4-24-103 effective April 10, 1986 (Supp. 86-2). Former Section R4-24-204 renumbered to R4-24-205, new Section R4-24-204 renumbered from Section R4-24-103 and amended effective May 7, 1990 (Supp. 90-2). Amended effective March 14, 1996 (Supp. 96-1). Former Section R4-24-204 renumbered to R4-24-206; new Section R4-24-204 renumbered from R4-24-202 and amended by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 307, effective January 13, 2003 (Supp. 03-1). Former Section R4-24-204 renumbered to R4-24-205; new Section R4-24-204 made by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 376, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 14 A.A.R. 3418, effective October 4, 2008, (Supp. 08-3).

R4-24-205. Examination Scores

- A. To be licensed as a physical therapist, an applicant shall obtain:
1. A scaled score of 600 or more, based on a scale ranging from 200 to 800 on a national examination for physical therapists taken on or after March 14, 1996; or
 2. A raw score that is no lower than 1.50 standard deviation below the national average for a national examination for physical therapists taken before March 14, 1996.
- B. To be certified as a physical therapist assistant, an applicant for certification shall obtain:
1. A scaled score of 600 or more based on a scale ranging from 200 to 800 on a national examination for physical therapist assistants taken on or after March 14, 1996; or
 2. A raw score that is no lower than 1.50 standard deviation below the national average for a national examination for physical therapist assistants taken before March 14, 1996.
- C. In addition to the requirements in subsections (A) and (B), to be licensed as a physical therapist or certified as a physical therapist assistant, an applicant shall obtain a scaled score of 600 or more based on a scale ranging from 200 to 800 on a jurisprudence examination.

Historical Note

Adopted effective April 10, 1986 (Supp. 86-2). Former Section R4-24-205 renumbered to R4-24-206, new Section R4-24-205 renumbered from Section R4-24-204 and amended effective May 7, 1990 (Supp. 90-2). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2988, effective August 12, 1999 (Supp. 99-3). Former Section R4-24-205 renumbered to R4-24-207; new Section R4-24-205 adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Former

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Section R4-24-205 repealed; new Section R4-24-205 renumbered from R4-24-204 and amended by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006 (Supp. 06-2).

R4-24-206. Renumbered**Historical Note**

Section R4-24-205 adopted effective April 10, 1986 (Supp. 86-2). Section R4-24-206 renumbered from Section R4-24-205 and amended effective May 7, 1990 (Supp. 90-2). Amended by final rulemaking at 5 A.A.R. 2988, effective August 12, 1999 (Supp. 99-3). Former Section R4-24-206 repealed; new Section R4-24-206 renumbered from R4-24-204 and amended by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 5465, effective February 4, 2006 (Supp. 05-4). Section R4-24-206 renumbered to R4-24-107 by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006 (Supp. 06-2).

R4-24-207. Application for a Physical Therapist Assistant Certificate

- A. An applicant for an original physical therapist assistant certificate shall submit to the Board an application packet that includes:
1. An application form provided by the Board, signed, dated, and verified by the applicant that contains:
 - a. The applicant's name, business, residential, and e-mail addresses, business and residential telephone numbers, birth date, and Social Security number;
 - b. The name and address of the college or university where the applicant completed an accredited educational program for physical therapist assistants, dates of attendance, and date of completion;
 - c. A statement of whether the applicant has ever been licensed or certified as a physical therapist assistant in any other jurisdiction of the United States or foreign country;
 - d. Professional employment history for the five years before the date of application including the name, address, and telephone number for each place of employment, job title, description of the work completed, and explanation of any breaks in employment, if applicable;
 - e. A statement of whether the applicant has ever been convicted of, pled guilty or no contest to, or entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country and if so, an explanation;
 - f. A statement of whether the applicant has ever had an application for a professional or occupational license, certificate, or registration, other than a driver's license, denied, rejected, suspended, or revoked by any jurisdiction of the United States or foreign country and if so, an explanation;
 - g. A statement of whether the applicant is currently or ever has been under investigation, suspension, or restriction by a professional licensing board in any jurisdiction of the United States or foreign country for any act that occurred in that jurisdiction that would be the subject of discipline under this Chapter and if so, an explanation;
 - h. A statement of whether the applicant has ever been the subject of disciplinary action by a professional association or postsecondary educational institution;
 2. A passport photograph of the applicant no larger than 1 1/2 x 2 inches that was taken not more than six months before the date of the application;
 3. Documentation, as described under A.R.S. § 41-1080, of the applicant's U.S. citizenship, alien status, legal residency, or lawful presence in the U.S.; and
 4. The fee required in R4-24-107.

- B. In addition to the requirements in subsection (A), an applicant shall arrange to have directly submitted to the Board:
1. An official transcript or letter showing the applicant completed all requirements of an accredited educational program that includes the official seal of the school or college where the applicant completed the accredited educational program and signature of the registrar of the school or college;
 2. Verification of passing a national examination for physical therapist assistants as evidenced by an original notice of examination results; and
 3. Verification of passing a jurisprudence examination as evidenced by an original notice of examination results.
- C. In addition to the requirements in subsections (A) and (B), an applicant for a physical therapist assistant certificate by endorsement shall submit to the Board:
1. The name of the licensing or certifying agency of any jurisdiction in which the applicant is currently or has been previously licensed or certified; and
 2. A verification of license or certificate, signed and dated by an official of the agency licensing or certifying the applicant, that includes the official seal of the licensing or certifying agency and all of the following:
 - a. The name of the applicant;
 - b. The license or certificate number and date of issuance;

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- c. The current status of the license or certificate;
 - d. The expiration date of the license or certificate;
 - e. A statement of whether the applicant was ever denied a license or certificate by the agency and if so, an explanation; and
 - f. A statement of whether any disciplinary action is pending or has ever been taken against the applicant and if so, an explanation.
- D. The Board shall deny a certificate to an applicant who fails to meet the requirements of this Section or A.R.S. Title 32, Chapter 19. A person denied a certificate may request a hearing under A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2988, effective August 12, 1999 (Supp. 99-3). Former Section R4-24-207 renumbered to R4-24-209; new Section R4-24-207 renumbered from R4-24-205 and amended by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 376, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 14 A.A.R. 3418, effective October 4, 2008, (Supp. 08-3). Amended by final rulemaking at 25 A.A.R. 404, effective April 6, 2019 (Supp. 19-1).

R4-24-208. License or Certificate Renewal; Address Change

- A. A licensee or certificate holder shall submit a renewal application packet to the Board on or before August 31 of an even-numbered year that includes:
- 1. The following information for the compliance period immediately preceding the renewal application:
 - a. The licensee's or certificate holder's:
 - i. Name;
 - ii. Home, business, and e-mail addresses; and
 - iii. Home and business telephone numbers;
 - b. A statement of whether the licensee or certificate holder has been convicted of, pled guilty or no contest to, or entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country and if so, an explanation;
 - c. A statement of whether the licensee or certificate holder has had an application for a professional or occupational license, certificate, or registration, other than a driver's license, denied, rejected, suspended, or revoked by any jurisdiction of the United States or foreign country and if so, an explanation;
 - d. A statement of whether the licensee or certificate holder is currently or ever has been under investigation, suspension, or restriction by a professional licensing board in any jurisdiction of the United States or foreign country for any act that occurred in that jurisdiction that would be the subject of discipline under this Chapter and if so, an explanation;
 - e. A statement of whether the licensee or certificate holder has been the subject of disciplinary action by a professional association or postsecondary educational institution;
 - f. A statement of whether the licensee or certificate holder has had a malpractice judgment against the licensee or certificate holder or has a lawsuit currently pending for malpractice and if so, an explanation;
 - g. A statement of whether the licensee or certificate holder is currently more than 30 days in arrears for

- payment required by a judgment and order for child support in Arizona or any other jurisdiction;
 - h. A statement of whether the licensee or certificate holder has adhered to the recognized standards of ethics;
 - i. A statement of whether the licensee or certificate holder has or has not committed any of the actions referenced in the definition of good moral character in R4-24-101;
 - j. A statement of whether the licensee or certificate holder has been the subject of any criminal investigation by a federal, state, or local agency or had criminal charges filed against the licensee or certificate holder;
 - k. If a licensee, a statement of whether the licensee has:
 - i. Any impairment to the licensee's cognitive, communicative, or physical ability to engage in the practice of physical therapy with skill and safety and if so, an explanation;
 - ii. Used alcohol, any illegal chemical substance, or prescription medicine, that in any way has impaired or limited the licensee's ability to practice physical therapy with skill and safety and if so, an explanation;
 - iii. Been diagnosed as having or is being treated for bipolar disorder, schizophrenia, paranoia, or other psychotic disorder that in any way has impaired or limited the licensee's ability to practice physical therapy with skill and safety and if so, an explanation;
 - l. If a certificate holder, a statement of whether the certificate holder has:
 - i. Any impairment to the certificate holder's cognitive, communicative, or physical ability to work as a physical therapist assistant with skill and safety and if so, an explanation;
 - ii. Used alcohol, any illegal chemical substance or prescription medicine, that in any way has impaired or limited the certificate holder's ability to work as a physical therapist assistant with skill and safety and if so, an explanation;
 - iii. Been diagnosed as having or is being treated for bipolar disorder, schizophrenia, paranoia, or other psychotic disorder that in any way has impaired or limited certificate holder's ability to work as a physical therapist assistant with skill and safety and if so, an explanation;
 - m. A statement of whether the licensee or certificate holder has ever violated A.R.S. § 32-2044(10);
 - n. If a licensee, a statement of whether the licensee has completed the 20 contact hours of continuing competence for the previous compliance period as required in R4-24-401;
 - o. If a certificate holder, a statement of whether the certificate holder has completed the 10 contact hours of continuing competence for the previous compliance period as required in R4-24-401;
 - p. If a licensee, a statement of whether the licensee has complied with the medical records protocol as required in A.R.S. § 32-3211; and
 - q. If a licensee, a statement of whether the licensee has completed the dry needling course content requirements in A.A.C. R4-24-313.
2. The signature of the applicant attesting to the truthfulness of the information provided by the licensee or certificate holder;

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- 3. If the documentation previously submitted under R4-24-201(A)(3) or R4-24-207(A)(3) did not establish citizenship in the United States or was not a non-expiring work authorization, documentation specified under A.R.S. § 41-1080 that the presence of the licensee or certificate holder in the United States continues to be authorized under federal law; and
- 4. The fee required by the Board in R4-24-107.
- B. Failure of the Board to inform a licensee or certificate holder of license or certificate expiration does not excuse the licensee's or certificate holder's non-renewal or untimely renewal.
- C. The Board shall:
 - 1. Approve or deny the application within the time frames in R4-24-209 and Table 1, and
 - 2. Deny the application of an applicant who does not meet the requirements in A.R.S. § 32-2001 et seq. or this Chapter.
- D. A licensee or certificate holder denied renewal of a license or certificate may request a hearing under A.R.S. Title 41, Chapter 6, Article 10.
- E. A licensee or certificate holder shall send to the Board written notification of a change in any of the information provided under subsection (A)(1)(a) no later than 30 days after the date of the change.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 376, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 14 A.A.R. 3418, effective October 4, 2008, (Supp. 08-3). Amended by final rulemaking at 18 A.A.R. 1858, effective July 10, 2012 (Supp. 12-3). Amended by final exempt rulemaking at 21 A.A.R. 924, effective July 1, 2015 (Supp. 15-2). Amended by final rulemaking at 25 A.A.R. 404, effective April 6, 2019 (Supp. 19-1).

R4-24-209. Time-frames for Board Approvals

- A. The overall time-frame described in A.R.S. § 41-1072(2) for each type of approval granted by the Board is listed in Table 1. The applicant and the Executive Director of the Board may agree in writing to extend the substantive review time-frame and overall time-frame. The overall time-frame and the substantive review time-frame may not be extended by more than 25% of the overall time-frame.
- B. The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of approval granted by the Board is listed in Table 1.
 - 1. The administrative completeness review time-frame begins:
 - a. When the Board receives an application packet for an initial or renewal license or certificate or
 - b. When the Board receives a request for approval of a facility.
- 2. If the application packet is incomplete, the Board shall send to the applicant a written notice specifying the missing document or incomplete information.
 - a. The administrative completeness review time-frame and the overall time-frame are suspended from the postmark date of the notice until the date the Board receives a complete application packet from the applicant.
 - b. An applicant who disagrees with the Board's statement of deficiencies may request a hearing as provided in A.R.S. § 32-2023.
- 3. If an application packet is complete, the Board shall send a written notice of administrative completeness to the applicant.
- 4. If the Board grants a license, certificate, or approval during the time provided to assess administrative completeness, the Board shall not issue a separate written notice of administrative completeness.
- C. The substantive review time-frame described in A.R.S. § 41-1072(3) is listed in Table 1 and begins on the postmark date of the notice of administrative completeness.
 - 1. During the substantive review time-frame, the Board may make one comprehensive written request for additional information or documentation. The time-frame for the Board to complete the substantive review is suspended from the postmark date of the comprehensive written request for additional information or documentation until the Board receives the additional information or documentation.
 - 2. The Board shall send a written notice of approval of a license or certificate to an applicant who meets the qualifications in A.R.S. §§ 32-2001 through 32-2027 and this Chapter.
 - 3. The Board shall send a written notice of denial to an applicant who fails to meet the qualifications in A.R.S. §§ 32-2001 through 32-2027 and these rules.
- D. The Board shall consider an application withdrawn if within 360 days from the application submission date the applicant fails to:
 - 1. Supply the missing information requested under subsection (B)(2) or (C)(1); or
 - 2. Take the national physical therapist examination or national physical therapist assistant examination.
- E. An applicant who does not wish an application withdrawn may request a denial in writing within 360 days from the application submission date.
- F. If a time-frame's last day falls on a Saturday, Sunday, or an official state holiday, the Board shall consider the next business day the time-frame's last day.

Historical Note

New Section R4-24-209 renumbered from R4-24-207 and amended by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006 (Supp. 06-2).

Table 1. Time Frames (in days)

Type of Applicant	Type of Approval	Statutory Authority	Overall Time Frame	Administrative Completeness Time Frame	Substantive Review Time Frame
Original License (R4-24-201)	License	A.R.S. §§ 32-2022; 32-2023	75	30	45

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License or Certificate by Endorsement (R4-24-201; R4-24-207)	License or certificate by Endorsement	A.R.S. § 32-2026	75	30	45
Physical Therapist Assistant Certificate (R4-24-207)	Certificate	A.R.S. §§ 32-2022; 32-2023	75	30	45
Foreign-educated (R4-24-203)	License	A.R.S. §§ 32-2022; 32-2025	75	45	30
Renewal of license or certificate (R4-24-208)	License or certificate	A.R.S. § 32-2027	30	15	15
Foreign-educated and Supervised Clinical Practice (R4-24-203, R4-24-204)	Interim Permit and Approval of Facility	A.R.S. § 32-2025	60	30	30
Reinstatement (R4-24-202)	Reinstatement of License or Certificate	A.R.S. § 32-2028	30	15	15
Initial Registration of a Business Entity	Registration	A.R.S. § 32-2030	30	15	15
Renewal of Registration of a Business Entity	Registration	A.R.S. § 32-2030(D)	15	7	8

Historical Note

Table 1 adopted by final rulemaking at 5 A.A.R. 2988, effective August 12, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006 (Supp. 06-2). Amended by final rulemaking at 15 A.A.R. 1788, effective December 5, 2009 (Supp. 09-4). Amended by final rulemaking at 18 A.A.R. 841, effective May 11, 2012 (Supp. 12-1). Amended by final rulemaking at 25 A.A.R. 404, effective April 6, 2019 (Supp. 19-1).

R4-24-210. Business Entity Registration; Display of Registration Certificate

- A. A business entity that offers physical therapy services to the public and is not exempt from registration under A.R.S. § 32-2030(H) shall separately register with the Board each location from which physical therapy services are offered in Arizona.
- B. A business entity shall not offer physical therapy services at a location in Arizona until that location is registered with the Board.
- C. To register with the Board an Arizona location at which physical therapy services are offered, a business entity shall submit to the Board an application packet that includes the following:
 - 1. An application form, which is available from the Board and requires the following information:
 - a. Name, primary address, and e-mail address of the business entity;
 - b. Name, title, address, e-mail address, and telephone number of the manager of the location being registered;
 - c. Name and business address of each officer or director of the business entity;
 - d. Name and license number of each physical therapist who provides physical therapy services at the location being registered;
 - e. Name and certificate number of each physical therapy assistant who works at the location being registered;
 - f. Description of the physical therapy services offered at the location being registered;
 - g. For the business entity, a statement of whether any state, territory, district, or country has ever:

- i. Refused to issue or renew a registration, permit, license, or other authorization;
- ii. Accepted surrender of a registration, permit, license, or other authorization in lieu of other disciplinary action; or
- iii. Suspended, revoked, cancelled, or taken other disciplinary action against a registration, permit, license, or other authorization; and
- h. Dated signature of an officer or director attesting that:
 - i. The business entity has a written protocol that meets the standards in A.R.S. § 32-2030(F) for the secure storage, transfer, and access of the physical therapy records of the business entity's patients; and
 - ii. The information provided is true and correct; and
- 2. The application fee required under R4-24-107(A)(3).
- D. For each location registered, a business entity shall display, in a location accessible to public view, the:
 - 1. Registration certificate and current renewal verification of the business entity,
 - 2. License and current renewal verification of every physical therapist who provides physical therapy services at the location, and
 - 3. Certificate and current renewal verification of every physical therapy assistant who works at the location.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 841, effective May 11, 2012 (Supp. 12-1). Amended by final rulemaking at 25 A.A.R. 404, effective April 6, 2019 (Supp. 19-1).

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R4-24-211. Renewal of Business Entity Registration

- A. The registration of a business entity expires for each location registered on August 31 of every odd-numbered year.
- B. A business entity shall separately renew the registration of each location from which the business entity offers physical therapy services in Arizona.
- C. To renew the registration of an Arizona location from which physical therapy services are offered, a business entity shall submit to the Board an application form, which is available from the Board and requires the following information:
 - 1. Name, primary address, and e-mail address of the business entity;
 - 2. Name, title, address, e-mail address, and telephone number of the manager of the location being registered;
 - 3. Name and business address of each officer or director of the business entity;
 - 4. Name and license number of each physical therapist who provides physical therapy services at the location being registered;
 - 5. Name and certificate number of each physical therapy assistant who works at the location being registered;
 - 6. Description of the physical therapy services offered at the location being registered;
 - 7. For the business entity, a statement of whether any state, territory, district, or country has ever:
 - a. Refused to issue or renew a registration, permit, license, or other authorization;
 - b. Accepted surrender of a registration, permit, license, or other authorization in lieu of other disciplinary action; or
 - c. Suspended, revoked, cancelled, or taken other disciplinary action against a registration, permit, license, or other authorization;
 - 8. Statement of whether the business entity complies with A.R.S. § 32-2030(F); and
 - 9. Dated signature of an officer or director attesting that the information provided is true and correct.
- D. A business entity that timely complies with subsection (C) may continue to offer physical therapy services from the location for which application is made until the Board grants or denies the renewed registration.
- E. A business entity that fails to comply timely with subsection (C) shall immediately stop offering physical therapy services from the location for which application is not made. To be authorized to offer physical therapy services again from that location, the business entity shall comply with R4-24-210 and pay both the application and late fee specified in R4-24-107(A)(3).

Historical Note

New Section made by final rulemaking at 18 A.A.R. 841, effective May 11, 2012 (Supp. 12-1). Amended by final rulemaking at 25 A.A.R. 404, effective April 6, 2019 (Supp. 19-1).

R4-24-212. Regulation of a Business Entity

- A. A business entity may submit a complaint under A.R.S. § 32-2030 or 32-2045(D) by complying with R4-24-305.
- B. The Board shall investigate and act on a complaint, whether submitted by or against a business entity, in a manner consistent with R4-24-305, R4-24-306, R4-24-307, R4-24-308, and R4-24-309.
- C. As provided under A.R.S. § 32-2047, a business entity that violates a requirement of A.R.S. § 32-2030 is subject to disciplinary action by the Board.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 841, effective May 11, 2012 (Supp. 12-1).

R4-24-213. Business Entity Participation

A registered business entity may provide assistance and advice to the Board relating to the regulation of business entities by:

1. Participating in the rulemaking process in a manner described under A.R.S. Title 41, Chapter 6, Article 3;
2. Submitting a petition under A.R.S. § 41-1033 and R4-24-502;
3. Submitting an appeal under A.R.S. § 41-1056.01 and R4-24-502;
4. Submitting a written criticism under R4-24-506; and
5. Attending a Board meeting.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 841, effective May 11, 2012 (Supp. 12-1).

EXHIBIT 1. Repealed**Historical Note**

Exhibit 1 adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Exhibit 1 repealed by final rulemaking at 12 A.A.R. 2401, effective August 5, 2006 (Supp. 06-2).

ARTICLE 3. PRACTICE OF PHYSICAL THERAPY**R4-24-301. Lawful Practice**

- A. A physical therapist shall provide the referring practitioner, if any, with information from the patient assessment, diagnosis, and plan of care. Within one week after a patient is initially evaluated, the physical therapist shall provide this information:
 1. In writing and place a copy of the written notice in the patient's record, or
 2. Orally and place a contemporaneously made note of the verbal communication in the patient's record.
- B. A physical therapist shall maintain the confidentiality of patient records as required by federal and state law.
- C. On written request by a patient or the patient's health care decision maker, a physical therapist shall provide access to or a copy of the patient's medical or payment record in accordance with A.R.S. § 12-2293.
- D. A physical therapist shall obtain a patient's consent before examination and treatment and document the consent in the patient's record.
- E. A physical therapist shall respect a patient's right to make decisions regarding examination and the recommended plan of care including the patient's decision regarding consent, modification of the plan of care, or refusal of examination or treatment. To assist the patient in making these decisions, the physical therapist shall:
 1. Communicate to the patient:
 - a. Examination findings,
 - b. Evaluation of the findings, and
 - c. Diagnosis and prognosis,
 2. Collaborate with the patient to establish the goals of treatment and the plan of care, and
 3. Inform the patient that the patient is free to select another physical therapy provider.

Historical Note

Adopted effective June 3, 1982 (Supp. 82-3). Former Section R4-24-301 repealed, new Section R4-24-301 adopted effective April 10, 1986 (Supp. 86-2). Amended effective March 14, 1996 (Supp. 96-1). Section repealed;

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new Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 15 A.A.R. 1788, effective December 5, 2009 (Supp. 09-4).

R4-24-302. Use of Titles

- A. As required under A.R.S. § 32-2042, a licensed physical therapist shall use the designation "P.T." immediately following the licensee's name or signature to denote licensure. A licensed physical therapist shall not use the designations "R.P.T." or "L.P.T." in connection with the physical therapist's name or place of business.
- B. In addition to and immediately following the "P.T." designation, a physical therapist may list academic degrees earned and professional specialty certifications held.
- C. As required under A.R.S. § 32-2042, a physical therapist assistant shall use the designation "P.T.A." immediately following the physical therapist assistant's name to denote certification.
- D. As required under A.R.S. § 32-2042, a physical therapist or physical therapist assistant who is on retired status shall use "(retired)" or "(ret.)" immediately after the designation required under subsection (A) or (C), as applicable.

Historical Note

Adopted effective June 1, 1982 (Supp. 82-3). Former Section R4-24-302 repealed, new Section R4-24-302 adopted effective April 10, 1986 (Supp. 86-2). Amended effective March 14, 1996 (Supp. 96-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 14 A.A.R. 3418, effective October 4, 2008 (Supp. 08-3). Amended by final rulemaking at 18 A.A.R. 1858, effective July 10, 2012 (Supp. 12-3).

R4-24-303. Patient Care Management

- A. A physical therapist is responsible for the scope of patient management in the practice of physical therapy as defined by A.R.S. § 32-2001. For each patient, the physical therapist shall:
 1. Perform and document an initial evaluation;
 2. Perform and document periodic reevaluation;
 3. Document a discharge summary and the patient's response to the course of treatment at discharge;
 4. Ensure that the patient's physical therapy record is complete and accurate; and
 5. Ensure that services reported for billing, whether billed directly to the patient or through a third party, are accurate and consistent with information in the patient's physical therapy record.
- B. On each date of service, a physical therapist shall:
 1. Perform and document each therapeutic intervention that requires the expertise of a physical therapist; and
 2. Determine, based on a patient's acuity and treatment plan, whether it is appropriate to use assistive personnel to perform a selected treatment intervention or physical therapy task for the patient.
- C. A physical therapist shall not supervise more than three assistive personnel at any time. If a physical therapist supervises three assistive personnel, the physical therapist shall ensure that:
 1. At least one of the assistive personnel is a physical therapist assistant,
 2. No more than two of the assistive personnel are physical therapist assistants performing selected treatment interventions under general supervision, and
 3. Assistive personnel other than a physical therapist assistant perform a physical therapy task only under the onsite supervision of a physical therapist.

- D. Before delegating performance of a selected treatment intervention to a physical therapist assistant working under general supervision, the supervising physical therapist shall ensure that the physical therapist assistant:
 1. Is certified under this Chapter, and
 2. Has completed at least 2,000 hours of experience as a physical therapist assistant working with patients under onsite supervision.
- E. Before delegating performance of a selected physical therapy intervention or physical therapy task to assistive personnel working under general or onsite supervision, the supervising physical therapist shall ensure that the assistive personnel is qualified by education or training to perform the selected physical therapy intervention or physical therapy task in a safe, effective, and efficient manner.
- F. A physical therapist who provides general supervision for a physical therapist assistant shall:
 1. Be licensed under this Chapter;
 2. Respond to a communication from the physical therapist assistant within 15 minutes;
 3. Go to the location at which and on the same day that the physical therapist assistant provides a selected treatment intervention if the physical therapist, after consultation with the physical therapist assistant, determines that going to the location is in the best interest of the patient; and
 4. Perform a reevaluation and provide each therapeutic intervention for the patient that is done on the day of the reevaluation every fourth treatment visit or every 30 days, whichever occurs first.
- G. A physical therapist assistant who provides a selected treatment intervention under general supervision shall document in the patient record:
 1. The name and license number of the supervising physical therapist;
 2. The name of the patient to whom the selected treatment intervention is provided;
 3. The date on which the selected treatment intervention is provided;
 4. The selected treatment intervention provided; and
 5. Whether the physical therapist assistant consulted with the supervising physical therapist during the course of the selected treatment intervention and if so, the subject of the consultation and any decision made.

Historical Note

Adopted effective June 3, 1982 (Supp. 82-3). Repealed effective April 10, 1986 (Supp. 86-2). New Section R-24-303 adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 13 A.A.R. 1640, effective June 30, 2007 (Supp. 07-2).

R4-24-304. Adequate Patient Records

- A. A physical therapist shall ensure that a patient record meets the following minimum standards:
 1. Each entry in the patient record is:
 - a. Legible,
 - b. Accurately dated, and
 - c. Signed with the name and legal designation of the individual making the entry;
 2. If an electronic signature is used to sign an entry, the electronic signature is secure;
 3. The patient record contains sufficient information to:
 - a. Identify the patient on each page of the patient record,
 - b. Justify the therapeutic intervention,

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- c. Document results of the therapeutic intervention;
 - d. Indicate advice or cautionary warnings provided to the patient;
 - e. Enable another physical therapist to assume the patient's care at any point in the course of therapeutic intervention, and
 - f. Describe the patient's medical history.
 - 4. If an individual other than a physical therapist or physical therapist assistant makes an entry into the patient record, the supervising physical therapist co-signs the entry;
 - 5. If it is determined that erroneous information is entered into the patient record:
 - a. The error is corrected in a manner that allows the erroneous information to remain legible, and
 - b. The individual making the correction dates and initials the correct information; and
 - 6. For each date of service there is an accurate record of the physical therapy services provided and billed.
- B. Initial evaluation.** As required by A.R.S. § 32-2043(F)(1), a physical therapist shall perform the initial evaluation of a patient. The physical therapist who performs an initial evaluation shall make an entry that meets the standards in subsection (A) in the patient record and document:
- 1. The patient's reason for seeking physical therapy services;
 - 2. The patient's relevant medical diagnoses or conditions;
 - 3. The patient's signs and symptoms;
 - 4. Objective data from tests or measurements;
 - 5. The physical therapist's interpretation of the results of the examination;
 - 6. Clinical rationale for therapeutic intervention;
 - 7. A plan of care that includes the proposed therapeutic intervention, measurable goals, and frequency and duration of therapeutic intervention; and
 - 8. The patient's prognosis.
- C. Therapeutic-intervention notes.** For each date that a therapeutic intervention is provided to a patient, the individual who provides the therapeutic intervention shall make an entry that meets the standards in subsection (A) in the patient record and document:
- 1. The patient's subjective report of current status or response to therapeutic intervention;
 - 2. The therapeutic intervention provided or appropriately supervised;
 - 3. Objective data from tests or measures, if collected;
 - 4. Instructions provided to the patient, if any; and
 - 5. Any change in the plan of care required under subsection (B)(7).
- D. Re-evaluation.** As required by A.R.S. § 32-2043(F)(2), a physical therapist shall perform a re-evaluation when a patient fails to progress as expected, progresses sufficiently to warrant a change in the plan of care, or in accordance with R4-24-303(F)(4). A physical therapist who performs a re-evaluation shall make an entry that meets the standards in subsection (A) in the patient record and document:
- 1. The patient's subjective report of current status or response to therapeutic intervention;
 - 2. Assessment of the patient's progress;
 - 3. The patient's current functional status;
 - 4. Objective data from tests or measures, if collected;
 - 5. Rationale for continuing therapeutic intervention; and
 - 6. Any change in the plan of care required under subsection (B)(7).
- E. Discharge summary.** As required by A.R.S. § 32-2043(F)(3), a physical therapist shall document the conclusion of care in a patient's record regardless of the reason that care is concluded.
- 1. If care is provided in an acute-care hospital, the entry made under subsection (C) on the last date that a therapeutic intervention is provided constitutes documentation of the conclusion of care if the entry is made by a physical therapist.
 - 2. If care is not provided in an acute-care hospital or if a physical therapist does not make the entry under subsection (C) on the last date that a therapeutic intervention is provided, a physical therapist shall make an entry that meets the standards in subsection (A) in the patient record and document:
 - a. The date on which therapeutic intervention terminated;
 - b. The reason that therapeutic intervention terminated;
 - c. Inclusive dates for the episode of care being terminated;
 - d. The total number of days on which therapeutic intervention was provided during the episode of care;
 - e. The patient's current functional status;
 - f. The patient's progress toward achieving the goals in the plan of care required under subsection (B)(7); and
 - g. The recommended discharge plan.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). R4-24-304 renumbered to R4-24-305; new Section R4-24-304 made by final rulemaking at 14 A.A.R. 3418, effective October 4, 2008 (Supp. 08-3).

R4-24-305. Complaints and Investigations

- A. A complainant shall ensure that a complaint filed with the Board is about:
 - 1. An individual licensed or certified under this Chapter; or
 - 2. An individual believed to be engaged in unlawful practice as described in A.R.S. § 32-2048.
- B. If the Board determines under A.R.S. § 32-2045(A)(2) that there is reason to believe that an individual may have violated A.R.S. Title 32, Chapter 19, or this Chapter, the Board shall prepare a complaint and serve the complaint as described in subsection (D)(2).
- C. Complaint requirements. A complainant shall:
 - 1. Submit the complaint to the Board in writing; and
 - 2. Provide the following information:
 - a. Name of licensee, certificate holder, or other individual who is the subject of complaint;
 - b. Name and address of complainant;
 - c. Nature of the complaint;
 - d. Details of the complaint with pertinent dates and activities;
 - e. Whether the complainant has contacted any other organization regarding the complaint; and
 - f. Whether complainant has contacted the licensee, certificate holder, or other individual concerning the complaint, and if so, the response, if any.
- D. Within 90 days after receiving a complaint, the Board shall ensure that the complaint is reviewed to determine whether the complaint is within the Board's jurisdiction, and:
 - 1. If the complaint is not within the Board's jurisdiction, dismiss the complaint and provide written notice of the dismissal to the complainant; or
 - 2. If the complaint is within the Board's jurisdiction, serve a copy of the complaint on the individual complained against and provide the individual complained against with 30 days to respond and admit, deny, or further explain each allegation in the complaint.

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- E. If a complaint is within the Board's jurisdiction, the Board shall ensure that an investigation regarding the matters alleged in the complaint is conducted.
- F. After expiration of the 30 days provided under subsection (D)(2), the Board shall review the complaint, response, and investigation results and take action as prescribed under A.R.S. §§ 32-2045(B) or 32-2046.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). R4-24-305 renumbered to R4-24-306; new Section R4-24-305 renumbered from R4-24-304 and amended by final rulemaking at 14 A.A.R. 3418, effective October 4, 2008 (Supp. 08-3).

R4-24-306. Hearings

- A. To facilitate investigation of a complaint, the Board may conduct an informal hearing. The Board shall send written notice of an informal hearing to the individual who is the subject of the complaint, by personal service or certified mail, return receipt requested, at least 30 days before the informal hearing.
- B. The Board shall ensure that the written notice of informal hearing contains the following information:
 1. The time, date, and place of the informal hearing;
 2. An explanation of the informal nature of the proceedings;
 3. The individual's right to appear with or without legal counsel;
 4. A statement of the allegations and issues involved with a citation to relevant statutes and rules;
 5. The individual's right to a formal hearing under A.R.S. Title 41, Chapter 6, Article 10 instead of the informal hearing;
 6. The licensee's or certificate holder's right to request under A.R.S. § 32-3206(A) a copy of information the Board will use in making its determination; and
 7. Notice that the Board may take disciplinary action as a result of the informal hearing if it finds the individual violated A.R.S. Title 32, Chapter 19, or this Chapter;
- C. The Board shall ensure that an informal hearing proceeds as follows:
 1. Introduction of the respondent and, if applicable, legal counsel for the respondent;
 2. Introduction of the Board members, staff, and Assistant Attorney General present;
 3. Swearing in of the respondent and witnesses;
 4. Brief summary of the allegations and purpose of the informal hearing;
 5. Optional opening comment by the respondent;
 6. Questioning of the respondent by the Board and questioning of witnesses by the Board and the respondent;
 7. Optional additional comments by the respondent; and
 8. Deliberation and deciding the case by the Board.

Historical Note

New Section R4-24-306 renumbered from R4-24-107 and amended by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). R4-24-306 renumbered to R4-24-307; new Section R4-24-306 renumbered from R4-24-305 and amended by final rulemaking at 14 A.A.R. 3418, effective October 4, 2008 (Supp. 08-3).

R4-24-307. Subpoenas

- A. A party desiring issuance of a subpoena to compel the appearance of a witness or the production of documents or other evidence at a hearing shall file a written request with the Board that includes the following information:
 1. The caption and docket number of the matter;

- 2. A list or description of any documents or other evidence sought;
 - 3. The name and business address of the custodian of the documents or other evidence sought;
 - 4. The name and business or residential address of all persons to be subpoenaed;
 - 5. A brief statement of the reason the evidence is relevant to the matter;
 - 6. The date, time, and place to appear or produce documents or other evidence; and
 - 7. The name, address, and telephone number of the party, or the party's attorney, requesting the subpoena.
- B. The party requesting a subpoena be issued shall ensure that the subpoena is served in the manner prescribed by the Arizona Rules of Civil Procedure and pay all costs involved in serving the subpoena.
 - C. A party or the person served with a subpoena who objects to the subpoena, in whole or in part, may file a written objection with the Board within five days after service of the subpoena or at the beginning of the hearing if the subpoena is served fewer than five days before the hearing.
 - D. The Board shall quash or modify a subpoena if:
 1. It is unreasonable or oppressive,
 2. It requests information that is confidential or privileged, or
 3. The desired testimony or evidence can be obtained by an alternative method.

Historical Note

New Section R4-24-307 renumbered from R4-24-109 and amended by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). R4-24-307 renumbered to R4-24-308; new Section R4-24-307 renumbered from R4-24-306 and amended by final rulemaking at 14 A.A.R. 3418, effective October 4, 2008 (Supp. 08-3).

R4-24-308. Rehearing or Review of Board Decisions

- A. The Board shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10.
- B. Except as provided in subsection (I), a party is required to file a motion for rehearing or review of a decision of the Board to exhaust the party's administrative remedies.
- C. A party may amend a motion for rehearing or review at any time before the Board rules on the motion.
- D. The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
 1. Irregularity in the proceedings of the Board or any order or abuse of discretion that deprived the moving party of a fair hearing;
 2. Misconduct of the Board, its staff, or an administrative law judge;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
 5. Excessive or insufficient penalty;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings; and
 7. The findings of fact or decision is not justified by the evidence or is contrary to law.
- E. The Board may affirm or modify a decision or grant a rehearing or review to any or all of the parties on all or part of the issues for any of the reasons listed in subsection (D). An order modifying a decision or granting a rehearing or review shall specify with particularity the grounds for the order. If a rehear-

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- ing or review is granted, the rehearing or review shall cover only the matters specified in the order.
- F. No later than 30 days after making a decision and after giving the parties notice and an opportunity to be heard, the Board may order a rehearing or review on its own initiative for any of the reasons listed in subsection (D). The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion. An order granting a rehearing or review shall specify with particularity the grounds on which the rehearing or review is granted.
- G. When a motion for rehearing or review is based upon affidavits, the affidavits shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. This period may be extended for not more than 20 days by the Board for good cause as described in subsection (I) or by written stipulation of the parties. The Board may permit reply affidavits.
- H. If a rehearing is granted, the Board shall hold the rehearing within 60 days after the issue date on the order granting the rehearing.
- I. If the Board makes a specific finding that immediate effectiveness of a particular decision is necessary for preservation of the public health, safety, or welfare and that rehearing or review is impracticable, unnecessary, or contrary to public interest, the decision may be issued as a final decision without an opportunity for rehearing or review. If an application for judicial review of the decision is made, it shall be made under A.R.S. § 12-901 et seq.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). R4-24-308 renumbered to R4-24-309; new Section R4-24-308 renumbered from R4-24-307 and amended by final rulemaking at 14 A.A.R. 3418, effective October 4, 2008 (Supp. 08-3). Amended by final rulemaking at 18 A.A.R. 1858, effective July 10, 2012 (Supp. 12-3).

R4-24-309. Disciplinary Actions

- A. As required by A.R.S. § 39-121.01, a record of Board disciplinary actions, including a decree of censure, is a public record open to public inspection.
- B. If the Board decides to restrict a license or certificate, the Board shall ensure that the restriction and any required corrective action address the conduct that led to the restriction and protect the public. If the Board decides to require that an individual with a restricted license or certificate be supervised during the period of restriction, the Board shall appoint an unrestricted licensee to provide the supervision.
- C. A physical therapist or physical therapist assistant whose license or certificate is suspended, revoked, or voluntarily surrendered shall return the license or certificate to the Board within 10 days after receipt of the Board's final order.
- D. At the end of a period of license or certificate restriction, the Board shall terminate the restriction only if the licensee or certificate holder submits to the Board evidence of having completed all required corrective actions and complied with all terms of the restriction. If the Board believes it will help the Board determine whether to terminate a restriction, the licensee or certificate holder shall appear before the Board.
- E. An applicant who had a previous license or certificate revoked by the Board shall appear before the Board before the Board acts on the application.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). R4-24-309 renumbered to R4-24-310; new Section R4-24-309

renumbered from R4-24-308 and amended by final rulemaking at 14 A.A.R. 3418, effective October 4, 2008 (Supp. 08-3).

R4-24-310. Substance Abuse Recovery Program

- A. Under A.R.S. § 32-2044(8), practicing as a physical therapist or working as a physical therapist assistant while mentally or physically impaired is grounds for disciplinary action.
- B. The Board shall allow an impaired licensee or certificate holder to enter into a substance abuse recovery program rather than conduct a disciplinary proceeding if:
1. The impaired licensee or certificate holder is qualified under A.R.S. § 32-2050(2),
 2. The Board believes the proposed program will assist the impaired licensee or certificate holder to recover, and
 3. The impaired licensee or certificate holder enters into the written agreement required under A.R.S. § 32-2050(3) and (4).

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 3897, effective July 31, 2004 (Supp. 04-3). New Section R4-24-310 renumbered from R4-24-309 and amended by final rulemaking at 14 A.A.R. 3418, effective October 4, 2008 (Supp. 08-3).

R4-24-311. Display of License; Disclosure

- A. A licensee or certificate holder shall display a copy or provide documentation of the license or certificate and current renewal verification as specified in A.R.S. § 32-2051(G).
- B. Upon request, a licensee or certificate holder shall inform a member of the public how to file a complaint by providing the address and telephone number of the Board office and a statement that a complaint against a licensee or certificate holder should be directed to the Board.
- C. Before conducting an evaluation or initiating physical therapy, a licensee shall disclose to a patient when a referring practitioner is deriving direct or indirect compensation from the referral. The licensee shall ensure that the disclosure is in writing and states "Under A.R.S. § 32-2051(C), I am required by law to inform you in writing that your referring physician [or specify if different from a physician] derives either direct or indirect compensation related to your physical therapy."

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 14 A.A.R. 3418, effective October 4, 2008 (Supp. 08-3).

R4-24-312. Mandatory Reporting Requirement

- A. As required by A.R.S. § 32-3208, an applicant, licensee, or certificate holder who is charged with a misdemeanor involving conduct that may affect patient safety or a felony shall provide written notice of the charge to the Board within 10 working days after the charge is filed.
- B. An applicant, licensee, or certificate holder may request a list of reportable misdemeanors from the Board.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 3418, effective October 4, 2008 (Supp. 08-3). Amended by final rulemaking at 18 A.A.R. 1858, effective July 10, 2012 (Supp. 12-3).

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R4-24-313. Professional Standards of Care and Training and Education Qualifications for Delivery of Dry Needling Skilled Intervention

- A. Effective July 1, 2015 and in accordance with A.R.S. § 32-2044(25), a physical therapist shall meet the qualifications established in subsection (C) before providing the skilled intervention "dry needling", as defined in A.R.S. § 32-2001(4).
- B. A physical therapist offering to provide or providing "dry needling" intervention shall provide documented proof of compliance with the qualifications listed in subsection (C) to the board within 30 days of completion of the course content in subsection (C) or within 30 days of initial licensure as a physical therapist in Arizona.
- C. Course content that meets the training and education qualifications for "dry needling" shall contain all of the following:
1. The course content shall be approved by one or more of the following entities prior to the course(s) being completed by the physical therapist.
 - a. Commission On Accreditation In Physical Therapy Education,
 - b. American Physical Therapy Association,
 - c. State Chapters Of The American Physical Therapy Association,
 - d. Specialty Groups Of The American Physical Therapy Association, or
 - e. The Federation of State Boards Of Physical Therapy.
 2. The course content shall include the following components of education and training:
 - a. Sterile needle procedures to include one of the following standards:
 - i. The U.S. Centers For Disease Control And Prevention, or
 - ii. The U.S. Occupational Safety And Health Administration
 - b. Anatomical Review,
 - c. Blood Borne Pathogens
 - d. Contraindications and indications for "dry needling",
 3. The course content required in subsection (C) of this Section shall include, but is not limited to, passing of both a written examination and practical examination before completion of the course content. Practice application course content and examinations shall be done in person to meet the qualifications of subsection (C).
 4. The course content required in subsection (C) of this subsection shall total a minimum of 24 contact hours of education.
- D. The standard of care for the intervention "dry needling" includes, but is not limited to the following:
1. "Dry needling" cannot be delegated to any assistive personnel.
 2. Consent for treatment for the intervention "dry needling" is the same as required under R4-24-301.
 3. Documentation of the intervention "dry needling" shall be done in accordance with R4-24-304.

Historical Note

New Section made by exempt rulemaking at 21 A.A.R.
924, effective July 1, 2015 (Supp. 15-2).

Appendix A. Repealed**Historical Note**

Appendix A adopted effective June 3, 1982 (Supp. 82-3).
Amended effective April 10, 1986 (Supp. 86-2).
Repealed effective May 7, 1990 (Supp. 90-2)

Appendix B. Repealed**Historical Note**

Appendix B adopted effective June 3, 1982 (Supp. 82-3).
Amended effective April 10, 1986 (Supp. 86-2).
Repealed effective May 7, 1990 (Supp. 90-2).

ARTICLE 4. CONTINUING COMPETENCE**R4-24-401. Continuing Competence Requirements for Renewal**

- A. Except as provided in subsection (G), a licensed physical therapist shall earn 20 contact hours of continuing competence for each compliance period to be eligible for license renewal.
1. The licensee shall earn at least 10 contact hours from Category A continuing competence activities. No more than five of the required contact hours from Category A may be obtained from nonclinical course work.
 2. No change
 3. If the licensee's initial license is for one year or less, the licensee shall earn 10 contact hours from Category A continuing competence activities during the initial compliance period. No more than five of the required contact hours from Category A may be obtained from nonclinical course work.
- B. Except as provided in subsection (G), a certified physical therapist assistant shall earn 10 contact hours of continuing competence for each compliance period to be eligible for certificate renewal.
1. The certificate holder shall earn at least six contact hours from Category A continuing competence activities. No more than three of the required contact hours from Category A may be obtained from nonclinical course work.
 2. No more than four contact hours may be earned by the certificate holder during any compliance period from Categories B and C continuing competence activities. No more than two contact hours from Categories B and C may be obtained from nonclinical course work.
 3. If the certificate holder's initial certificate is for one year or less, the certificate holder shall earn six contact hours from Category A continuing competence activities during the initial compliance period. No more than three of the required contact hours from Category A may be obtained from nonclinical course work.
- C. A licensee or certificate holder shall not receive contact hour credit for repetitions of the same activity.
- D. The continuing competence compliance period for a licensee or certificate holder begins on September 1 following the issuance of an initial or renewal license or certificate and ends on August 31 of even-numbered years.
- E. A licensee or certificate holder shall not carry over contact hours from one compliance period to another.
- F. An applicant for renewal shall submit a signed statement to the Board with the renewal application stating whether continuing competence requirements have been fulfilled for the current compliance period.
- G. The Board may, at its discretion, waive continuing competence requirements on an individual basis for reasons of extreme hardship such as illness, disability, active service in the military, or other extraordinary circumstance as determined by the Board. A licensee or certificate holder who seeks a waiver of the continuing competence requirements shall provide to the Board, in writing, the specific reasons for requesting the waiver and additional information the Board may request in support of the waiver.
- H. A licensee or certificate holder is subject to Board auditing for continuing competence compliance.

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1. Selection for audit shall be random and notice of audit sent within 60 calendar days following the renewal deadline.
2. Within 30 days of receipt of a notice of audit, a licensee or certificate holder shall submit evidence to the Board that shows compliance with the requirements of continuing competence. Documentation of a continuing competence activity shall include:
 - a. The date, place, course title, sponsor, schedule, and presenter;
 - b. The number of contact hours received for the activity; and
 - c. Proof of completion, such as an abstract, certificate of attendance, sign-in log, or other certification of completion.
- I. A licensee or certificate holder shall retain evidence of participation in a continuing competence activity for two compliance periods after participation.
- J. The Board shall notify a licensee or certificate holder who has been audited whether the licensee or certificate holder is in compliance with continuing competence requirements. The Board shall provide the notice electronically or by certified mail within 30 working days following the determination by the Board.
- K. The Board shall provide six months from the date of the notice under subsection (J) for a licensee or certificate holder found not in compliance with continuing competence requirements to satisfy the continuing competence requirements. A licensee or certificate holder may request a hearing to contest the Board's decision under A.R.S. Title 41, Chapter 6, Article 10.
- L. Penalties for failure to comply with continuing competence requirements may be imposed by the Board under A.R.S. § 32-2047 following a hearing conducted under A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 25 A.A.R. 404, effective April 6, 2019 (Supp. 19-1).

R4-24-402. Continuing Competence Activities

- A. Category A continuing competence activities shall be approved by:
 1. An accredited medical, health care, or physical therapy program;
 2. A state or national medical, health care, or physical therapy association, or a component of the association; or
 3. A national medical, health care, or physical therapy specialty society.
- B. Category A continuing competence activities include:
 1. A physical therapy continuing education course designed to provide necessary understanding of current research, clinical skills, administration, or education related to the practice of physical therapy. Calculation of contact hours is determined by dividing the total minutes of instruction by 60. Breaks shall not be included as part of instructional time;
 2. Coursework towards granting or renewal of a physical therapy clinical specialty certification approved by the Board. Each 60 minutes of instruction equals one contact hour;
 3. Coursework in a physical therapy clinical residency program. Each 60 minutes of instruction equals one contact hour; and

4. Coursework in a postgraduate physical therapy education from an accredited college or university. Each 60 minutes of instruction equals one contact hour.
- C. Category B continuing competence activities include:
 1. Study group: Maximum five contact hours for physical therapists and two contact hours for physical therapist assistants.
 - a. A study group is a structured meeting designed for the study of a clinical physical therapy topic dealing with current research, clinical skills, procedures, or treatment related to the practice of physical therapy.
 - b. No change
 2. Self instruction: Maximum five contact hours for physical therapists and two contact hours for physical therapist assistants.
 - a. Self instruction is a structured course of study relating to one clinical physical therapy topic dealing with current research, clinical skills, procedures, or treatment related to the practice of physical therapy. Self instruction may be directed by a correspondence course, video, internet, or satellite program.
 - b. Each 60 minutes of self instruction equals one contact hour.
 3. Inservice education: Maximum five contact hours for physical therapists and two contact hours for physical therapist assistants.
 - a. Inservice education is attendance at a presentation pertaining to current research, clinical skills, procedures, or treatment related to the practice of physical therapy or relating to patient welfare or safety, including CPR certification.
 - b. Each 60 minutes of inservice education equals one contact hour.
- D. Category C modes of continuing competence include:
 1. Physical therapy practice management coursework: Maximum of five contact hours for physical therapists and two contact hours for physical therapist assistants.
 - a. Physical therapy practice management course work is course work concerning physical therapy administration, professional responsibility, ethical obligations, or legal requirements applicable to physical therapy practice settings.
 - b. If the course is graded, a licensee or certificate holder shall receive a "pass" in a pass/fail course or a minimum of a C in a graded course to receive credit.
 - c. Each 60 minutes of practice management coursework equals one contact hour.
 2. Teaching or lecturing: Maximum five contact hours for physical therapists and two contact hours for physical therapist assistants.
 - a. Teaching or lecturing is the presentation of an original educational program dealing with current research, clinical skills, procedures, treatment, or practice management related to the practice of physical therapy principally for health care professionals. Credit may be earned for teaching when the presentation is accompanied by written materials prepared, augmented, or updated by the presenter including course objectives and program content.
 - b. One 60 minute instructional period equals 2.5 contact hours.
 - c. Credit shall be given only once for a presentation within a compliance period.

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3. Publication: Maximum five contact hours for physical therapists and two contact hours for physical therapist assistants.
 - a. Publication includes writing for professional publication, platform, or poster presentation abstracts that have direct application to the practice of physical therapy. Credit may be earned for publication of material that is a minimum of 1500 words in length and published by a recognized third-party publisher of physical therapy material.
 - b. Each article published in a refereed journal, book chapter, or book equals five contact hours for physical therapists and two contact hours for physical therapist assistants. Articles published in non-refereed journals, magazines, newsletters, or periodicals equal two contact hours for physical therapists and one contact hour for physical therapist assistants.
4. Clinical instruction: Maximum five contact hours for physical therapists and two contact hours for physical therapist assistants.
 - a. Clinical instruction involves assisting a student physical therapist or physical therapist assistant or a physical therapist resident or fellow acquire clinical skills required of a physical therapist or physical therapist assistant.
 - b. An individual to whom clinical instruction is provided shall be enrolled in:
 - i. A physical therapist or physical therapist assistant program accredited by the Commission on Accreditation of Physical Therapy Education; or
 - ii. A physical therapist residency or fellowship program approved by the American Physical Therapy Association.
 - c. The program referenced under subsection (D)(4)(b) shall provide the enrolled individual with proof of completing the hours of clinical instruction.
 - d. Each 120 hours of clinical instruction equals one contact hour.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 25 A.A.R. 404, effective April 6, 2019 (Supp. 19-1).

R4-24-403. Activities Not Eligible for Continuing Competence Credit

A licensee or certificate holder shall not receive continuing competence credit for the following activities:

1. A regularly scheduled educational opportunity provided within an institution, such as rounds or case conferences;
2. A staff meeting;
3. A publication or presentation by the licensee or certificate holder to a lay or nonprofessional group; and
4. Routine teaching of personnel, students, or staff as part of a job requirement.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 25 A.A.R. 404, effective April 6, 2019 (Supp. 19-1).

ARTICLE 5. PUBLIC PARTICIPATION PROCEDURES**R4-24-501. Expired****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 3897, effective July 31, 2004 (Supp. 04-3).

R4-24-502. Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statement; Objection to a Section Based Upon Economic, Small Business, or Consumer Impact

A petition to adopt, amend, or repeal a Section or to review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule under A.R.S. § 41-1033 or to object to a Section in accordance with A.R.S. § 41-1056.01 shall be filed with the Board as prescribed in this Section. Each petition shall contain:

1. The name and current address of the petitioner;
2. For adoption of a new Section, specific language of the proposed new Section;
3. For amendment of a current Section, citation for the applicable Arizona Administrative Code Section number and heading of the current Section and the specific language of the current Section with language to be deleted stricken and new language underlined;
4. For the repeal of a current Section, citation for the applicable A.A.C. Section number and heading of the Section proposed for repeal;
5. The reasons a Section should be adopted, amended, or repealed, and if in reference to an existing Section, why the Section is inadequate, unreasonable, unduly burdensome, or otherwise not acceptable. The petitioner may provide additional supporting information, including:
 - a. Statistical data or other justification, with clear reference to an attached exhibit;
 - b. Identification of what person or segment of the public would be affected and how the person or segment would be affected; and
 - c. If the petitioner is a public agency, a summary of a relevant issue raised in any public hearing, or as a written comment offered by the public;
6. For a review of an existing Board practice or substantive policy statement alleged to constitute a rule, the reason the existing Board practice or substantive policy statement constitutes a rule and the proposed action requested of the Board;
7. For an objection to a Section based upon the economic, small business, or consumer impact, evidence that:
 - a. The actual economic, small business, or consumer impact significantly exceeded the impact estimated in the economic, small business, and consumer impact statement submitted during the making of the Section;
 - b. The actual economic, small business, or consumer impact was not estimated in the economic, small business, and consumer impact statement submitted during the making of the Section and that actual impact imposes a significant burden on a person subject to the Section; or
 - c. The agency did not select the alternative that imposes the least burden and costs to persons regulated by the Section, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective; and
8. The signature of the person submitting the petition.

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New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 18 A.A.R. 1858, effective July 10, 2012 (Supp. 12-3).

R4-24-503. Expired**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 3897, effective July 31, 2004 (Supp. 04-3).

R4-24-504. Expired**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 3897, effective July 31, 2004 (Supp. 04-3).

R4-24-505. Expired**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 3897, effective July 31, 2004 (Supp. 04-3).

R4-24-506. Written Criticism of Rule

- A. Any person may file a written criticism of an existing rule with the Board.
- B. The criticism shall clearly identify the rule and specify why the existing rule is inadequate, unduly burdensome, unreasonable, or otherwise improper.
- C. The Board shall acknowledge receipt of a criticism within 15 days and shall place the criticism in the official record for review by the Board under A.R.S. § 41-1056.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2399, effective June 9, 2000 (Supp. 00-2).

32-2001. Definitions

In this chapter, unless the context otherwise requires:

1. "Assistive personnel" includes physical therapist assistants and physical therapy aides and other assistive personnel who are trained or educated health care providers and who are not physical therapist assistants or physical therapy aides but who perform specific designated tasks related to physical therapy under the supervision of a physical therapist. At the discretion of the supervising physical therapist, and if properly credentialed and not prohibited by any other law, other assistive personnel may be identified by the title specific to their training or education. This paragraph does not apply to personnel assisting other health care professionals licensed pursuant to this title in the performance of delegable treatment responsibilities within their scope of practice.
2. "Board" means the board of physical therapy.
3. "Business entity" means a business organization that has an ownership that includes any persons who are not licensed or certified to provide physical therapy services in this state, that offers to the public professional services regulated by the board and that is established pursuant to the laws of any state or foreign country.
4. "Dry needling" means a skilled intervention performed by a physical therapist that uses a thin filiform needle to penetrate the skin and stimulate underlying neural, muscular and connective tissues for the evaluation and management of neuromusculoskeletal conditions, pain and movement impairments.
5. "General supervision" means that the supervising physical therapist is on call and is readily available via telecommunications when the physical therapist assistant is providing treatment interventions.
6. "Interim permit" means a permit issued by the board that allows a person to practice as a physical therapist in this state or to work as a physical therapist assistant for a specific period of time and under conditions prescribed by the board before that person is issued a license or certificate.
7. "Manual therapy techniques" means a broad group of passive interventions in which physical therapists use their hands to administer skilled movements designed to modulate pain, increase joint range of motion, reduce or eliminate soft tissue swelling, inflammation, or restriction, induce relaxation, improve contractile and noncontractile tissue extensibility, and improve pulmonary function. These interventions involve a variety of techniques, such as the application of graded forces.
8. "On-site supervision" means that the supervising physical therapist is on site and is present in the facility or on the campus where assistive personnel or a holder of an interim permit is

performing services, is immediately available to assist the person being supervised in the services being performed and maintains continued involvement in appropriate aspects of each treatment session in which a component of treatment is delegated.

9. "Physical therapist" means a person who is licensed pursuant to this chapter.

10. "Physical therapist assistant" means a person who meets the requirements of this chapter for certification and who performs physical therapy procedures and related tasks that have been selected and delegated by the supervising physical therapist.

11. "Physical therapy" means the care and services provided by or under the direction and supervision of a physical therapist who is licensed pursuant to this chapter.

12. "Physical therapy aide" means a person who is trained under the direction of a physical therapist and who performs designated and supervised routine physical therapy tasks.

13. "Practice of physical therapy" means:

(a) Examining, evaluating and testing persons who have mechanical, physiological and developmental impairments, functional limitations and disabilities or other health and movement related conditions in order to determine a diagnosis, a prognosis and a plan of therapeutic intervention and to assess the ongoing effects of intervention.

(b) Alleviating impairments and functional limitations by managing, designing, implementing and modifying therapeutic interventions including:

(i) Therapeutic exercise.

(ii) Functional training in self-care and in home, community or work reintegration.

(iii) Manual therapy techniques.

(iv) Therapeutic massage.

(v) Assistive and adaptive orthotic, prosthetic, protective and supportive devices and equipment.

(vi) Pulmonary hygiene.

(vii) Debridement and wound care.

(viii) Physical agents or modalities.

(ix) Mechanical and electrotherapeutic modalities.

(x) Patient related instruction.

(c) Reducing the risk of injury, impairments, functional limitations and disability by means that include promoting and maintaining a person's fitness, health and quality of life.

(d) Engaging in administration, consultation, education and research.

14. "Restricted certificate" means a certificate on which the board has placed any restrictions as the result of a disciplinary action.

15. "Restricted license" means a license on which the board places restrictions or conditions, or both, as to the scope of practice, place of practice, supervision of practice, duration of licensed status or type or condition of a patient to whom the licensee may provide services.

16. "Restricted registration" means a registration the board has placed any restrictions on as the result of disciplinary action.

32-2002. Board of physical therapy; appointment; qualifications

A. The board of physical therapy is established consisting of members appointed by the governor pursuant to section 38-211. Four members shall be physical therapists who are residents of this state, possess an unrestricted license to practice physical therapy in this state and have been practicing in this state for at least five years before their appointment. One member shall be a physical therapist assistant who is a resident of this state, possesses an unrestricted certificate issued pursuant to this chapter and has been performing selected interventions in this state for at least five years before the person's appointment. The governor shall also appoint two public members who are residents of this state and who are not affiliated with, and do not have a financial interest in, any health care profession but who have an interest in consumer rights.

B. Board members serve staggered four year terms. Board members shall not serve for more than two successive four year terms or for more than ten consecutive years. By approval of a majority of the board, a member's service may extend at the completion of a four year term until a new member is appointed or the current member is reappointed.

C. If requested by the board the governor may remove a board member for misconduct, incompetence or neglect of duty.

D. Board members are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2 to cover necessary expenses for attending each board meeting or for representing the board in an official board approved activity.

E. A board member who acts within the scope of board duties, without malice and in the reasonable belief that the person's action is warranted by law is immune from civil liability.

32-2003. Board; powers and duties

A. The board shall:

1. Evaluate the qualifications of applicants for licensure and certification.
2. Provide for national examinations for physical therapists and physical therapist assistants and adopt passing scores for these examinations.
3. Issue licenses, permits and certificates to persons who meet the requirements of this chapter.
4. Regulate the practice of physical therapy by interpreting and enforcing this chapter.
5. Adopt and revise rules to enforce this chapter.
6. Meet at least once each quarter in compliance with the open meeting requirements of title 38, chapter 3, article 3.1 and keep an official record of these meetings.
7. Establish the mechanisms for assessing continuing professional competence of physical therapists to engage in the practice of physical therapy and the competence of physical therapist assistants to work in the field of physical therapy.
8. At its first regular meeting after the start of each calendar year, elect officers from among its members and as necessary to accomplish board business.
9. Provide for the timely orientation and training of new professional and public appointees to the board regarding board licensing and disciplinary procedures, this chapter, board rules and board procedures.
10. Maintain a current list of all persons regulated under this chapter. This list shall include the person's name, current business and residential addresses, telephone numbers and license or certificate number.
11. Subject to title 41, chapter 4, article 4, employ necessary personnel to carry out the administrative work of the board. Board personnel are eligible to receive compensation pursuant to section 38-611.
12. Enter into contracts for services necessary for adequate enforcement of this chapter.
13. Report final disciplinary action taken against a licensee or a certificate holder to a national disciplinary database recognized by the board.
14. Publish, at least annually, final disciplinary actions taken against a licensee or a certificate holder.
15. Publish, at least annually, board rulings, opinions and interpretations of statutes or rules in order to guide persons regulated pursuant to this chapter.
16. Not later than December 31 of each year, submit a written report of its actions and proceedings to the governor.

17. Establish and collect fees.
 18. Provide information to the public regarding the board, its processes and consumer rights.
- B. The board may establish a committee or committees to assist it in carrying out its duties for a time prescribed by the board. The board may require a committee appointed pursuant to this subsection to make regular reports to the board.

32-2004. Board of physical therapy fund; appropriation; deposit of receipts by board

- A. The board of physical therapy fund is established. The board shall administer the fund.
- B. Except as provided in section 32-2048, pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all monies collected under this chapter in the state general fund and deposit the remaining ninety per cent in the board of physical therapy fund.
- C. Monies deposited in the physical therapy fund are subject to section 35-143.01.

32-2021. Persons and activities not required to be licensed

- A. This chapter does not restrict a person who is licensed under any other law of this state from engaging in the profession or practice for which that person is licensed if that person does not claim to be a physical therapist or a provider of physical therapy.
- B. This chapter does not restrict the use of physical agents, modalities or devices by persons qualified under this title to personally render or delegate the use of this treatment.
- C. The following persons are exempt from the licensure requirements of this chapter:
 1. A person in a professional education program approved by the board who is satisfying supervised clinical education requirements related to the person's physical therapist or physical therapist assistant education while under the on-site supervision of a physical therapist.
 2. A physical therapist who is practicing or a physical therapist assistant who is working in the United States armed services, United States public health service or veterans administration pursuant to federal regulations for state licensure of health care providers.
 3. A physical therapist who is licensed in another jurisdiction of the United States or a foreign educated physical therapist credentialed in another country if that person is performing physical therapy in connection with teaching or participating in an educational seminar for not more than sixty days in any twelve month period.
 4. A physical therapist who is licensed in another jurisdiction of the United States or who is credentialed in another country if that person by contract or employment is providing physical therapy to persons who are affiliated with or employed by established athletic teams, athletic

organizations or performing arts companies temporarily practicing, competing or performing in this state for not more than sixty days in a calendar year.

5. A physical therapist who is licensed in another jurisdiction of the United States and who enters this state to provide physical therapy to victims of a declared local, state or national disaster or emergency. This exemption applies for the duration of the declared emergency but not longer than sixty days. The physical therapist must also register with the board before practicing.

32-2022. Qualifications for licensure and certification; fingerprint clearance card

A. An applicant for a license as a physical therapist who has been educated in the United States shall:

1. Be of good moral character.
2. Complete the application process.
3. Be a graduate of a professional physical therapy education program that is accredited by a national accreditation agency approved by the board.
4. Have successfully passed the national examination approved by the board.
5. Have successfully passed a jurisprudence examination that tests the applicant's knowledge of board statutes and rules.
6. Obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

B. An applicant for a license as a physical therapist who has been educated outside of the United States shall:

1. Be of good moral character.
2. Complete the application process.
3. Provide satisfactory evidence that the applicant's education is substantially equivalent to the requirements of physical therapists educated in accredited educational programs as determined by the board. If the board determines that a foreign-educated applicant's education is not substantially equivalent, it may require the person to complete additional coursework before it proceeds with the application process. It is not necessary that coursework completed by the applicant be identical in all respects to that required by an education program in the United States for an entry-level physical therapy degree, but all required content areas must be evident as required by board rules. Deficiencies may occur only in coursework and not in essential areas of professional education and shall not be of a magnitude that would cause the education to be deemed below entry-level preparation for practice in this state.

4. Provide written proof of legal authorization to practice as a physical therapist without limitation in the country where the professional education occurred. The board may waive this requirement on receipt of written proof that the applicant cannot demonstrate legal authorization based on the citizenship requirements of the country where the professional education occurred.

5. Provide proof of legal authorization to reside and seek employment in the United States or its territories.

6. Have passed the board-approved English proficiency examinations if the applicant's native language is not English.

7. Have participated in an interim supervised clinical practice period before licensure as approved by the board or shall have already met this requirement to the board's satisfaction by virtue of the applicant's clinical practice in another jurisdiction of the United States.

8. Have successfully passed the national examination approved by the board.

9. Have successfully passed a jurisprudence examination that tests the applicant's knowledge of board statutes and rules.

10. Obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

C. Notwithstanding the requirements of subsection B of this section, if the foreign-educated physical therapist applicant is a graduate of an accredited educational program as determined by the board, the board may waive the requirements of subsection B, paragraphs 3 and 7 of this section.

D. An applicant for certification as a physical therapist assistant shall meet the following requirements:

1. Be of good moral character.

2. Complete the application process.

3. Be a graduate of a physical therapist assistant education program accredited by an agency approved by the board.

4. Have successfully passed the national examination approved by the board.

5. Have successfully passed a jurisprudence examination that tests the applicant's knowledge of board statutes and rules.

6. Obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

E. For the purposes of subsection B, paragraph 3 of this section, "substantially equivalent" means that the applicant provides documentation satisfactory to the board that:

1. The applicant graduated from a physical therapist education program that prepares the applicant to engage without restriction in the practice of physical therapy.
2. The applicant's school of physical therapy education is recognized by its own ministry of education. The board may waive this requirement for good cause shown.
3. The applicant has undergone a credentials evaluation as directed by the board that determines that the applicant has met uniform criteria for educational requirements pursuant to board rules.
4. The applicant has completed any additional education required by the board.

32-2023. Application; denial; hearing

- A. An applicant for licensure or certification shall file a completed application as required by the board. The applicant shall include the application fee prescribed in section 32-2029.
- B. The board may deny a license or certificate to an applicant, a licensee or a certificate holder for any of the following:
 1. Knowingly making a false statement of fact required to be revealed in the initial application, renewal application or reinstatement application for a license or certificate.
 2. Committing fraud in the procurement of a license or certificate.
 3. Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case conviction by a court of competent jurisdiction is conclusive evidence of the commission.
 4. Attempting to engage in conduct that subverts or undermines the integrity of the examination or the examination process, including using in any manner recalled or memorized examination questions from or with a person or entity, failing to comply with all test center security procedures, communicating or attempting to communicate with other examinees during the examination or copying or sharing examination questions or portions or questions.
 5. Engaging in any conduct that would be considered a violation of section 32-2044.

- C. If the board denies an application because of deficiencies in an application or for a reason prescribed in subsection B of this section, the board must inform an applicant of those specific deficiencies. On receipt of a written request by an applicant who disagrees with the board's decision to deny an application, the board shall hold a hearing pursuant to title 41, chapter 6, article 10.

32-2024. Examinations

- A. The board shall prescribe examinations for licensure and certification and determine the passing score.

B. An applicant may take the examinations for licensure if either of the following applies:

1. The applicant has met all of the requirements of section 32-2022, subsection A, paragraphs 1, 2 and 3 and has paid the fees prescribed by this chapter.

2. The applicant has:

(a) Met all of the requirements of section 32-2022, subsection A, paragraphs 1 and 2.

(b) Paid the fees prescribed by this chapter.

(c) Submitted with the application a letter on the official letterhead of the accredited educational institution where the applicant is completing an accredited educational program that includes the signature of the program director, the department chairperson or a similarly authorized person of the university or college and that states that:

(i) The applicant is a candidate for a degree as a physical therapist at the next scheduled graduation date.

(ii) The date the national examination for licensure is to be taken by the applicant is the one nearest to and before the applicant's expected graduation date and is not more than one hundred twenty days before the date of the applicant's expected graduation date.

(iii) The applicant meets any other established requirements of the accredited educational program, if applicable.

C. An applicant may take the examinations for licensure if the applicant has met all of the requirements of section 32-2022, subsection B, paragraphs 1 through 6 and has paid the fees prescribed by this chapter.

D. An applicant may take the examinations for certification if either of the following applies:

1. The applicant has met all of the requirements of section 32-2022, subsection D, paragraphs 1, 2 and 3 and has paid the fees prescribed by this chapter.

2. The applicant has:

(a) Met all of the requirements of section 32-2022, subsection D, paragraphs 1 and 2.

(b) Paid the fees prescribed by this chapter.

(c) Submitted with the application a letter on the official letterhead of the accredited educational institution where the applicant is completing an accredited educational program that includes the signature of the program director, the department chairperson or a similarly authorized person of the university, school or college and that states that:

(i) The applicant is a candidate for a certificate or degree as a physical therapist assistant at the next scheduled graduation date.

(ii) The date the national examination for certification is to be taken by the applicant is the one nearest to and before the applicant's expected graduation date and is not more than one hundred twenty days before the date of the applicant's expected graduation date.

(iii) The applicant meets any other established requirements of the accredited educational program, if applicable.

E. An applicant for licensure or certification who does not pass the national examination after the first attempt may retake the examination one additional time within six months after the first failure without reapplication for licensure or certification. An applicant may retake the examinations as prescribed by the organization that administers the examinations.

F. The board shall not issue a license or certificate to a person who passes an examination through fraud.

G. The national examination for licensure as a physical therapist shall test entry level competence related to physical therapy theory, examination and evaluation, diagnosis, prognosis, treatment intervention, prevention and consultation. The national examination for certification as a physical therapist assistant shall test for requisite knowledge and skills in the technical application of physical therapy services.

32-2025. Interim permits

A. If a foreign educated applicant satisfies the requirements of section 32-2022, subsection B, before the board issues a license it shall issue an interim permit to the applicant for the purpose of participating in a supervised clinical practice period. An applicant who fails the national examination is not eligible for an interim permit until the applicant passes the examination.

B. If an applicant who has been educated in the United States satisfies the requirements of section 32-2022, subsection A or D, but the board determines that there is evidence that the applicant lacks the competence to practice as a physical therapist or work as a physical therapist assistant, the board shall issue an interim permit to the applicant to allow that person to participate in a supervised clinical practice.

C. The board may issue an interim permit for at least ninety days but not more than six months.

D. An interim permit holder shall complete, to the satisfaction of the board, a period of clinical practice in a facility approved by the board and under the continuous and on-site supervision of a physical therapist who holds an unrestricted license issued pursuant to this chapter.

E. At any time during an interim supervised clinical practice period, the board may revoke an interim permit because of the permit holder's incompetence or for a violation of this chapter.

Pursuant to title 41, chapter 6, article 10, the board shall hold a hearing on request of a permit holder whose permit is revoked.

32-2026. Licensure or certification by endorsement

A. The board shall issue a license to a physical therapist who has a valid unrestricted license from another jurisdiction of the United States if that person, when granted the license, met all of the requirements prescribed in section 32-2022, subsection A or B and any applicable board rules.

B. The board shall issue a certificate to a physical therapist assistant who has a valid unrestricted license or certificate from another jurisdiction of the United States if that person, when granted the license or certificate, meets all of the requirements prescribed in section 32-2022, subsection D and any applicable board rules.

32-2027. License or certificate renewal; suspension

A. A licensee or certificate holder shall renew the license or certificate pursuant to board rules. Except as provided in section 32-4301, a licensee or certificate holder who fails to renew the license or certificate on or before its expiration date shall not practice as a physical therapist or work as a physical therapist assistant in this state.

B. The board shall administratively suspend a license or certificate if the licensee or certificate holder does not submit a complete application for renewal and pay the renewal fee pursuant to board rules.

32-2028. Reinstatement of license or certificate

A. The board may reinstate a license or certificate that it suspended pursuant to section 32-2027, subsection B on payment of a renewal fee and reinstatement fee and completion of the application process as prescribed by the board.

B. If a person's license or certificate has been suspended pursuant to section 32-2027, subsection B for more than three consecutive years, the license or certificate expires and that person shall reapply for a license or certificate pursuant to section 32-2022 or 32-2026 and pay all applicable fees. The person must also demonstrate to the board's satisfaction competency by satisfying one or more of the following as prescribed by the board:

1. Practicing for a specified time under an interim permit.
2. Completing remedial courses.
3. Completing continuing competence requirements for the period of the lapsed license.
4. Passing an examination.

32-2029. Fees

The board shall establish and collect fees of not more than:

1. Three hundred dollars for an application for an original license or certificate. This fee is nonrefundable.
2. Three hundred dollars for a certificate of renewal of a license or certificate.
3. Three hundred dollars for an application for reinstatement of licensure.
4. Fifty dollars for each duplicate license or certificate.

32-2030. Business entities; patient records; protocol; exemptions; rules

A. Beginning September 1, 2011, a business entity shall not offer physical therapy services pursuant to this chapter unless:

1. The business entity is registered with the board pursuant to this section.
2. The physical therapy services are conducted by a licensee or certificate holder pursuant to this chapter.

B. The business entity must file a registration application on a form prescribed by the board. The application shall include:

1. A description of the entity's services offered to the public.
2. The name of the manager who is authorized and who is responsible for managing the physical therapy services offered at each office.
3. The names and addresses of the officers and directors of the business entity.
4. A registration fee prescribed by the board by rule.

C. A business entity must file a separate registration application and pay a fee for each branch office in this state.

D. A registration expires on August 31 of odd numbered years in accordance with the physical therapist professional licensing schedule. A business entity that wishes to renew a registration must submit an application for renewal as prescribed by the board on a biennial basis on a form prescribed by the board before the expiration date. An entity that fails to renew the registration before the expiration date is subject to a late fee as prescribed by the board by rule.

E. The business entity must notify the board in writing within thirty days after any change:

1. In the business entity's name, address or telephone number.
 2. In the officers or directors of the business entity.
 3. In the name of the manager who is authorized and who is responsible for managing the physical therapy services in any facility.
- F. The business entity must establish and implement a written protocol for the secure storage, transfer and access of the physical therapy records of the business entity's patients. This protocol must include, at a minimum, procedures for:
1. Notifying patients of the future locations of their records if the business entity terminates or sells the practice.
 2. Disposing of unclaimed physical therapy records.
 3. The timely response to requests by patients for copies of their records.
- G. The business entity must notify the board within thirty days after the dissolution of any registered business entity or the closing or relocation of any facility and must disclose to the board the entity's procedure by which its patients may obtain their records.
- H. This section does not apply to:
1. A sole proprietorship or partnership that consists exclusively of persons who are licensed by a health profession regulatory board as defined in section 32-3201.
 2. A facility regulated by the federal government or a state, district or territory of the United States.
 3. An administrator or executor of the estate of a deceased physical therapist or a person who is legally authorized to act for a physical therapist who has been adjudicated to be mentally incompetent for not more than one year from the date the board receives notice of the physical therapist's death or incapacitation.
 4. A health care institution that is licensed pursuant to title 36.
- I. A facility that offers physical therapy services to the public by persons licensed under this chapter must be registered by the board unless the facility is any of the following:
1. Owned by a licensee.
 2. Regulated by the federal government or a state, district or territory of the United States.
- J. Except for issues relating to insurance coding and billing that require the name, signature and license number of the physical therapist providing treatment, this section does not:

1. Authorize a licensee in the course of providing physical therapy services for an entity registered pursuant to this section to disregard or interfere with a policy or practice established by the entity for the operation and management of the business.
2. Authorize a business entity registered pursuant to this section to establish or enforce a business policy or practice that may interfere with the professional judgment of the licensee in providing physical therapy services for the business entity or may compromise a licensee's ability to comply with this chapter.

K. The board shall adopt rules that provide a method for the board to receive the assistance and advice of business entities registered pursuant to this section in all matters relating to the regulation of business entities.

L. The board shall adopt rules necessary to enforce this chapter in the practice settings of its licensees, certificate holders and registrants if the practice settings are not regulated by the department of health services.

32-2031. Retired status; reinstatement to active status

A. The board shall place a licensee or certificate holder on retired status and waive the renewal fee and continuing competence requirements if a licensee or certificate holder presents a written affidavit to the board that the licensee or certificate holder has retired from the practice of physical therapy or from work as a physical therapist assistant, is in good standing with the board and has paid all fees required by this chapter before the waiver.

B. During the period of waiver pursuant to subsection A, the retired licensee or certificate holder may not engage in the practice of physical therapy or work as a physical therapist assistant.

C. A retired licensee or certificate holder must renew the retired license or certificate every two years by verifying the person's contact information and using the same schedule for renewal of an active license or certificate. The board may not charge a fee for renewal of a retired license or certificate.

D. If a licensee or certificate holder fails to renew the retired status of the license or certificate on or before its expiration date, the retired license or certificate expires. If the person seeks to reinstate the person's retired status after the retired license or certificate has expired, the person must make a request for retired status pursuant to subsection A.

E. The board may reinstate a retired licensee or certificate holder to active practice or work on payment of the renewal fee and presentation of evidence satisfactory to the board that the retired licensee or certificate holder is professionally able to engage in the practice of physical therapy or work as a physical therapist assistant and still possesses the professional knowledge required. If the retired licensee or certificate holder has held a retired license or certificate for more than three consecutive years, the person must also demonstrate competency to the board's satisfaction by satisfying one or more of the following as prescribed by the board:

1. Practicing or working for a specified time under an interim permit.
2. Completing remedial courses.
3. Completing continuing competence requirements for the period of the retired license or certificate.
4. Passing an examination as prescribed by the board.

32-2032. Inactive status; reinstatement to active status

- A. The board shall place a licensee or certificate holder on inactive status and waive the continuing competence requirements if a licensee or certificate holder presents a written affidavit to the board that the licensee or certificate holder is not currently engaged in the practice of physical therapy or working as a physical therapist assistant in this state, is in good standing with the board and has paid all fees required by this chapter.
- B. During the period of inactive status pursuant to subsection A, the inactive licensee or certificate holder may not engage in the practice of physical therapy or work as a physical therapist assistant in this state.
- C. A licensee or certificate holder on inactive status must renew the inactive license or certificate every two years using the same schedule for renewal of an active license or certificate. The board by rule shall prescribe the fee for the renewal of an inactive license or certificate.
- D. An inactive licensee or certificate holder who applies to the board for reinstatement to active licensure or certification within three years after the date the board issues a notice of inactive status must submit the full annual license renewal fee and prove to the board's satisfaction that the licensee or certificate holder has met continuing competence requirements as prescribed by the board by rule.
- E. An inactive licensee or certificate holder who applies to the board for reinstatement to active licensure or certification and who has not been actively engaged in the practice of physical therapy or working as a physical therapist assistant in this state for more than three consecutive years after the date the board issues a notice of inactive status must submit the full annual license renewal fee and demonstrate competency to the board's satisfaction by satisfying one or more of the following as prescribed by the board:
 1. Practicing or working for a specified time under an interim permit.
 2. Completing remedial courses.
 3. Completing continuing competence requirements for the period of the inactive license or certificate.
 4. Passing an examination.

32-2032. Inactive status; reinstatement to active status

A. The board shall place a licensee or certificate holder on inactive status and waive the continuing competence requirements if a licensee or certificate holder presents a written affidavit to the board that the licensee or certificate holder is not currently engaged in the practice of physical therapy or working as a physical therapist assistant in this state, is in good standing with the board and has paid all fees required by this chapter.

B. During the period of inactive status pursuant to subsection A, the inactive licensee or certificate holder may not engage in the practice of physical therapy or work as a physical therapist assistant in this state.

C. A licensee or certificate holder on inactive status must renew the inactive license or certificate every two years using the same schedule for renewal of an active license or certificate. The board by rule shall prescribe the fee for the renewal of an inactive license or certificate.

D. An inactive licensee or certificate holder who applies to the board for reinstatement to active licensure or certification within three years after the date the board issues a notice of inactive status must submit the full annual license renewal fee and prove to the board's satisfaction that the licensee or certificate holder has met continuing competence requirements as prescribed by the board by rule.

E. An inactive licensee or certificate holder who applies to the board for reinstatement to active licensure or certification and who has not been actively engaged in the practice of physical therapy or working as a physical therapist assistant in this state for more than three consecutive years after the date the board issues a notice of inactive status must submit the full annual license renewal fee and demonstrate competency to the board's satisfaction by satisfying one or more of the following as prescribed by the board:

1. Practicing or working for a specified time under an interim permit.
2. Completing remedial courses.
3. Completing continuing competence requirements for the period of the inactive license or certificate.
4. Passing an examination.

32-2041. Lawful practice

A. A physical therapist shall refer a client to appropriate health care practitioners if the physical therapist has reasonable cause to believe symptoms or conditions are present that require services beyond the scope of practice or if physical therapy is contraindicated.

B. A physical therapist shall adhere to the recognized standards of ethics of the physical therapy profession and as further established by rule.

C. A physical therapist licensed under this chapter shall practice physical therapy as prescribed by this chapter.

32-2042. Use of titles; restrictions; violation; classification

- A. A physical therapist shall use the letters "PT" in connection with the physical therapist's name or place of business to denote licensure under this chapter. A physical therapist on retired status shall use "(retired)" or "(ret.)" after the letters "PT" in connection with the physical therapist's name or place of business to denote the physical therapist's retired status pursuant to section 32-2031.
- B. A physical therapist assistant shall use the letters "PTA" in connection with that person's name to denote certification pursuant to this chapter. A physical therapist assistant on retired status shall use "(retired)" or "(ret.)" after the letters "PTA" in connection with the physical therapist assistant's name or place of business to denote the physical therapist assistant's retired status pursuant to section 32-2031.
- C. A person or business entity or its employees, agents or representatives shall not use in connection with that person's name or the name or activity of the business the words "physical therapy", "physical therapist", "physiotherapy", "physiotherapist" or "registered physical therapist", the letters "PT", "LPT", "RPT", "MPT", "DScPT" or "DPT" or any other words, abbreviations or insignia indicating or implying directly or indirectly that physical therapy is provided or supplied, including the billing of services labeled as physical therapy, unless these services are provided by or under the direction of a physical therapist who is licensed pursuant to this chapter. A person or entity that violates this subsection is guilty of a class 1 misdemeanor.
- D. A person or business entity shall not advertise, bill or otherwise promote a person who is not licensed pursuant to this chapter as being a physical therapist or offering physical therapy services.
- E. A person shall not use the title "physical therapist assistant" or use the letters "PTA" in connection with that person's name or any other words, abbreviations or insignia indicating or implying directly or indirectly that the person is a physical therapist assistant unless that person is certified as a physical therapist assistant pursuant to this chapter. A person who violates this subsection is guilty of a class 1 misdemeanor.

32-2043. Supervision; patient care management

- A. A physical therapist is responsible for patient care given by assistive personnel under the physical therapist's supervision. A physical therapist may delegate to assistive personnel and supervise selected acts, tasks or procedures that fall within the scope of physical therapy practice but that do not exceed the education or training of the assistive personnel.
- B. A physical therapist assistant certified pursuant to this chapter may perform selected interventions under the general supervision of a physical therapist licensed pursuant to this chapter.
- C. A physical therapy aide and other assistive personnel shall perform designated routine tasks only under the on-site supervision of a licensed physical therapist who is present in the facility.
- D. A licensed physical therapist must provide on-site supervision of an interim permit holder.

E. A physical therapist student and a physical therapist assistant student must practice under the on-site supervision of a licensed physical therapist.

F. A physical therapist is responsible for managing all aspects of the physical therapy care of each patient. A physical therapist must provide:

1. The initial evaluation of and documentation for a patient.
2. Periodic reevaluation of and documentation for a patient.
3. The documented discharge of a patient, including the response to therapeutic intervention at the time of discharge.

G. A physical therapist must verify the qualifications of physical therapist assistants and other assistive personnel under the physical therapist's direction and supervision.

H. For each patient on each date of service, a physical therapist must provide and document all of the therapeutic intervention that requires the expertise of a physical therapist and must determine the use of physical therapist assistants and other assistive personnel to ensure the delivery of care that is safe, effective and efficient. Documentation for each date of service must be as prescribed by the board by rule.

I. A physical therapist assistant must document care provided but may do so without the co-signature of the supervising physical therapist if the physical therapist complies with the requirements of subsections G and H.

J. A physical therapist's responsibility for patient care management includes accurate documentation and billing of the services provided.

32-2044. Grounds for disciplinary action

The following are grounds for disciplinary action:

1. Violating this chapter, board rules or a written board order.
2. Practicing or offering to practice beyond the scope of the practice of physical therapy.
3. Obtaining or attempting to obtain a license or certificate by fraud or misrepresentation.
4. Engaging in the performance of substandard care by a physical therapist due to a deliberate or negligent act or failure to act regardless of whether actual injury to the patient is established.
5. Engaging in the performance of substandard care by a physical therapist assistant, including exceeding the authority to perform tasks selected and delegated by the supervising licensee regardless of whether actual injury to the patient is established.

6. Failing to supervise assistive personnel, physical therapy students or interim permit holders in accordance with this chapter and rules adopted pursuant to this chapter.
7. Conviction of a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case conviction by a court of competent jurisdiction is conclusive evidence of the commission and the board may take disciplinary action when the time for appeal has lapsed, when the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order. For the purposes of this paragraph, "conviction" means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
8. Practicing as a physical therapist or working as a physical therapist assistant when physical or mental abilities are impaired by disease or trauma, by the use of controlled substances or other habit-forming drugs, chemicals or alcohol or by other causes.
9. Having had a license or certificate revoked or suspended or other disciplinary action taken or an application for licensure or certification refused, revoked or suspended by the proper authorities of another state, territory or country.
10. Engaging in sexual misconduct. For the purposes of this paragraph, "sexual misconduct" includes:
 - (a) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual, while a provider-patient relationship exists.
 - (b) Making sexual advances, requesting sexual favors or engaging in other verbal conduct or physical contact of a sexual nature with patients.
 - (c) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.
11. Directly or indirectly requesting, receiving or participating in the dividing, transferring, assigning, rebating or refunding of an unearned fee or profiting by means of any credit or other valuable consideration such as an unearned commission, discount or gratuity in connection with the furnishing of physical therapy services. This paragraph does not prohibit the members of any regularly and properly organized business entity recognized by law and composed of physical therapists from dividing fees received for professional services among themselves as they determine necessary to defray their joint operating expense.
12. Failing to adhere to the recognized standards of ethics of the physical therapy profession.
13. Charging unreasonable or fraudulent fees for services performed or not performed.
14. Making misleading, deceptive, untrue or fraudulent representations in violation of this chapter or in the practice of the profession.

15. Having been adjudged mentally incompetent by a court of competent jurisdiction.
16. Aiding or abetting a person who is not licensed or certified in this state and who directly or indirectly performs activities requiring a license or certificate.
17. Failing to report to the board any direct knowledge of an unprofessional, incompetent or illegal act that appears to be in violation of this chapter or board rules.
18. Interfering with an investigation or disciplinary proceeding by failing to cooperate, by wilful misrepresentation of facts or by the use of threats or harassment against any patient or witness to prevent the patient or witness from providing evidence in a disciplinary proceeding or any legal action.
19. Failing to maintain patient confidentiality without prior written consent of the patient or unless otherwise required by law.
20. Failing to maintain adequate patient records. For the purposes of this paragraph, "adequate patient records" means legible records that comply with board rules and that contain at a minimum an evaluation of objective findings, a diagnosis, the plan of care, the treatment record, a discharge summary and sufficient information to identify the patient.
21. Promoting an unnecessary device, treatment intervention or service for the financial gain of the practitioner or of a third party.
22. Providing treatment intervention unwarranted by the condition of the patient or treatment beyond the point of reasonable benefit.
23. Failing to report to the board a name change or a change in business or home address within thirty days after that change.
24. Failing to complete continuing competence requirements as established by the board by rule.
25. Failing to demonstrate professional standards of care and training and education qualifications, as established by the board by rule, in the performance of dry needling when provided as a therapeutic modality.

32-2045. Investigative powers; emergency action

- A. To enforce this chapter the board may:

1. Receive complaints filed against licensees or certificate holders and conduct a timely investigation.
2. Conduct an investigation at any time and on its own initiative without receipt of a written complaint if the board has reason to believe that there may be a violation of this chapter.

3. Issue subpoenas to compel the attendance of any witness or the production of any documentation relative to a case.
4. Take emergency action ordering the summary suspension of a license or certificate or the restriction of the licensee's practice or certificate holder's employment pending proceedings by the board.
5. Require a licensee or certificate holder to be examined in order to determine the licensee's or certificate holder's mental, physical or professional competence to practice or work in the field of physical therapy.

B. If the board finds that the information received in a complaint or an investigation is not of sufficient seriousness to merit direct action against the licensee or certificate holder it may take either of the following actions:

1. Dismiss the complaint if the board believes the information or complaint is without merit.
2. Issue an advisory letter. The issuance of an advisory letter is a nondisciplinary action to notify a licensee or certificate holder that, while there is not sufficient evidence to merit disciplinary action, the board believes that the licensee or certificate holder should be educated about the requirements of this chapter and board rules. An advisory letter is a public document and may be used in future disciplinary actions against a licensee or certificate holder.
3. Issue a nondisciplinary order requiring the licensee or certificate holder to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee or certificate holder with the necessary understanding of current standards, skills, procedures or treatment.

C. The board shall notify a licensee or certificate holder of a complaint and the nature of the complaint within ninety days after receiving the complaint.

D. Any person may submit a complaint regarding any licensee, certificate holder or other person potentially in violation of this chapter. Confidentiality shall be maintained subject to law.

E. The board shall keep confidential all information relating to the receipt and investigation of complaints filed against licensees and certificate holders until the information becomes public record or as required by law.

32-2046. Informal and formal hearings

A. The board may request an informal hearing with a licensee, a certificate holder or any unlicensed person in order to further its investigation or to resolve a complaint.

B. If at an informal hearing the board finds a violation of this chapter has occurred that constitutes grounds for disciplinary action, it may take any disciplinary actions prescribed in

section 32-2047, paragraph 1, 2 or 6, except that a civil penalty may not exceed five hundred dollars.

C. If the results of an informal hearing indicate that suspension, revocation or a civil penalty might be in order, the board shall notify the subject of the investigation of the time and place for a hearing pursuant to title 41, chapter 6, article 10.

D. In lieu of or in addition to an informal hearing as provided in subsection A of this section, the board may serve on a licensee or a certificate holder a summons and complaint setting forth the grounds for disciplinary action and notice of a hearing to be held before the board at least thirty days after the date of the notice. The notice shall state the time and place of the hearing.

E. A motion for rehearing or review of the board's decision in a disciplinary action shall be filed pursuant to title 41, chapter 6, article 10.

F. The service of a summons and complaint and the service of a subpoena shall be as provided for service in civil cases.

G. If a person disobeys a subpoena, the board may petition the superior court for an order requiring appearance or the production of documents.

32-2047. Disciplinary actions; penalties

On proof that any grounds prescribed in section 32-2044 have been violated or that any requirements in section 32-2030 have been violated, the board may take the following disciplinary actions singly or in combination:

1. Issue a decree of censure.
2. Restrict a license, certificate or registration. The board may require a licensee, certificate holder or registrant to report regularly to the board on matters related to the grounds for the restricted license or certificate.
3. Suspend a license, certificate or registration for a period prescribed by the board.
4. Revoke a license, certificate or registration.
5. Refuse to issue or renew a license, certificate or registration.
6. Impose a civil penalty of at least two hundred fifty dollars but not more than ten thousand dollars for each violation of this chapter. In addition the board may assess and collect the reasonable costs incurred in a disciplinary hearing when action is taken against a person's license or certificate.
7. Accept a voluntary surrendering of a license, certificate or registration pursuant to an order of consent by the board.

32-2048. Unlawful practice; classification; injunctive relief; deposit of civil penalties

A. It is unlawful for any person to practice or in any manner to claim to practice physical therapy or for a person to claim the designation of a physical therapist unless that person is licensed pursuant to this chapter. A person who engages in an activity requiring a license pursuant to this chapter or who uses any word, title or representation in violation of section 32-2042 that implies that the person is licensed to engage in the practice of physical therapy is guilty of a class 1 misdemeanor.

B. The board may investigate any person to the extent necessary to determine if the person is engaged in the unlawful practice of physical therapy. If an investigation indicates that a person may be practicing physical therapy unlawfully, the board shall inform the person of the alleged violation. The board may refer the matter for prosecution regardless of whether the person ceases the unlawful practice of physical therapy.

C. 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 to enjoin any person from committing any act in violation of this chapter. Injunction proceedings are in addition to, and not in lieu of, all penalties and other remedies prescribed in this chapter.

D. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies it collects from civil penalties pursuant to this chapter in the state general fund.

32-2049. Disclosure prohibition

The board shall not disclose the identity of a person who provides information unless this information is essential to proceedings conducted pursuant to sections 32-2045 and 32-2046 or unless required by a court.

32-2050. Substance abuse recovery program

In lieu of a disciplinary proceeding prescribed by this article the board may permit a licensee or certificate holder to actively participate in a board approved substance abuse recovery program if:

1. The board has evidence that the licensee or certificate holder is an impaired professional.
2. The licensee or certificate holder has not been convicted of a felony relating to a controlled substance in a court of law of the United States or any other territory or country.
3. The licensee or certificate holder enters into a written agreement with the board for a restricted license and complies with all of the terms of the agreement, including making satisfactory progress in the program and adhering to any limitations on the licensee's practice imposed by the board to protect the public. Failure to enter into such an agreement shall activate an immediate investigation and disciplinary proceedings by the board.

4. As part of the agreement established between the licensee or certificate holder and the board, the licensee or certificate holder signs a waiver allowing the substance abuse program to release information to the board if the licensee or certificate holder does not comply with the requirements of this section or is unable to practice with reasonable skill or safety.

32-2051. Rights of consumers

A. The public has access to the following information:

1. A list of licensees and interim permit holders that includes the licensee's and interim permit holder's place of practice, license or interim permit number, date of license or interim permit expiration and status of license or interim permit.

2. A list of physical therapist assistants certified in this state, including place of employment, certificate number, date of certificate expiration and status of certificate.

3. Public records.

B. The home addresses and telephone numbers of physical therapists and physical therapist assistants are not public records and shall be kept confidential by the board unless they are the only addresses and telephone numbers of record.

C. If a referring practitioner is deriving direct or indirect compensation from the referral to physical therapy the physical therapist shall disclose this information in writing to the patient.

D. A physical therapist shall disclose in writing to a patient any financial interest in products the physical therapist endorses and recommends to the patient and shall document this disclosure in the patient's record.

E. A physical therapist shall ensure that each patient understands that the patient has freedom of choice in services and products.

F. Information relating to the physical therapist-patient relationship is confidential and shall not be communicated to a third party who is not involved in that patient's care without the prior written consent of the patient. The physical therapist shall divulge to the board information it requires in connection with any investigation, public hearing or other proceeding. The physical therapist-patient privilege does not extend to cases in which the physical therapist has a duty to report information as required by law. The confidentiality requirements and privileges of this subsection also apply to physical therapist assistants.

G. Each licensee and certificate holder shall display a copy of the license or certificate and current renewal verification in a location accessible to public view at the licensee's place of practice. If the licensee or certificate holder is unable to display the license, certificate or current renewal verification, the licensee or certificate holder must produce that documentation on request.

H. The board shall keep all information relating to the receipt and investigation of complaints filed against a licensee or certificate holder confidential unless the information is disclosed in the course of the investigation or any subsequent proceeding or if that information is required to be disclosed by law.

I. The following are confidential and are not available to the public:

1. Patient records, including clinical records, files, any report or oral statement relating to a diagnostic finding or treatment of a patient.
2. Any information from which a patient or a patient's family might be identified.
3. Information received and records or reports kept by the board as a result of an investigation made pursuant to this chapter.

32-2052. Judicial review

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

32-2053. Physical therapy licensure compact

The physical therapy licensure compact is adopted and enacted into law as follows:

Section 1

Purpose

The purpose of this compact is to facilitate the interstate practice of physical therapy with the goal of improving public access to physical therapy services. The practice of physical therapy occurs in the state where the patient/client is located at the time of the patient/client encounter. This compact preserves the regulatory authority of states to protect the public health and safety through the current system of state licensure. This compact is designed to achieve the following objectives:

1. Increase public access to physical therapy services by providing for the mutual recognition of other member state licenses.
2. Enhance the states' ability to protect the public health and safety.
3. Encourage the cooperation of member states in regulating multistate physical therapy practice.
4. Support spouses of relocating military members.
5. Enhance the exchange of licensure, investigative and disciplinary information between member states.

6. Allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards.

Section 2

Definitions

As used in this compact, and except as otherwise provided, the following definitions shall apply:

1. "Active duty military" means full-time duty status in the active uniformed service of the United States, including members of the national guard and reserve on active duty orders pursuant to 10 United States Code section 1211.
2. "Adverse action" means disciplinary action taken by a physical therapy licensing board based on misconduct or unacceptable performance, or both.
3. "Alternative program" means a nondisciplinary monitoring or practice remediation process approved by a physical therapy licensing board, including a program relating to substance abuse issues.
4. "Compact privilege" means the authorization granted by a remote state to allow a licensee from another member state to practice as a physical therapist or work as a physical therapist assistant in the remote state under its laws and rules. The practice of physical therapy occurs in the member state where the patient/client is located at the time of the patient/client encounter.
5. "Continuing competence" means a requirement, as a condition of license renewal, to provide evidence of participation in or completion of educational and professional activities relevant to the practice or area of work.
6. "Data system" means a repository of information about licensees, including examination, licensure, investigative information, compact privilege and adverse action.
7. "Encumbered license" means a license that a physical therapy licensing board has limited in any way.
8. "Executive board" means a group of directors elected or appointed to act on behalf of, and within the powers granted by, the commission.
9. "Home state" means the member state that is the licensee's primary state of residence.
10. "Investigative information" means information, records and documents received or generated by a physical therapy licensing board pursuant to an investigation.
11. "Jurisprudence requirement" means the assessment of an individual's knowledge of the laws and rules governing the practice of physical therapy in a state.

12. "Licensee" means an individual who currently holds an authorization from the state to practice as a physical therapist or to work as a physical therapist assistant.
13. "Member state" means a state that has enacted the compact.
14. "Party state" means any member state in which a licensee holds a current license or compact privilege or is applying for a license or compact privilege.
15. "Physical therapist" means an individual who is licensed by a state to practice physical therapy.
16. "Physical therapist assistant" means an individual who is licensed or certified by a state and who assists the physical therapist in selected components of physical therapy.
17. "Physical therapy", "physical therapy practice" or "practice of physical therapy" means the care and services provided by or under the direction and supervision of a licensed physical therapist.
18. "Physical therapy compact commission" or "commission" means the national administrative body whose membership consists of all states that have enacted this compact.
19. "Physical therapy licensing board" or "licensing board" means the agency of a state that is responsible for the licensing and regulation of physical therapists and physical therapist assistants.
20. "Remote state" means a member state, other than the home state, where a licensee is exercising or seeking to exercise the compact privilege.
21. "Rule" means a regulation, principle or directive adopted by the commission that has the force of law.
22. "State" means any state, commonwealth, district or territory of the United States that regulates the practice of physical therapy.

Section 3

State participation in the compact

- A. To participate in the compact, a state must do all of the following:
 1. Participate fully in the commission's data system, including using the commission's unique identifier as defined in rules.
 2. Have a mechanism in place for receiving and investigating complaints about licensees.

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3. Notify the commission, in compliance with the terms of the compact and rules, of any adverse action or the availability of investigative information regarding a licensee.

4. Fully implement a criminal background check requirement, within a time frame established by rule, by receiving the results of the federal bureau of investigation record search on criminal background checks and use the results in making licensure decisions.

5. Comply with the rules of the commission.

6. Utilize a recognized national examination as a requirement for licensure pursuant to the rules of the commission.

7. Have continuing competence requirements as a condition for license renewal.

B. On adoption of this compact, the member state shall have the authority to obtain biometric-based information from each physical therapy licensure applicant and submit this information to the federal bureau of investigation for a criminal background check in accordance with 28 United States Code section 534 and 42 United States Code section 14616.

C. A member state shall grant the compact privilege to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the compact and rules.

D. Member states may charge a fee for granting a compact privilege.

Section 4

Compact privilege

A. To exercise the compact privilege under the terms and provisions of the compact, the licensee shall meet all of the following requirements:

1. Hold a license in the home state.

2. Have no encumbrance on any state license.

3. Be eligible for a compact privilege in any member state in accordance with subsections D, G and H of this section.

4. Not have had any adverse action taken against any license or compact privilege within the previous two years.

5. Notify the commission that the licensee is seeking the compact privilege within a remote state or states.

6. Pay any applicable fees, including any state fee, for the compact privilege.

7. Meet any jurisprudence requirement established by the remote state or states in which the licensee is seeking a compact privilege.
 8. Report to the commission any adverse action taken by any nonmember state within thirty days after the date the adverse action is taken.
- B. The compact privilege is valid until the expiration date of the home license. The licensee must comply with the requirements of subsection A of this section to maintain the compact privilege in the remote state.
- C. A licensee providing physical therapy in a remote state under the compact privilege shall function within the laws and regulations of the remote state.
- D. A licensee providing physical therapy in a remote state is subject to that state's regulatory authority. A remote state, in accordance with due process and that state's laws, may remove a licensee's compact privilege in the remote state for a specific period of time, impose fines or take any other necessary actions to protect the health and safety of its citizens. The licensee is not eligible for a compact privilege in any state until the specific time for removal has passed and all fines are paid.
- E. If a home state license is encumbered, the licensee shall lose the compact privilege in any remote state until both of the following occur:
1. The home state license is no longer encumbered.
 2. Two years have elapsed from the date of the adverse action.
- F. Once an encumbered license in the home state is restored to good standing, the licensee must meet the requirements of subsection A of this section to obtain a compact privilege in any remote state.
- G. If a licensee's compact privilege in any remote state is removed, the individual shall lose the compact privilege in any remote state until all of the following occur:
1. The specific period of time for which the compact privilege was removed has ended.
 2. All fines have been paid.
 3. Two years have elapsed from the date of the adverse action.
- H. Once the requirements of subsection G of this section have been met, the licensee must meet the requirements in subsection A of this section to obtain a compact privilege in a remote state.

Section 5

Active duty military personnel or their spouses

A licensee who is active duty military or is the spouse of an individual who is active duty military may designate one of the following as the home state:

1. The home of record.
2. The permanent change of station.
3. The state of current residence if it is different than the permanent change of station state or home of record.

Section 6

Adverse actions

- A. A home state shall have exclusive power to impose an adverse action against a license issued by the home state.
- B. A home state may take an adverse action based on the investigative information of a remote state, so long as the home state follows its own procedures for imposing an adverse action.
- C. Nothing in this compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action and that such participation shall remain nonpublic if required by the member state's laws. Member states must require licensees who enter any alternative programs in lieu of discipline to agree not to practice in any other member state during the term of the alternative program without prior authorization from such other member state.
- D. Any member state may investigate actual or alleged violations of the statutes and rules authorizing the practice of physical therapy in any other member state in which a physical therapist or physical therapist assistant holds a license or compact privilege.
- E. A remote state shall have the authority to do all of the following:
 1. Take adverse actions as set forth in section 4, subsection D of this compact against a licensee's compact privilege in the state.
 2. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a physical therapy licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state where the witnesses or evidence are located.

3. If otherwise permitted by state law, recover from the licensee the costs of investigations and disposition of cases resulting from any adverse action taken against that licensee.

F. Joint investigations are as follows:

1. In addition to the authority granted to a member state by its respective physical therapy practice act or other applicable state law, a member state may participate with other member states in joint investigations of licensees.
2. Member states shall share any investigative, litigation or compliance materials in furtherance of any joint or individual investigation initiated under the compact.

Section 7

Establishment of the physical therapy compact commission

A. The compact member states hereby create and establish a joint public agency known as the physical therapy compact commission to which the following apply:

1. The commission is an instrumentality of the compact states.
2. Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.
3. Nothing in this compact shall be construed to be a waiver of sovereign immunity.

B. Membership, voting and meetings are as follows:

1. Each member state shall have and be limited to one delegate selected by that member state's licensing board.
2. The delegate shall be a current member of the licensing board, who is a physical therapist, physical therapist assistant or public member or the board administrator.
3. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.
4. The member state board shall fill any vacancy occurring in the commission.
5. Each delegate shall be entitled to one vote with regard to the adoption of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission.

6. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for the delegate's participation in meetings by telephone or other means of communication.

7. The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

C. The commission shall have the following powers and duties:

1. Establish the fiscal year of the commission.

2. Establish bylaws.

3. Maintain its financial records in accordance with the bylaws.

4. Meet and take such actions as are consistent with the provisions of this compact and the bylaws.

5. Adopt uniform rules to facilitate and coordinate implementation and administration of this compact. The rules shall have the force and effect of law and shall be binding in all member states.

6. Bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state physical therapy licensing board to sue or be sued under applicable law shall not be affected.

7. Purchase and maintain insurance and bonds.

8. Borrow, accept or contract for services of personnel, including employees of a member state.

9. Hire employees, elect or appoint officers, fix compensation, define duties and grant such individuals appropriate authority to carry out the purposes of the compact and to establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters.

10. Accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and receive, utilize and dispose of the same, if at all times the commission avoids any appearance of impropriety or conflict of interest.

11. Lease, purchase, accept appropriate gifts or donations of or otherwise own, hold, improve or use any property, real, personal or mixed. at all times the commission shall avoid any appearance of impropriety.

12. Sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed.

13. Establish a budget and make expenditures.
14. Borrow money.
15. Appoint committees, including standing committees composed of members, state regulators, state legislators or their representatives and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws.
16. Provide and receive information from, and cooperate with, law enforcement agencies.
17. Establish and elect an executive board.
18. Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of physical therapy licensure and practice.

D. Provision for the executive board is as follows:

1. The executive board shall have the power to act on behalf of the commission according to the terms of this compact and shall be composed of the following nine members:
 - (a) Seven voting members who are elected by the commission from the current membership of the commission.
 - (b) One ex officio, nonvoting member from the recognized national physical therapy professional association.
 - (c) One ex officio, nonvoting member from the recognized membership organization of the physical therapy licensing boards.
2. The ex officio members will be selected by their respective organizations.
3. The commission may remove any member of the executive board as provided in bylaws.
4. The executive board shall meet at least annually.
5. The executive board shall have the following duties and responsibilities:
 - (a) Recommend to the entire commission changes to the rules or bylaws, to this compact legislation, to fees paid by compact member states such as annual dues and to any commission compact fee charged to licensees for the compact privilege.
 - (b) Ensure compact administration services are appropriately provided, contractual or otherwise.
 - (c) Prepare and recommend the budget.
 - (d) Maintain financial records on behalf of the commission.

(e) Monitor compact compliance of member states and provide compliance reports to the commission.

(f) Establish additional committees as necessary.

(g) Other duties as provided in rules or bylaws.

E. Meetings of the commission are as follows:

1. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in section 9 of this compact.

2. The commission or the executive board or other committees of the commission may convene in a closed, nonpublic meeting if the commission or executive board or other committees of the commission must discuss any of the following:

(a) Noncompliance of a member state with its obligations under the compact.

(b) The employment, compensation or discipline of or other matters, practices or procedures related to specific employees, or other matters related to the commission's internal personnel practices and procedures.

(c) Current, threatened or reasonably anticipated litigation.

(d) The negotiation of contracts for the purchase, lease or sale of goods, services or real estate.

(e) Accusing any person of a crime or formally censuring any person.

(f) The disclosure of trade secrets or commercial or financial information that is privileged or confidential.

(g) The disclosure of information of a personal nature for which disclosure would constitute a clearly unwarranted invasion of personal privacy.

(h) The disclosure of investigative records compiled for law enforcement purposes.

(i) The disclosure of information related to any investigative report prepared by or on behalf of or for use of the commission or other committee charged with the responsibility of investigating or determining compliance issues pursuant to this compact.

(j) Matters specifically exempt from disclosure by federal or member state statute.

3. If a meeting, or portion of a meeting, is closed pursuant to this section, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

4. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

F. Financing of the commission is as follows:

1. The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization and ongoing activities.
2. The commission may accept any and all appropriate revenue sources, donations and grants of money, equipment, supplies, materials and services.
3. The commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based on a formula to be determined by the commission, which shall adopt a rule that is binding on all member states.
4. The commission may not incur obligations of any kind before securing the monies adequate to meet those obligations, and the commission may not pledge the credit of any of the member states, except by and with the authority of the member state.
5. The commission shall keep accurate accounts of all of its receipts and disbursements, which are subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of monies handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

G. Qualified immunity, defense and indemnification provisions are as follows:

1. The members, officers, executive director, employees and representatives of the commission are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities. this paragraph does not protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional or wilful or wanton misconduct of that person.
2. The commission shall defend any member, officer, executive director, employee or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of commission

employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities. This paragraph does not prohibit that person from retaining the person's own counsel if the actual or alleged act, error or omission did not result from that person's intentional or wilful or wanton misconduct.

3. The commission shall indemnify and hold harmless any member, officer, executive director, employee or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities if the actual or alleged act, error or omission did not result from the intentional or wilful or wanton misconduct of that person.

Section 8

Data system

A. The commission shall provide for the development, maintenance and utilization of a coordinated database and reporting system containing licensure, adverse action and investigative information on all licensed individuals in member states.

B. Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom this compact applies as required by the rules of the commission, including all of the following:

1. Identifying information.

2. Licensure data.

3. Adverse actions against a license or compact privilege.

4. Nonconfidential information related to alternative program participation.

5. Any denial of an application for licensure and the reason or reasons for such denial.

6. Other information that may facilitate the administration of this compact, as determined by the rules of the commission.

C. Investigative information pertaining to a licensee in any member state will only be available to other party states.

D. The commission shall promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state will be available to any other member state.

E. Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

F. Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the data system.

Section 9

Rulemaking

A. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this section and the rules adopted under this section. Rules and amendments become binding as of the date specified in each rule or amendment.

B. If a majority of the legislatures of the member states reject a rule by enactment of a statute or resolution in the same manner used to adopt the compact within four years after the date of adoption of the rule, the rule has no further force and effect in any member state.

C. Rules or amendments to the rules shall be adopted at a regular or special meeting of the commission.

D. Before the adoption of a final rule or rules by the commission, and at least thirty days before the meeting at which the rule will be considered and voted on, the commission shall file a notice of proposed rulemaking on both:

1. The website of the commission or other publicly accessible platform.

2. The website of each member state's physical therapy licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.

E. The notice of proposed rulemaking shall include all of the following:

1. The proposed time, date and location of the meeting in which the rule will be considered and voted on.

2. The text of the proposed rule or amendment and the reason for the proposed rule.

3. A request for comments on the proposed rule from any interested person.

4. The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing, and any written comments.

F. Before the adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions and arguments, which shall be made available to the public.

G. The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by any of the following:

1. At least twenty-five persons.
2. A state or federal governmental subdivision or agency.
3. An association having at least twenty-five members.

H. If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time and date of the scheduled public hearing. If the hearing is held via electronic means, the commission shall publish the mechanism for access to the electronic hearing. Additionally:

1. All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing at least five business days before the scheduled date of the hearing.
2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.
3. All hearings will be recorded. A copy of the recording will be made available on request.
4. This section does not require a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.

I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

J. If no written notice of intent to attend the public hearing by interested parties is received, the commission may proceed with the adoption of the proposed rule without a public hearing.

K. The commission, by majority vote of all members, shall take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

L. On a determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, an opportunity for comment or a hearing if the usual rulemaking procedures provided in the compact and in this section are retroactively applied to the rule as soon as reasonably possible, but not later than ninety days after the effective date of the rule. For the purposes of this subsection, an emergency rule is one that must be adopted immediately in order to do any of the following:

1. Meet an imminent threat to public health, safety or welfare.
2. Prevent a loss of commission or member state funds.

3. Meet a deadline for the adoption of an administrative rule that is established by federal law or rule.

4. Protect the public health and safety.

M. The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency or grammatical errors. Public notice of any revisions shall be posted on the website of the commission. The revision is subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing and delivered to the chairperson of the commission before the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

Section 10

Oversight, dispute resolution and enforcement

A. Oversight of the commission is as follows:

1. The executive, legislative and judicial branches of state government in each member state shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules adopted under this compact have standing as statutory law.

2. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact that may affect the powers, responsibilities or actions of the commission.

3. The commission is entitled to receive service of process in any such proceeding and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission shall render a judgment or order void as to the commission, this compact or rules adopted under this compact.

B. Default, technical assistance and termination provisions are as follows:

1. If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or rules adopted under this compact, the commission shall do both of the following:

(a) Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default or any other action to be taken by the commission.

(b) Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state may be terminated from the compact on an affirmative vote of a majority of the member states, and all rights, privileges and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.
3. Termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor, the majority and minority leaders of the defaulting state's legislature and each of the member states.
4. A state that has been terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.
5. The commission may not bear any costs related to a state that is found to be in default or that has been terminated from the compact, unless agreed on in writing between the commission and the defaulting state.
6. The defaulting state may appeal the action of the commission by petitioning the United States district court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorney fees.

C. Dispute resolution provisions are as follows:

1. On request by a member state, the commission shall attempt to resolve disputes related to the compact that arise among member states and between member and nonmember states.
2. The commission shall adopt a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement provisions are as follows:

1. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.
2. By majority vote, the commission may initiate legal action in the United States district court for the District of Columbia or the federal district where the commission has its principal offices against a member state in default to enforce compliance with the provisions of the compact and its adopted rules and bylaws. The relief sought may include both injunctive relief and damages. If judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney fees.
3. The remedies in this compact are not the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

Section 11

Date of implementation of the interstate commission
for physical therapy practice and associated
rules, withdrawal and amendment

A. This compact is effective on the date on which the compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, shall be limited to the powers granted to the commission relating to assembly and the adoption of rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary to the implementation and administration of this compact.

B. Any state that joins the compact subsequent to the commission's initial adoption of the rules is subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the commission shall have the full force and effect of law on the day the compact becomes law in that state.

C. Any member state may withdraw from this compact by enacting a statute repealing the same:

1. A member state's withdrawal shall not take effect until six months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing state's physical therapy licensing board to comply with the investigative and adverse action reporting requirements of this act before the effective date of withdrawal.

D. This compact does not invalidate or prevent any physical therapy licensure agreement or other cooperative arrangement between a member state and a nonmember state that does not conflict with the provisions of this compact.

E. This compact may be amended by the member states. An amendment to this compact does not become effective and binding on any member state until it is enacted into the laws of all member states.

Section 12

Construction and severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or if the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact is held contrary to

the constitution of any party state, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

32-2054. Participation in compact as condition of employment; prohibition

An employer may not require a physical therapist to seek licensure through the physical therapy licensure compact enacted by section 32-2053 as a condition of initial or continued employment as a physical therapist in this state. An employer may require that a physical therapist obtain and maintain a license to practice physical therapy in multiple states, if the physical therapist is free to obtain and maintain the licenses by any means authorized by the laws of the respective states.

32-2055. Open meeting requirements

If a meeting, or a portion of a meeting, of the physical therapy compact commission is closed pursuant to section 32-2053, section 7, subsection E, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision consistent with title 38, chapter 3, article 3.1.

32-2056. Board of physical therapy; notice of commission actions; expenditure of certain monies prohibited

The board of physical therapy:

1. Within thirty days after a physical therapy compact commission action shall post on the board's public website notice of any commission action that may affect a physical therapist's license.
2. May not spend any monies received from physical therapists or applicants for licensure who are not applying for licensure through this compact on any activities, obligations or duties required by this compact.

DEPARTMENT OF GAMING (O19-1101)

Title 19, Chapter 2, Article 5, Pari-Mutuel Wagering



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - ONE-YEAR REVIEW REPORT

MEETING DATE: December 3, 2019

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

FROM: Council Staff

DATE: November 4, 2019

SUBJECT: DEPARTMENT OF GAMING - RACING COMMISSION (O19-1101)
Title 19, Chapter 2, Arizona Racing Commission, Article 5, Pari-Mutuel Wagering

This One Year Review Report (1YRR) from the Racing Commission (Commission) relates to rules in Title 19, Chapter 2, Article 5 regarding Pari-Mutuel Wagering. These rules were made pursuant to A.R.S § 41-1095, which granted the Commission a one-time exemption from the Administrative Procedure Act (APA) in Title 41, Chapter 6 of the Arizona Revised Statutes. The exemption from the APA is valid for one year from the effective date of the session law, which was September 28, 2018.

Pursuant to A.R.S § 41-1095, “[f]or an agency that the legislature has granted a one-time rulemaking exemption, within one year after a rule has been adopted the agency shall review the rule adopted under the rulemaking exemption to determine whether any rule adopted under the rulemaking exemption should be amended or repealed.”

Proposed Action

The Commission does not plan to take any action on these rules.

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

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

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

Legislation enacted in 2018 allowed the Commission to add a new wager for bettors that expanded the wagering options on horse racing in the state. Turf Paradise was the only horse track to institute the new wager. The objective of the rule was to increase the total pari-mutuel handle in this State. The handle increased nearly \$3 million from FY2018 to FY2019, with the new wager constituting approximately \$1.7 million of that amount.

Stakeholders include the Commission and horse racing bettors.

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

The Department states that the amended rule imposes a minimal burden and cost on those regulated by the rule. The Department estimates that the rule has little or no impact on small businesses or consumers.

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

No, the Department indicates it did not receive any written comments on these rules.

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, understandable, effective, and consistent with other rules and statutes.

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

Yes, the Commission indicates that the rules are enforced as written.

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

Not applicable. The Department states that there is no corresponding federal law.

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

Yes, the Department indicates it is in compliance with A.R.S. 41-1037.

9. Conclusion

As mentioned above, the Department is not planning to take any action on these rules. Council staff finds that the rules are mostly clear, concise, understandable, and effective. Council staff recommends approval of this report.



Arizona Department of Gaming

Racing



Governor Douglas A. Ducey

Director Ted Vogt
Racing Division Director Rudy Casillas

November 14, 2019

VIA EMAIL: grrc@azdoa.gov
Ms. Nicole Sornsin
Governor's Regulatory Review Council
100 North Fifteenth Avenue, Suite 402
Phoenix, Arizona 85007

Re: Revised One Year Review Report for Arizona Administrative Code (A.A.C.) Title 19, Chapter 2, Article 5

Dear Ms. Sornsin:

Pursuant to Arizona Revised Statutes (A.R.S.) § 41-1095, enclosed is the One-Year-Review Report on A.A.C. Title 19, Chapter 2, Article 5, as requested in your correspondence dated June 29, 2019.

Department staff reviewed all of the rules in A.A.C. Title 19, Chapter 2, Article 5, and does not intend for any of the Department's rules in these articles to expire under A.R.S. § 41-1056(J).

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

If you have any questions about this report, please contact:

Name: Rudy Casillas
Title: Deputy Director & Racing Division Director
Address: 1110 W. Washington St., Suite 450
Phoenix, AZ 85007.
Telephone: (602) 255-3838
Email: rcasillas@azgaming.gov

Please let me know if you require any other information. Thank you for your time and consideration.

Sincerely,

Ted Vogt
Director



Administrative Rules

A.A.C. Title 19 – Alcohol, Dog and Horse Racing, Lottery and Gaming

Chapter 2 – Arizona Racing Commission

Article 5 – Pari-Mutuel Wagering

One-Year-Review Report (Revised)

Submitted to the Governor's Regulatory Review Council

November 2019

Arizona Department of Gaming

One-Year-Review Report

19 A.A.C., Chapter 2, Article 5

11/07/2019 (Revised)

1. Authorization of the rule by existing statutes

First, Arizona Revised Statutes (“A.R.S.”) § 5-104 is the general authorizing statute that requires the Arizona Racing Commission to adopt rules to govern racing meetings in order to protect and promote the safety and welfare of animals participating in racing meetings and to protect and promote public health, safety and the proper conduct of racing and pari-mutuel wagering in the State. Second, A.R.S. § 5-111 outlines the requirements to conduct pari-mutuel wagering in the State, permitting the rules adopted through A.A.C. Title 19, Chapter 2, Article 5. Lastly, Laws 2018, Chapter 318, Section 10 granted the Department a one-year exemption from the rulemaking requirements of Title 41, Chapter 6 of A.R.S.

2. The objective of each rule:

Rule	Objective
R19-2-501	The rule requires permittees to conduct pari-mutuel wagering in accordance with applicable laws and rules and do so on a system that is approved by the Department. The rule was not amended by the one-year rulemaking exemption prescribed by Laws 2018, Chapter 318, Section 10.
R19-2-502	The rule requires the permittee to maintain all wagering records for the Departments review. The rule was not amended by the one-year rulemaking exemption prescribed by Laws 2018, Chapter 318, Section 10.
R19-2-503	The rule states that pari-mutuel tickets are evidence of a contribution to the pari-mutuel pool and evidence of the obligation of the permittee to pay the ticketholder a portion of the pool as determined by the valid ticket. Outlines requirements of a ticket to be deemed valid. The rule was not amended by the one-year rulemaking exemption prescribed by Laws 2018, Chapter 318, Section 10.
R19-2-504	The rule requires pari-mutuel tickets to be sold only by a permittee during specific times and at an authorized location. It also outlines the payment process for winning pari-mutuel wagers. The rule was not amended by the one-year rulemaking exemption prescribed by Laws 2018, Chapter 318, Section 10.
R19-2-505	The rule requires that no permittee shall allow wagering more than one day prior to the scheduled post time of the first contest unless authorization is obtained by the Department. The rule was not amended by the one-year rulemaking exemption prescribed by Laws 2018, Chapter 318, Section 10.
R19-2-506	The rule outlines requirements for permittees for cases where a permittee has withheld or refused to cash a pari-mutuel wager and stipulates claims be forwarded to the Department within 48 hours. The rule was not amended by the one-year rulemaking exemption prescribed by Laws 2018, Chapter 318, Section 10.
R19-2-507	The rule outlines the requirements, process and procedures if an error occurs in the payment amounts for pari-mutuel wagers, which are cashed or are entitled to be cashed as a result of such error. The rule was not amended by the one-year rulemaking exemption prescribed by Laws 2018, Chapter 318, Section 10.

R19-2-508	The rule requires an explanation summary of pari-mutuel wagering and each type of betting pool to be published in the program for every wagering performance. The rule was not amended by the one-year rulemaking exemption prescribed by Laws 2018, Chapter 318, Section 10.
R19-2-509	The rule requires approximate odds for win pool betting to be posted on display devices within view of the wagering public and update at intervals of not more than 90 seconds and probable payoff for other pools to be displayed as determined by the Department. The rule was not amended by the one-year rulemaking exemption prescribed by Laws 2018, Chapter 318, Section 10.
R19-2-510	The rule stipulates that cancelled contests or ones declared "no contest" shall be granted refunds on valid wagers. The rule was not amended by the one-year rulemaking exemption prescribed by Laws 2018, Chapter 318, Section 10.
R19-2-511	The rule outlines pools where refunds of the entire pool shall be made upon presentation and surrender of the affected pari-mutuel ticket. The rule was not amended by the one-year rulemaking exemption prescribed by Laws 2018, Chapter 318, Section 10.
R19-2-512	The rule outlines the process and procedures for contestants coupled in wagering as a coupled entry or a mutuel field and stipulates price calculations, refunds and distributions of pools. The rule was not amended by the one-year rulemaking exemption prescribed by Laws 2018, Chapter 318, Section 10.
R19-2-513	The rule authorizes that when pools are opened for wagering the types of bets that the permittee may allow or prohibit. The rule was not amended by the one-year rulemaking exemption prescribed by Laws 2018, Chapter 318, Section 10.
R19-2-514	The rule allows the permittee to apply to the Department to offer new forms of wagering or suspend any previously approved forms of wagering. The rule was not amended by the one-year rulemaking exemption prescribed by Laws 2018, Chapter 318, Section 10.
R19-2-515	The rule authorizes a Department representative to close wagering for each contest on a system maintained by the permittee and approved by the Department. The rule was not amended by the one-year rulemaking exemption prescribed by Laws 2018, Chapter 318, Section 10.
R19-2-516	The rule requires that the permittee issue complaint reports to the Department within 48 hours on all patron complaints regarding pari-mutuel wagering. The rule was not amended by the one-year rulemaking exemption prescribed by Laws 2018, Chapter 318, Section 10.
R19-2-517	The rule requires licensees to report any know irregularities or wrongdoings involving pari-mutuel wagering to the Department. The rule was not amended by the one-year rulemaking exemption prescribed by Laws 2018, Chapter 318, Section 10.
R19-2-518	The objective of this rule is to have State supervision monitoring all wagering at race meetings and wagering facilities, which requires the permittee to grant the Department unrestricted access to its facilities, equipment and records pertaining to pari-mutuel wagering. The rule was not amended by the one-year rulemaking exemption prescribed by Laws 2018, Chapter 318, Section 10.
R19-2-519	The rule objective is for the permittee to provide a mutuel manager who is responsible for the accuracy of all payoff prices posted and in the event of an error or a problem make reports to the Department. The rule was not amended by the one-year rulemaking exemption prescribed by Laws 2018, Chapter 318, Section 10.

R19-2-520	Allows a racetrack permittee to offer pari-mutuel cash vouchers at wagering locations as incentives or promotional prizes. Further, a permittee shall not, without approval from the Department, use any form or stored value instrument other than pari-mutuel cash vouchers. The rule outlines requirements and procedures for stored value instruments. The rule was not amended by the one-year rulemaking exemption prescribed by Laws 2018, Chapter 318, Section 10.
R19-2-521	This section was repealed by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014.
R19-2-522	This section was repealed by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014.
R19-2-523	This rule outlines in detail the price calculation procedure and distributions of pools for all pari-mutuel wagering pools and requires that pools shall be separately and independently calculated and distributed. This includes the newly adopted wager rule found in A.A.C. R19-2-523(G), which resulted from the one-year rulemaking exemption pursuant to Laws 2018, Chapter 318, Section 10. The objective of the newly adopted rule, which introduced a new “jackpot” style of wagering to the horse racing industry, was to increase pari-mutuel wagering handles in the State. This objective was clearly met, as the total handle increased from \$148,873,491 in Fiscal Year (“FY”) 2018 to \$151,681,345 in FY2019.

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

The rules in A.A.C. Title 19, Chapter 2, Article 5 are effective in meeting their objectives.

4. Are the rules consistent with other rules and statutes? Yes No

The rules in A.A.C. Title 19, Chapter 2, Article 5 are consistent with statutes and other rules made by the agency and current agency enforcement policy.

5. Are the rules enforced as written? Yes No

The rules in A.A.C. Title 19, Chapter 2, Article 5 are enforced as written.

6. Are the rules clear, concise, and understandable? Yes No

The rules in A.A.C. Title 19, Chapter 2, Article 5 are clear, concise, and understandable.

7. Has the agency received written criticisms of the rules since the rules were adopted? Yes No

The Department has not received any business competitiveness analysis of the rules.

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

Legislation enacted in 2018 allowed the Department to add a unique pari-mutuel wager as option for bettors in this State. This new wager, known as “Pick (n) Pools,” resulted in an increase in economic activity, as bettors now have expanded wagering options on horse racing in this State. Turf Paradise (the

only horse track to institute the wager) had a total of \$1,773,153 bet on this new wager during the 2019-2020 racing season. It is estimated that the rule has had no impact on small businesses or consumers.

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

The Department has not received any business competitiveness analysis of the rules.

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Not applicable, as this rule review is in response to a one-time rulemaking exemption.

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 objective of this rule is to increase the total pari-mutuel handle in this State, which has gone up nearly 3 million dollars from FY2018 to FY2019, with approximately \$1.7 million dollars bet on the new wager created by the rule. This change also has little burden or cost to regulated persons by the rule. Currently, a permittee's Mutuel Manager is required to submit a recapitulation sheet summarizing wagering taking place at the track each day. Included in this are the amount of monies wagered on each individual bet, which now includes information on the bet created by this rule.

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

15 U.S.C. § 57 indicates that the states should have the primary responsibility for determining what forms of gambling may take place within their borders, and the federal government should prevent interference by one state with the gambling policies of another. Additionally, there is no corresponding federal law directly related to these rules.

Furthermore, this rule has been adopted in several other states with pari-mutuel horse racing and is growing in popularity across the country. This is due to a consistent growth of pari-mutuel handles in the adopting states.

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:

While A.A.C. Title 19, Chapter 2, Article 5 does require certain pari-mutuel licenses that are needed to ensure the integrity if the pari-mutuel horse racing industry in Arizona, The amended rule does not require additional regulatory permits, licenses, or agency authorization and are in compliance with the general permit requirements of A.R.S. § 41-1037.

14. Proposed course of action

After review of the rules in Title 19, Chapter 2, Article 5, the Department proposes that no course of action be taken and this article does not expire under A.R.S. § 41-1056(J).

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ARTICLE 4. ADVANCE DEPOSIT WAGERING, TELETRACKING, AND SIMULCASTING

Article 4, consisting of Sections R19-2-401 through R19-2-410, adopted effective February 26, 1996, under an exemption from the rulemaking process pursuant to A.R.S. § 41-105(A)(18) (Supp. 96-1).

Article 4, consisting of Sections R4-27-401 through R4-27-410, repealed effective December 14, 1994 (Supp. 94-4).

Article 4, consisting of Sections R4-27-401 through R4-27-410, adopted effective April 3, 1984 (Supp. 84-2). R19-2-401 through R19-2-410 recodified from R4-27-401 through R4-27-410 (Supp. 95-1).

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ARTICLE 5. PARI-MUTUEL WAGERING

Article 5, consisting of Sections R4-27-501 through R4-27-523, adopted effective October 21, 1993, under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption

from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules. Because this Chapter contains rules which are exempt from the regular rulemaking process, the Chapter is being printed on blue paper. R-19-2-501 through R19-2-523 recodified from R4-27-501 through R4-27-523 (Supp. 95-1).

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Article 6, consisting of Sections R19-2-601 through R19-2-610, recodified from Sections R4-3-415 through R4-3-424 at 5 A.R. 1175, April 23, 1999 (Supp. 99-2).

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ified from R4-27-501 (Supp. 95-1).

The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.

R19-2-502. Records

- A. The permittee shall maintain records of all wagering for one year from the end of the racing meet or end of the racetrack's fiscal year, the same term for which outs tickets are valid, so the Department may review the records for any contest. Wagering records maintained shall include the opening line, subsequent odds fluctuation, the amount and at which window wagers were placed on any betting, interest, and other information as may be required. The wagering records shall be retained by each permittee and safeguarded for the period specified by the Department. The Department may require that certain records be made available to the wagering public at the completion of each contest.
- B. The permittee shall provide the Department with a list of the licensed individuals afforded access to pari-mutuel records and equipment at the wagering facility.

Historical Note

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-502 recodified from R4-27-502 (Supp. 95-1). Section amended by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.

R19-2-503. Pari-mutuel Tickets

A pari-mutuel ticket is evidence of a contribution to the pari-mutuel pool operated by the permittee and is evidence of the obligation of the permittee to pay to the holder thereof such portion of the distributable amount of the pari-mutuel pool as is represented by such valid pari-mutuel ticket. The permittee shall cash all valid winning tickets when such are presented for payment during the course of the meeting where sold, and for a one-year period after the last day of the meeting. Each pari-mutuel ticket purchaser agrees to abide by the terms and provisions of these rules, other applicable rules of the Arizona Racing Commission, and by the laws of the state of Arizona.

1. To be deemed a valid pari-mutuel ticket, such ticket shall have been issued by a pari-mutuel ticket machine operated by the permittee and recorded as a ticket entitled to a share of the pari-mutuel pool and contain imprinted information as to:
 - a. The name of the permittee operating the meeting,
 - b. A unique identifying number or code,

- c. Identification of the terminal at which the ticket was issued,
 - d. A designation of the performance for which the wagering transaction was issued,
 - e. The contest number for which the pool is conducted,
 - f. The type or types of wagers represented,
 - g. The number or numbers representing the betting interests for which the wager is recorded,
 - h. The amount or amounts of the contributions to the pari-mutuel pool or pools for which the ticket is evidence.
2. No pari-mutuel ticket recorded or reported as previously paid, cancelled, or nonexistent shall be deemed a valid pari-mutuel ticket by the permittee. The permittee may withhold payment and refuse to cash any pari-mutuel ticket deemed not valid, except as provided in R19-2-504(E) of these rules.

Historical Note

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-503 recodified from R4-27-503 (Supp. 95-1).

The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.

R19-2-504. Pari-mutuel Ticket Sales

- A. Pari-mutuel tickets shall be sold only by a permittee licensed to conduct pari-mutuel wagering or a racetrack permittee-contracted ADWP. All tickets shall be sold as prescribed under A.R.S. §§ 5-111 and 5-112.
- B. A pari-mutuel ticket may not be sold on a contest for which wagering has been closed and a permittee shall not be responsible for sales entered into but not completed by issuance of a ticket before the totalisator is closed for wagering on the contest.
- C. Claims pertaining to a mistake on an issued or unissued ticket must be made by the bettor before leaving the seller's window. Cancellation or exchange of tickets issued shall not be permitted after a patron has left a seller's window except in accordance with written policies established by the racetrack permittee and approved by the Department. An ADWP shall abide by the most restrictive policy established by any of the racetrack permittees with which the ADWP contracts.
- D. Payment on winning pari-mutuel wagers shall be made on the basis of the order of finish as purposely posted and declared "official." Any change in the order of finish or award of purse money that results from a subsequent ruling by the stewards or Department shall in no way affect the pari-mutuel payoff. If an error in the posted order of finish or payoff figures is discovered, the official order of finish or payoff prices may be corrected and an announcement concerning the change shall be made to the public.
- E. A racetrack permittee shall not satisfy claims on lost, mutilated, or altered pari-mutuel tickets without authorization of the Department.
- F. A racetrack permittee has no obligation to enter a wager into a betting pool if unable to do so due to equipment failure.

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- G. Pari-mutuel tickets shall neither be sold to nor purchased by anyone less than 21 years old.

Historical Note

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-504 recodified from R4-27-504 (Supp. 95-1). Section amended by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.

R19-2-505. Advance Performance Wagering

No permittee shall permit wagering to begin more than one day before scheduled post time of the first contest of a performance unless it has first obtained the authorization of the Department.

Historical Note

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-505 recodified from R4-27-505 (Supp. 95-1).

The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.

R19-2-506. Claims for Payment from Pari-mutuel Pool

At a designated location, a written, verified claim for payment from a pari-mutuel pool shall be accepted by the permittee in any case where the permittee has withheld payment or has refused to cash a pari-mutuel wager. The claim shall be made on such form as approved by the Department, and the claimant shall make such claim under penalty of perjury. The original of such claim shall be forwarded to the Department within 48 hours.

1. In the case of a claim made for payment of a mutilated pari-mutuel ticket which does not contain the total imprinted elements required pursuant to R19-2-503(1) of these rules, the permittee shall make a recommendation to accompany the claim forwarded to the Department as to whether or not the mutilated ticket has sufficient elements to be positively identified as a winning ticket.
2. In the case of a claim made for payment on a pari-mutuel wager, the Department shall adjudicate the claim and may order payment thereon from the pari-mutuel pool or by the permittee, or may deny the claim, or may make such other order as it may deem proper.

Historical Note

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-506 recodified from R4-27-506 (Supp. 95-1).

The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.

R19-2-507. Payment for Errors

If an error occurs in the payment amounts for pari-mutuel wagers which are cashed or entitled to be cashed and, as a result of such error, the pari-mutuel pool involved in the error is not correctly distributed among winning ticket holders, the following shall apply:

1. Verification is required to show that the amount of the commission, the amount in breakage, and the amount in payoffs is equal to the total gross pool. If the amount of the pool is more than the amount used to calculate the payoff, the underpayment shall be paid to the Department for deposit into the State Treasury.
2. Any claim not filed with the permittee within 30 days, inclusive of the date on which the underpayment was publicly announced, shall be deemed waived, and the permittee shall have no further liability therefore.
3. In the event the error results in an overpayment to winning wagers, the permittee shall be responsible for such payment.

Historical Note

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-507 recodified from R4-27-507 (Supp. 95-1).

The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.

R19-2-508. Betting Explanation

A racetrack permittee shall ensure that a summary explanation of pari-mutuel wagering and each type of betting pool offered is published in the racing program for every wagering performance. The racetrack permittee shall make the rules of racing relative to each type of pari-mutuel pool offered available upon request through permittee representatives at all permittee wagering locations and shall post a link to the Department's rules page on all permittee web sites.

Historical Note

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-508 recodified from R4-27-508 (Supp. 95-1). Section amended by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing

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Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.

R19-2-509. Display of Betting Information

- A. A racetrack permittee shall ensure that odds or will-pay amounts for win pool betting are posted on display devices within view of the wagering public and updated at intervals of not more than 90 seconds.
- B. The racetrack permittee shall ensure that amounts wagered in total for the other pools and on each betting interest or wager combination are displayed to the wagering public at intervals and in a manner approved by the Department.
- C. Official results and payoffs shall be displayed when a contest is declared official.

Historical Note

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-509 recodified from R4-27-509 (Supp. 95-1). Section amended by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.

R19-2-510. Cancelled Contests

If a contest is cancelled or declared "no contest," refunds shall be granted on valid wagers in accordance with this Chapter.

Historical Note

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-510 recodified from R4-27-510 (Supp. 95-1). Section amended by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.

R19-2-511. Refunds

- A. Notwithstanding other provisions of these rules, refunds of the entire pool shall be made on:
 - 1. Win pools, Exacta pools, and first-half Double pools offered in contests in which the number of betting interests has been reduced to fewer than 2.
 - 2. Place pools, Quinella pools, Trifecta pools, first-half Quinella Double pools, first-half Twin Quinella pools,

first-half Twin Trifecta pools, and first-half Tri-Superfecta pools offered in contests in which the number of betting interests has been reduced to fewer than 3.

- 3. Show pools, Superfecta pools, and first-half Twin Superfecta pools offered in contests in which the number of betting interests has been reduced to fewer than 4.
- B. Authorized refunds shall be paid upon presentation and surrender of the affected pari-mutuel ticket.

Historical Note

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-511 recodified from R4-27-511 (Supp. 95-1).

The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.

R19-2-512. Coupled Entries and Mutuel Fields

- A. Contestants coupled in wagering as a coupled entry or mutuel field shall be considered part of a single betting interest for the purpose of price calculations and distribution of pools. Should any contestant in a coupled entry or mutuel field be officially withdrawn or scratched, the remaining contestants in that coupled entry or mutuel field shall remain valid betting interests and no refunds will be granted. If all contestants within a coupled entry or mutuel field are scratched, then tickets on such betting interests shall be refunded, notwithstanding other provisions of these rules.
- B. For the purpose of price calculations only, coupled entries and mutuel fields shall be calculated as a single finisher, using the finishing position of the leading contestant in that coupled entry or mutuel field to determine order of placing. This rule shall apply to all circumstances, including situations involving a dead heat, except as otherwise provided by these rules.

Historical Note

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-512 recodified from R4-27-512 (Supp. 95-1).

The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.

R19-2-513. Pools Dependent upon Betting Interests

- A. Unless the Department otherwise provides, at the time the pools are opened for wagering, the racetrack permittee:
 - 1. Shall offer Win wagering on all contests with three or more betting interests and may offer Win wagering on all contests with two or more betting interests.

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2. Shall offer Place wagering on all contests with four or more betting interests and may offer Place wagering on all contests with three or more wagering interests.
 3. Shall offer Show wagering on all contests with five or more betting interests and may offer Show wagering on all contests with four or more betting interests.
 4. May offer Quinella wagering on all contests with three or more betting interests.
 5. May offer Quinella Double wagering on all contests with three or more betting interests.
 6. May offer Exacta wagering on all contests with two or more betting interests.
 7. May offer Trifecta wagering on all contests with three or more betting interests.
 8. May offer Superfecta wagering on all contests with four or more betting interests.
 9. May offer Twin Quinella wagering on all contests with three or more betting interests.
 10. Shall not offer first- or second-leg Twin-Trifecta or Tri-Superfecta wagering on any contests with six or fewer betting interests in either leg of the wager.
 11. May offer Pick-N wagering on any consecutive contests that allow Win wagering.
 12. May offer Place Pick-N wagering on any consecutive contests that allow Place wagering.
 13. May prohibit wagering on any particular contestant in stakes races, if the exclusions are clearly indicated in the racing program.
- B.** Before each racing meet, the racetrack permittee shall establish and submit to the Department the pools to be offered with each number of betting interests.

Historical Note

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-513 recodified from R4-27-513 (Supp. 95-1). Amended effective July 3, 1996 (Supp. 96-3). Amended by exempt rulemaking at 6 A.A.R. 786, effective February 1, 2000 (Supp. 00-1). Section amended by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.

R19-2-514. Prior Approval Required for Betting Pools

- A.** A permittee that desires to offer new forms of wagering must apply in writing to the Department and receive written approval prior to implementing the new betting pool.
- B.** The permittee may suspend previously approved forms of wagering with the prior approval of the Department. Any carryover shall be held until the suspended form of wagering is reinstated. A permittee may request approval of a form of wagering or separate wagering pool for specific performances.

Historical Note

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-514 recodified from R4-27-514 (Supp. 95-1).

The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.

R19-2-515. Closing of Wagering in a Contest

- A.** A Department representative shall close wagering for each contest. After wagering is closed, no pari-mutuel tickets shall be sold for that contest.
- B.** The racetrack permittee shall maintain, in good order, a system approved by the Department for closing wagering.
1. If the totalisator fails mechanically and becomes unreliable as to the amounts wagered, all money wagered on the contest shall be refunded.
 2. If a breakdown of the totalisator cannot be repaired during wagering on a contest, the wagering for that contest shall be declared closed. The payoff for a race closed because of totalisator breakdown shall be computed on the sums wagered in each pool before the breakdown.

Historical Note

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-515 recodified from R4-27-515 (Supp. 95-1). Section amended by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.

R19-2-516. Complaints Pertaining to Pari-mutuel Operations

- A.** When a patron makes a complaint regarding the pari-mutuel department to a permittee, the permittee shall immediately issue a complaint report setting out:
1. The name of the complainant;
 2. The nature of the complaint;
 3. The name of the persons, if any, against whom the complaint was made;
 4. The date of the complaint;
 5. The action taken or proposed to be taken, if any, by the permittee.
- B.** The permittee shall submit every complaint report to the Department within 48 hours after the complaint was made.

Historical Note

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-516 recodified from R4-27-516 (Supp. 95-1).

The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption

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from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.

R19-2-517. Licensed Employees

All licensees shall report any known irregularities or wrongdoings by any person involving pari-mutuel wagering immediately to the Department and cooperate in subsequent investigations.

Historical Note

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-517 recodified from R4-27-517 (Supp. 95-1).

The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.

R19-2-518. State Mutual Supervisor

- A. The Director shall appoint a state mutual supervisor who shall monitor the pari-mutuel department and wagering at all race meetings and additional wagering facilities.
- B. A permittee shall grant the state mutual supervisor and Department unrestricted access to its facilities and equipment and to all books, ledgers, accounts, documents, and records pertaining to pari-mutuel wagering.
- C. The state mutual supervisor shall receive all requested information from a permittee's officers and employees promptly and shall receive full cooperation while carrying out the duties of that office.
- D. The state mutual supervisor shall report to the Director and stewards any failure of the permittee, including its officers and employees, to comply with both the provisions of these rules and the laws of the state of Arizona.

Historical Note

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-518 recodified from R4-27-518 (Supp. 95-1).

The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.

R19-2-519. Mutuel Manager

- A. In the event of an emergency in connection with the pari-mutuel department not covered in these rules, the mutuel manager representing the permittee shall report the problem to the

stewards and the permittee, and the stewards shall render a full report to the Department within 48 hours.

- B. The mutuel manager shall be responsible for the correctness of all payoff prices posted on the odds board, subject to the limitations of nonfraudulent human and mechanical errors. In the event that a payoff is both incorrectly posted and paid, the mutuel manager shall file with the Department a complete report explaining the circumstances prior to the next racing day.
- C. The mutuel manager shall provide the Department with, upon request, complete and detailed reports of each race day; including the handle of each race, the total handle and attendance, the payoffs on each race, breakage and commission, opening and closing lines, and sellers' shortages and overages.

Historical Note

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-519 recodified from R4-27-519 (Supp. 95-1).

The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.

R19-2-520. Stored Value Instruments

- A. Pari-mutuel cash vouchers. A racetrack permittee may offer pari-mutuel cash vouchers at a wagering location that issues pari-mutuel tickets.
 - 1. Cash vouchers shall be dispensed through the totalisator system;
 - 2. The stored value on a cash voucher may be redeemed in the same manner as a value of a winning pari-mutuel ticket for wagers placed at a pari-mutuel window or a self-service terminal, and may be redeemed for the cash value at any time;
 - 3. The tote system transaction record for all pari-mutuel cash vouchers shall include the voucher identification number in subsequent pari-mutuel transactions; and
 - 4. Pari-mutuel wagers made from a voucher shall include the voucher by identification number.
- B. A racetrack permittee may, with prior approval of the Department, issue special pari-mutuel cash vouchers as incentives or promotional prizes, and may restrict the use of the special vouchers to the purchase of pari-mutuel wagers.
- C. Other stored value instruments and systems. A racetrack permittee shall not, without the prior approval of the Department, use any form of stored value instrument or system other than a pari-mutuel cash voucher for making or cashing pari-mutuel wagers. A request for approval of a stored value instrument or system other than a pari-mutuel cash voucher shall include a detailed description of the standards used to:
 - 1. Identify the specific stored value instrument or account in the pari-mutuel system wagering transaction record;
 - 2. Verify the identity and business address of the person obtaining, holding, and using the stored value instrument or system; and
 - 3. Record and maintain records of deposits, credits, debits, transaction numbers, and account balances involving the stored value instruments or accounts.
- D. A stored value instrument or system:

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1. Shall prevent a wagering transaction if the wagering transaction will create a negative balance in the account, and
 2. Shall not operate to automatically facilitate a transfer of funds into a stored value instrument or account without direct authorization of each deposit transfer by the person holding the instrument or account.
- E.** A request for approval of a stored value instrument or system shall include:
1. An affirmation that records and reports relating to all transactions, account records, and customer identification and verification will be made available on request to the Department in both paper or and electronic form approved by the Department; and
 2. Certification of secure retention of all records for the time specified in R19-2-502.

Historical Note

Section reserved. New Section made by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

R19-2-521. Repealed**Historical Note**

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-521 recodified from R4-27-521 (Supp. 95-1). Amended effective February 17, 1998, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 98-1). Amended effective July 22, 1998, pursuant to an exemption under the Administrative Procedure Act. (Supp. 98-3). Amended by exempt rulemaking at 5 A.A.R. 532, effective January 29, 1999 (Supp. 99-1). Amended by exempt rulemaking at 5 A.A.R. 2176, effective June 15, 1999 (Supp. 99-2). Section repealed by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

R19-2-522. Repealed**Historical Note**

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). R19-2-522 recodified from R4-27-522 (Supp. 95-1). Amended effective February 17, 1998, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 98-1). Amended by exempt rulemaking at 5 A.A.R. 532, effective January 29, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 20 A.A.R. 2874, effective October 10, 2014 (Supp. 14-4).

The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(A)(18). Exemption from A.R.S. Title 41, Chapter 6 means that the Arizona Racing Commission did not submit these rules to the Governor's Regulatory Review Council for Review; the Commission did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.

R19-2-523. Calculation of Payoffs and Distribution of Pools**A. General**

1. All permitted pari-mutuel wagering pools shall be separately and independently calculated and distributed. Take-

out shall be deducted from each gross pool as stipulated by law. The remainder of the monies in the pool shall constitute the net pool for distribution as payoff on winning wagers.

2. For each wagering pool, the amount wagered on the winning betting interest or betting combinations is deducted from the net pool to determine the profit; the profit is then divided by the amount wagered on the winning betting interest or combinations, such quotient being the profit per dollar.
3. Either the standard or net price calculation procedure may be used to calculate single commission pools, while the net price calculation procedure must be used to calculate multi-commission pools.

a. Standard Price Calculation Procedure**SINGLE PRICE POOL (WIN POOL)**

gross pool	=	sum of wagers on all betting interests - refunds
takeout	=	gross pool x percent takeout
net pool	=	gross pool - takeout
profit	=	net pool - gross amount bet on winner
profit per dollar	=	profit / gross amount bet on winner
\$1 unbroken price	=	profit per dollar + \$1
\$1 broken price	=	\$1 unbroken price rounded down to the break point
total payout	=	\$1 broken price x gross amount bet on winner
total breakage	=	net pool - total payout

PROFIT SPLIT (PLACE POOL)

Profit is net pool less gross amount bet on all place finishers. Finishers split profit 1/2 and 1/2 (place profit), then divide by gross amount bet on each place finisher for two unique prices.

PROFIT SPLIT (SHOW POOL)

Profit is net pool less gross amount bet on all show finishers. Finishers split profit 1/3 and 1/3 and 1/3 (show profit), then divide by gross amount bet on each show finisher for three unique prices.

b. Net Price Calculation Procedure**SINGLE PRICE POOL (WIN POOL)**

gross pool	=	sum of wagers on all betting interests - refunds
takeout	=	gross pool x percent takeout
* for each source:		
net pool	=	gross pool - takeout
net bet on winner	=	gross amount bet on winner x (1 - percent takeout)
total net pool	=	sum of all sources net pools
total net bet on winner	=	sum of all sources net bet on winner
total profit	=	total net pool - total net bet on winner
profit per dollar	=	total profit / total net bet on winner

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\$1 unbroken base price	=	profit per dollar + \$1
* for each source:		
\$1 unbroken price	=	\$1 unbroken base price x (1 - percent takeout)
\$1 broken price	=	\$1 unbroken price rounded down to the break point
total payout	=	\$1 broken price x gross amount bet on winner
total breakage	=	net pool - total payout

PROFIT SPLIT (PLACE POOL)

Total profit is the total net pool less the total net amount bet on all place finishers. Finishers split total profit 1/2 and 1/2 (place profit), then divide by total net amount bet on each place finisher for two unique unbroken base prices.

PROFIT SPLIT (SHOW POOL)

Total profit is the total net pool less the total net amount bet on all show finishers. Finishers split total profit 1/3 and 1/3 and 1/3 (show profit), then divide by total net amount bet on each show finisher for three unique unbroken base prices.

- If a profit split results in only one covered winning betting interest or combinations, it shall be calculated the same as a single price pool.

- Minimum payoffs and the method used for calculating breakage shall be established by the Department.
- The individual pools outlined in these rules may be given alternative names by each permittee, provided prior approval is obtained from the Department.

B. Win Pools

- The amount wagered on the betting interest which finishes first is deducted from the net pool, the balance remaining being the profit; the profit is divided by the amount wagered on the betting interest finishing first, such quotient being the profit per dollar wagered to Win on that betting interest.
- The net Win pool shall be distributed as a single price pool to winning wagers in the following precedence, based upon the official order of finish:
 - To those whose selection finished first; but if there are no such wagers, then
 - To those whose selection finished second; but if there are no such wagers, then
 - To those whose selection finished third; but if there are no such wagers, then
 - The entire pool shall be refunded on Win wagers for that contest.
- If there is a dead heat for first involving:
 - Contestants representing the same betting interest, the Win pool shall be distributed as if no dead heat occurred.
 - Contestants representing two or more betting interests, the Win pool shall be distributed as a profit split.

Table 1. Win Pool - Standard Price CalculationTable 1: WIN POOL
(Standard Price Calculation)

Sum of Wagers on All Betting Interests=\$194,230.00
Refunds = \$1,317.00
Gross Pool:
Sum of Wagers on All Betting Interests - Refunds=\$192,913.00
Percent Takeout= 18%
Takeout:
Gross Pool x Percent Takeout=\$34,724.34
Net Pool:
Gross Pool - Takeout=\$158,188.66
Gross Amount Bet on Winner=\$23,872.00
Profit:
Net Pool - Gross Amount Bet on Winner=\$134,316.66
Profit Per Dollar:
Profit / Gross Amount Bet on Winner=\$5.6265357
\$1 Unbroken Price:
Profit Per Dollar + \$1=\$6.6265357

C. Place Pools

- The amounts wagered to Place on the first two betting interests to finish are deducted from the net pool, the balance remaining being the profit; the profit is divided into two equal portions, one being assigned to each winning betting interest and divided by the amount wagered to Place on that betting interest, the resulting quotient is the profit per dollar wagered to Place on that betting interest.
- The net Place pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:

- If contestants of a coupled entry or mutuel field finished in the first two places, as a single price pool to those who selected the coupled entry or mutuel field; otherwise
- As a profit split to those whose selection is included within the first two finishers; but if there are no such wagers on one of those two finishers, then
- As a single price pool to those who selected the one covered betting interest included within the first two finishers; but if there are no such wagers, then

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- d. As a single price pool to those who selected the third-place finisher, but if there are no such wagers, then
- e. The entire pool shall be refunded on Place wagers for that contest.
- 3. If there is a dead heat for first involving:
 - a. Contestants representing the same betting interest, the Place pool shall be distributed as a single price pool.
 - b. Contestants representing two or more betting interests, the Place pool shall be distributed as a profit split.
- 4. If there is a dead heat for second involving:
 - a. Contestants representing the same betting interest, the Place pool shall be distributed as if no dead heat occurred.
 - b. Contestants representing two or more betting interests, the Place pool is divided with half of the profit distributed to Place wagers on the betting interest finishing first and the remainder is distributed equally amongst Place wagers on those betting interests involved in the dead heat for second.

Table 2. Place Pool - Standard Price Calculation

Table 2: PLACE POOL

(Standard Price Calculation)

Sum of Wagers on All Betting Interests=\$194,230.00

Refunds = \$1,317.00

Gross Pool:

Sum of Wagers on All Betting Interests - Refunds=\$192,913.00

Percent Takeout= 18%

Takeout

Gross Pool x Percent Takeout=\$34,724.34

Net Pool:

Gross Pool - Takeout=\$158,188.66

Gross Amount Bet on first place finisher=\$23,872.00

Gross amount Bet on second place finisher=\$12,500.00

Profit:

Net Pool- Gross Amount Bet on first place finisher

- Gross Amount Bet on second place finisher=\$121,816.66

Place Profit:

Profit / 2 = \$60,908.33

Profit Per Dollar for first place:

Place Profit / Gross Amount Bet on first place finisher=\$2.5514548

\$1 Unbroken Price for first place:

Profit Per Dollar for first place + \$1=\$3.5514548

Profit Per Dollar for second place:

Place Profit / Gross Amount Bet on second place finisher=\$4.8726664

\$1 Unbroken Price for second place:

Profit Per Dollar for second place + \$1=\$5.8726664

D. Show Pools

1. The amounts wagered to Show on the first three betting interests to finish are deducted from the net pool, the balance remaining being the profit; the profit is divided into three equal portions, one being assigned to each winning betting interest and divided by the amount wagered to Show on that betting interest, the resulting quotient being the profit per dollar wagered to Show on that betting interest.
2. The net Show pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:
 - a. If contestants of a coupled entry or mutuel field finished in the first three places, as a single price pool to those who selected the coupled entry or mutuel field; otherwise
 - b. If contestants of a coupled entry or mutuel field finished as two of the first three finishers, the profit is divided with two-thirds distributed to those who

selected the coupled entry or mutuel field and one-third distributed to those who selected the other betting interest included within the first three finishers; otherwise

- c. As a profit split to those whose selection is included within the first three finishers; but if there are no such wagers on one of those three finishers, then
- d. As a profit split to those who selected one of the two covered betting interests included within the first three finishers; but if there are no such wagers on two of those three finishers, then
- e. As a single price pool to those who selected the one covered betting interest included within the first three finishers; but if there are no such wagers, then
- f. As a single price pool to those who selected the fourth-place finisher; but if there are no such wagers, then
- g. The entire pool shall be refunded on Show wagers for that contest.

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3. If there is a dead heat for first involving:
 - a. Two contestants representing the same betting interest, the profit is divided with 2/3rds distributed to those who selected the first-place finishers and one-third distributed to those who selected the betting interest finishing third.
 - b. Three contestants representing a single betting interest, the Show pool shall be distributed as a single price pool.
 - c. Contestants representing two or more betting interests, the Show pool shall be distributed as a profit split.
4. If there is a dead heat for second involving:
 - a. Contestants representing the same betting interest, the profit is divided with one-third distributed to those who selected the betting interest finishing first and two-thirds distributed to those who selected the second-place finishers.
5. If there is a dead heat for third involving:
 - a. Contestants representing the same betting interest, the Show pool shall be distributed as if no dead heat occurred.
 - b. Contestants representing two or more betting interests, the Show pool is divided with 2/3rds of the profit distributed to Show wagers on the betting interests finishing first and second and the remainder is distributed equally among Show wagers on those betting interests involved in the dead heat for third.

Table 3. Show Pool - Standard Price Calculation

Table 3: SHOW POOL
(Standard Price Calculation)

Sum of Wagers on All Betting Interests=\$194,230.00
 Refunds = \$1,317.00
 Gross Pool:
 Sum of Wagers on All Betting Interests - Refunds=\$192,913.00
 Percent Takeout= 18%
 Takeout
 Gross Pool x Percent Takeout=\$34,724.34
 Net Pool:
 Gross Pool - Takeout=\$158,188.66
 Gross Amount Bet on first place finisher=\$23,872.00
 Gross Amount Bet on second place finisher=\$12,500.00
 Gross Amount Bet on third place finisher=\$4,408.00
 Profit: Net Pool
 - Gross Amount Bet on first place finisher
 - Gross Amount Bet on second place finisher
 - Gross Amount Bet on third place finisher=\$117,408.66
 Show Profit:
 Profit / 3 = \$39,136.22
 Profit Per Dollar for first place:
 Show Profit / Gross Amount Bet on first place finisher=\$1.6394194
 \$1 Unbroken Price for first place:
 Profit Per Dollar for first place + \$1=\$2.6394194
 Profit Per Dollar for second place:
 Show Profit / Gross Amount Bet on second place finisher=\$3.1308976
 \$1 Unbroken Price for second place
 Profit Per Dollar for second place + \$1=\$4.1308976
 Profit Per Dollar for third place:
 Show Profit / Gross Amount Bet on third place finisher=\$8.8784528
 \$1 Unbroken Price for third place
 Profit Per Dollar for third place + \$1=\$9.8784528

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Table 4. Show Pool - Single Takeout Rate & Single Betting Source

Table 4: SHOW POOL

Single Takeout Rate & Single Betting Source

(Net Price Calculation)

Sum of Wagers on All Betting Interests=\$194,230.00

Refunds = \$1,317.00

Gross Pool:

Sum of Wagers on All Betting Interests - Refunds=\$192,913.00

Percent Takeout= 18%

Takeout:

Gross Pool x Percent Takeout=\$34,724.34

Total Net Pool:

Gross Pool - Takeout=\$158,188.66

Gross Amount Bet on first place finisher=\$23,872.00

Net Amount Bet on first place finisher=\$19,575.04

Gross Amount Bet on second place finisher=\$12,500.00

Net Amount bet on second place finisher=\$10,250.00

Gross Amount Bet on third place finisher=\$4,408.00

Net Amount Bet on third place finisher=\$3,614.56

Total Net Bet on Winners:

Net Amount Bet on first place finisher +

Net Amount Bet on second place finisher +

Net Amount Bet on third place finisher=\$33,439.60

Total Profit:

Total Net Pool - Total Net Bet on Winners=\$124,749.06

Show Profit:

Total Profit / 3=\$41,583.02

Profit Per Dollar for first place:

Show Profit / Net Amount Bet on first place finisher=\$2.1242879

\$1 Unbroken Base Price for first place:

Profit Per Dollar for first place + \$1=\$3.1242879

\$1 Unbroken Price for first place:

\$1 Unbroken Base Price for first place x (1 - percent takeout)=\$2.5619161

Profit Per Dollar for second place:

Show Profit / Net Amount Bet on second place finisher=\$4.0568800

\$1 Unbroken Base Price for second place:

Profit Per Dollar for second place + \$1=\$5.0568800

\$1 Unbroken Price for second place:

\$1 Unbroken Base Price for second place x (1 - percent takeout)=\$4.1466416

Profit Per Dollar for third place:

Show Profit / Net Amount Bet on third place finisher=\$11.504310

\$1 Unbroken Base Price for third place:

Profit Per Dollar for third place + \$1=\$12.504310

Unbroken Price for third place:

\$1 Unbroken Base Price for third place x (1 - percent takeout)=\$10.253534

- E. Double Pools
 - 1. The Double requires selection of the first-place finisher in each of two specified contests.
 - 2. The net Double pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:
 - a. As a single price pool to those whose selection finished first in each of the two contests; but if there are no such wagers, then
 - b. As a profit split to those who selected the first-place finisher in either of the two contests; but if there are no such wagers, then
 - c. As a single price pool to those who selected the one covered first-place finisher in either contest; but if there are no such wagers, then
 - d. As a single price pool to those whose selection finished second in each of the two contests; but if there are no such wagers, then
 - e. The entire pool shall be refunded on Double wagers for those contests.

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3. If there is a dead heat for first in either of the two contests involving:
 - a. Contestants representing the same betting interest, the Double pool shall be distributed as if no dead heat occurred.
 - b. Contestants representing two or more betting interests, the Double pool shall be distributed as a profit split if there is more than one covered winning combination.
4. Should a betting interest in the first-half of the Double be scratched prior to the first Double contest being declared official, all money wagered on combinations including the scratched betting interest shall be deducted from the Double pool and refunded.
5. Should a betting interest in the second-half of the Double be scratched prior to the close of wagering on the first Double contest, all money wagered on combinations including the scratched betting interest shall be deducted from the Double pool and refunded.
6. Should a betting interest in the second-half of the Double be scratched after the close of wagering on the first Double contest, all wagers combining the winner of the first contest with the scratched betting interest in the second contest shall be allocated a consolation payoff. In calcu-
- lating the consolation payoff the net Double pool shall be divided by the total amount wagered on the winner of the first contest and an unbroken consolation price obtained. The broken consolation price is multiplied by the dollar value of wagers on the winner of the first contest combined with the scratched betting interest to obtain the consolation payoff. Breakage is not declared in this calculation. The consolation payoff is deducted from the net Double pool before calculation and distribution of the winning Double payoff. Dead heats including separate betting interests in the first contest shall result in a consolation payoff calculated as a profit split.
7. If either of the Double contests are cancelled prior to the first Double contest, or the first Double contest is declared "no contest," the entire Double pool shall be refunded on Double wagers for those contests.
8. If the second Double contest is cancelled or declared "no contest" after the conclusion of the first Double contest, the net Double pool shall be distributed as a single price pool to wagers selecting the winner of the first Double contest. In the event of a dead heat involving separate betting interests, the net Double pool shall be distributed as a profit split.

Table 5. Double Pool - Standard Price Calculation

Table 5: DOUBLE POOL
(Standard Price Calculation)

Sum of Wagers on All Betting Interests=\$194,230.00
 Refunds = \$1,317.00
 Gross Pool:
 Sum of Wagers on All Betting Interests - Refunds=\$192,913.00
 Percent Takeout= 18%
 Takeout:
 Gross Pool x Percent Takeout=\$34,724.34
 Net Pool:
 Gross Pool -Takeout=\$158,188.66
 Gross Amount Bet on Winning Combination=\$23,872.00
 Profit:
 Net Pool - Gross Amount Bet on Winning Combination= \$134,316.66
 Profit Per Dollar:
 Profit / Gross Amount Bet on Winning Combination=\$5.6265357
 \$1 Unbroken Price:
 Profit Per Dollar + \$1=\$6.6265357

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Table 6. Double Pool - Consolation Pricing**Table 6: DOUBLE POOL*****CONSOLATION PRICING***

Sum of Wagers on All Betting Interests=\$194,230.00

Refunds = \$1,317.00

Gross Pool:

Sum of Wagers on All Betting Interests - Refunds=\$192,913.00

Percent Takeout= 18%

Takeout:

Gross Pool x Percent Takeout=\$34,724.34

Net Pool:

Gross Pool -Takeout=\$158,188.66

Consolation Pool:

Sum Total Amount Bet on winner of the first
contest with all second contest betting interests=\$43,321.00

\$1 Consolation Unbroken Consolation Price:

Net Pool / Consolation Pool=\$3.6515468

\$1 Consolation Broken Price=\$3.65

Amount Bet on winner of the first contest with
scratched betting interests:=\$1,234.00

Consolation Liability:

\$1 Consolation Broken Price x (Amount Bet on the
winner of the first contest with scratched
betting interests)=\$4,504.10

Adjusted Net Pool:

Net Pool - Consolation Liability=\$153,684.56

Gross Amount Bet on the Winning Combination=\$23,872.00

Profit:

Adjusted Net Pool - Gross Amount Bet on the
Winning Combination=\$129,812.56

Profit Per Dollar:

Profit / Gross Amount Bet on the Winning
Combination= \$5.4378586

\$1 Unbroken Price:

Profit Per Dollar + \$1=\$6.4378586

- F. Pick 3 Pools
 - 1. The Pick 3 requires selection of the first-place finisher in each of three specified contests.
 - 2. The net Pick 3 pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:
 - a. As a single price pool to those whose selection finished first in each of the three contests; but if there are no such wagers, then
 - b. As a single price pool to those who selected the first-place finisher in any two of the three contests; but if there are no such wagers, then
 - c. As a single price pool to those who selected the first-place finisher in any one of the three contests; but if there are no such wagers, then
 - d. The entire pool shall be refunded on Pick 3 wagers for those contests.
 - 3. If there is a dead heat for first in any of the three contests involving:
 - a. Contestants representing the same betting interest, the Pick 3 pool shall be distributed as if no dead heat occurred.
 - b. Contestants representing two or more betting interests, the Pick 3 pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.
- 4. Should a betting interest in any of the three Pick 3 contests be scratched, the actual favorite, as evidenced by total amounts wagered in the Win pool at the close of wagering on that contest, shall be substituted for the scratched betting interest for all purposes, including pool calculations. In the event that the Win pool total for two or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number. The totalisator shall produce reports showing each of the wagering combinations with substituted betting interests which became winners as a result of the substitution, in addition to the normal winning combination.
- 5. If all three Pick 3 contests are cancelled or declared "no contest," the entire pool shall be refunded on Pick 3 wagers for those contests.
- 6. If one or two of the Pick 3 contests are cancelled or declared "no contest," the Pick 3 pool shall remain valid and shall be distributed in accordance with subsection (F)(2) of this rule.
- G. Pick (n) Pools
 - 1. The Pick (n) requires selection of the first-place finisher in each of a designated number of contests. The permittee must obtain written approval from the Department con-

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- cerning the scheduling of Pick (n) contests, the designation of one of the methods prescribed in subsection (G)(2), and the amount of any cap to be set on the carryover. Any changes to the approved Pick (n) format require prior approval from the Department.
2. The Pick (n) pool shall be apportioned under one of the following methods:
 - a. *Method 1, Pick (n) with Carryover:* The net Pick (n) pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the Pick (n) contests, based upon the official order of finish. If there are no such wagers, then a designated percentage of the net pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick (n) contests; and the remainder shall be added to the carryover.
 - b. *Method 2, Pick (n) with Minor Pool and Carryover:* The major share of the net Pick (n) pool and the carryover, if any, shall be distributed to those who selected the first-place finisher in each of the Pick (n) contests, based upon the official order of finish. The minor share of the net Pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of Pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher of all Pick (n) contests, the minor share of the net Pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick (n) contests; and the major share shall be added to the carryover.
 - c. *Method 3, Pick (n) with No Minor Pool and No Carryover:* The net Pick (n) pool shall be distributed as the single price pool to those who selected the first-place finisher in the greatest number of Pick (n) contests, based upon the official order of finish. If there are no winning wagers, the pool is refunded.
 - d. *Method 4, Pick (n) with Minor Pool and No Carryover:* The major share of the net Pick (n) pool shall be distributed to those who selected the first-place finisher in the greatest number of Pick (n) contests, based upon the official order of finish. The minor share of the net Pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of Pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher in a second greatest number of Pick (n) contests, the minor share of the net Pick (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in the greatest number of Pick (n) contests. If the greatest number of first-place finishers selected is 1, the major and minor shares are combined for distribution as a single price pool. If there are no winning wagers, the pool is refunded.
 - e. *Method 5, Pick (n) with Minor Pool and No Carryover:* The major share of net Pick (n) pool shall be distributed to those who selected the first-place finisher in each of the Pick (n) contests, based upon the official order of finish. The minor share of the net Pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of Pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher in all Pick (n) contests, the entire net Pick (n) pool shall be distributed as a single pool to those who selected the first-place finisher in the greatest number of Pick (n) contests. If there are no wagers selecting the first-place finisher in a second greatest number of Pick (n) contests, the minor share of the net Pick (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in each of the Pick (n) contests. If there are no winning wagers, the pool is refunded.
 - f. *Method 6, Pick (n) with Minor Pool and Carryover with "Unique Winning Ticket" Provision (referred to as the "Unique Pick" for purposes of this rule only):* The Unique Pick net pool and carryover, if any, shall be distributed to the sole holder of a unique winning ticket that selected the first-place finisher in every one of the Unique Pick contests, based upon the official order of finish. If there is no sole holder of a unique winning ticket selecting the first-place finisher in every one of the Unique Pick contests, or if there are no wagers selecting the first-place finisher of all Unique Pick contests, the minor share of the Unique Pick net pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Unique Pick contests, and the major share shall be added to the carryover. Where there is no correct selection of the first-place finisher in at least one of the Unique Pick contests, based upon the official order of finish, the day's net pool shall be refunded and the previous carryover pool amount, if any, shall be carried over to the next scheduled corresponding pool.
 - i. Request for Mandatory Distribution. In lieu of the event of a sole jackpot winner, the permittee may request permission to distribute the Unique Pick jackpot pursuant to subsections (G)(8) and (9) of this rule.
 - ii. Unique Pick Jackpot Identification. Permittees must clearly identify one of the following methods that will be relied upon for determining the existence of a Unique Pick winning ticket. The first method is when there is one and only one winning ticket that correctly selected the first place finisher in each of the Unique Pick contests, based upon the official order of finish, to be verified by the unique serial number assigned by the tote company that issued the winning ticket. The second method is when the total amount wagered on one and only one winning combination selecting the first-place finisher in each of the Unique Pick contests, based up on the official order of finish, is equal to no more than the minimum allowable wager.
 3. If there is a dead heat for first in any of the Pick (n) contests involving:
 - a. Contestants representing the same betting interest, the Pick (n) pool shall be distributed as if no dead heat occurred.
 - b. Contestants representing two or more betting interests, the Pick (n) pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.
 4. Should a betting interest in any of the Pick (n) contests be scratched, the actual favorite, as evidenced by total

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- amounts wagered in the Win pool at the host association for the contest at the close of wagering on that contest, shall be substituted for the scratched betting interest for all purposes, including pool calculations. In the event that the Win pool total for two or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number. The totalisator shall produce reports showing each of the wagering combinations with substituted betting interests which became winners as a result of the substitution, in addition to the normal winning combination.
5. The Pick (n) pool shall be cancelled and all Pick (n) wagers for the individual performance shall be refunded if:
 - a. At least two contests included as part of a Pick 3 are cancelled or declared "no contest."
 - b. At least three contests included as part of a Pick 4, Pick 5, or Pick 6 are cancelled or declared "no contest."
 - c. At least four contests included as part of a Pick 7, Pick 8, or Pick 9 are cancelled or declared "no contest."
 - d. At least five contests included as part of a Pick 10 are cancelled or declared "no contest."
 6. If at least one contest included as part of a Pick (n) is cancelled or declared "no contest," but not more than the number specified in subsection (G)(5) of this rule, the net pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of Pick (n) contests for that performance. Such distribution shall include the portion ordinarily retained for the Pick (n) carryover but not the carryover from previous performances.
 7. The Pick (n) carryover may be capped at a designated level approved by the Department so that if, at the close of any performance, the amount in the Pick (n) carryover equals or exceeds the designated cap, the Pick (n) carryover will be frozen until it is won or distributed under other provisions of this rule. After the Pick (n) carryover is frozen, 100% of the net pool, part of which ordinarily would be added to the Pick (n) carryover, shall be distributed to those whose selection finished first in the greatest number of Pick (n) contests for that performance.
 8. A written request for permission to distribute the Pick (n) carryover on a specific performance may be submitted to the Department. The request shall contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.
 9. Should the Pick (n) carryover be designated for distribution on the final day of the meeting or on another specified date on which there are no wagers selecting the first-place finisher in each of the Pick (n) contests, the entire pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of Pick (n) contests. The Pick (n) carryover shall be designated for distribution on a specified date and performance only under the following circumstances:
 - a. Upon written approval from the Department as provided in subsection (G)(8) of this rule.
 - b. Upon written approval from the Department when there is a change in the carryover cap, a change from one type of Pick (n) wagering to another, or when the Pick (n) is discontinued.
 - c. On the closing performance of the meet or split meet.
 10. If, for any reason, the Pick (n) carryover must be held over to the corresponding Pick (n) pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the Department. The Pick (n) carryover plus accrued interest shall then be added to the net Pick (n) pool of the following meet on a date and performance so designated by the Department.
 11. With the written approval of the Department, the permittee may contribute to the Pick (n) carryover a sum of money up to the amount of any designated cap.
 12. Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of live tickets remaining is strictly prohibited. This shall not prohibit necessary communication between totalisator and pari-mutuel department employees for processing of pool data.
 13. The permittee may suspend previously approved Pick (n) wagering with the prior approval of the Department. Any carryover shall be held until the suspended Pick (n) wagering is reinstated. A permittee may request approval of a Pick (n) wager or separate wagering pool for specific performances.

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Table 7. Pick 7 Pool - Multiple Takeout Rates & Multiple Betting Sources

Table 7: PICK 7 POOL					
Multiple Takeout Rates & Multiple Betting Sources					
(Net Price Calculation)					
	Percent	Gross Pool	Gross Amt. Bet on Win	Net Pool	Net Amt. Bet on Win
Source 1:	16%	\$190,000.00	\$44.00	\$159,600.00	\$36.96
Source 2:	18.5%	\$10,000.00	\$18.00	\$8,150.00	\$14.67
Source 3:	21%	\$525,730.00	\$124.00	\$415,326.70	\$97.96
TOTALS:		\$725,730.00	\$186.00	\$583,076.70	\$149.59
Total Profit:					
Total Net Pool - Total Net Bet on the Winning Combination=					
\$582,927.11					
Profit Per Dollar:					
Total Profit / Total Net Bet on the Winning Combination=					
\$3,896.8321					
\$1 Unbroken Base Price:					
Profit Per Dollar + \$1=\$3,897.8321					
\$1 Unbroken Price for Source 1:					
\$1 Unbroken Base Price x (1 - Percent Takeout)=\$3,274.1789					
\$1 Unbroken Price for Source 2:					
\$1 Unbroken Base Price x (1 - Percent Takeout)=\$3,176.7331					
\$1 Unbroken Price for Source 3:					
\$1 Unbroken Base Price x (1 - Percent Takeout)=\$3,079.2873					

H. Place Pick (n) Pools

1. The Place Pick (n) requires selection of the first- or second-place finisher in each of a designated number of contests. The permittee must obtain written approval from the Department concerning the scheduling of Place Pick (n) contests, the designation of one of the methods prescribed in subsection (H)(2), the distinctive name identifying the pool and the amount of any cap to be set on the carryover. Any changes to the approved Place Pick (n) format require prior approval from the Department.
2. The Place Pick (n) pool shall be apportioned under one of the following methods:
 - a. *Method 1, Place Pick (n) with Carryover:* The net Place Pick (n) pool and carryover, if any, shall be distributed as a single price pool to those who selected the first- or second-place finisher in each of the Place Pick (n) contests, based upon the official order of finish. If there are no such wagers, then a designated percentage of the net pool shall be distributed as a single price pool to those who selected the first- or second-place finisher in the greatest number of Place Pick (n) contests; and the remainder shall be added to the carryover.
 - b. *Method 2, Place Pick (n) with Minor Pool and Carryover:* The major share of the net Place Pick (n) pool and the carryover, if any, shall be distributed to those who selected the first- or second-place finisher in each of the Place Pick (n) contests, based upon the official order of finish. The minor share of the net Place Pick (n) pool shall be distributed to those who selected the first- or second-place finisher in the second greatest number of Place Pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first- or second-place finisher of all Place Pick (n) contests, the minor share of the net Place Pick (n) pool shall be distributed as a sin-

gle price pool to those who selected the first- or second-place finisher in the greatest number of Place Pick (n) contests; and the major share shall be added to the carryover.

- c. *Method 3, Place (n) Pick with No Minor Pool and No Carryover:* The net Place Pick (n) pool shall be distributed as a single price pool to those who selected the first- or second-place finisher in the greatest number of Place Pick (n) contests, based upon the official order of finish. If there are no major winning wagers, the pool is refunded.
- d. *Method 4, Place Pick (n) with Minor Pool and No Carryover:* The major share of the net Place Pick (n) pool shall be distributed to those who selected the first- or second-place finisher in the greatest number of Place Pick (n) contests, based upon the official order of finish. The minor share of the net Place Pick (n) pool shall be distributed to those who selected the first- or second-place finisher in the second greatest number of Place Pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first- or second-place finisher in a second greatest number of Place Pick (n) contests, the minor share of the net Place Pick (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first- or second-place finisher in the greatest number of Place Pick (n) contests. If the greatest number of first- or second-place finishers selected is 1, the major and minor shares are combined for distribution as a single price pool. If there are no winning wagers, the pool is refunded.
- e. *Method 5, Place Pick (n) with Minor Pool and No Carryover:* The major share of the net Place Pick (n) pool shall be distributed to those who selected the first- or second-place finisher in each of the Place

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Pick (n) contests, based upon the official order of finish. The minor share of the net Place Pick (n) pool shall be distributed to those who selected the first- or second-place finisher in the second greatest number of Place Pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first- or second-place finisher in all Place Pick (n) contests, the entire net Place Pick (n) pool shall be distributed as a single price pool to those who selected the first- or second-place finisher in the greatest number of Place Pick (n) contests. If there are no wagers selecting the first or second-place finisher in a second greatest number of Place Pick (n) contests, the minor share of the net Place Pick (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first- or second-place finisher in each of the Place Pick (n) contests. If there are no winning wagers, the pool is refunded.

3. If there is a dead heat for first in any of the Place Pick (n) contests involving:
 - a. Contestants representing the same betting interest, the Place Pick (n) pool shall be distributed as if no dead heat occurred.
 - b. Contestants representing two or more betting interests, the Place Pick (n) pool shall be distributed as a single price pool with a winning wager including each betting interest participating in the dead heat.
4. If there is a dead heat for second in any of the Place Pick (n) contests involving:
 - a. Contestants representing the same betting interest, the Place Pick (n) pool shall be distributed as if no dead heat occurred.
 - b. Contestants representing two or more betting interests, the Place Pick (n) pool shall be distributed as a single price pool with a winning wager including the betting interest which finished first or any betting interest involved in a dead heat for second.
5. Should a betting interest in any Place Pick (n) contest be scratched, the actual favorite, as evidenced by total amounts wagered in the Win pool at the host association for the contest at the close of wagering on that contest, shall be substituted for the scratched betting interest for all purposes, including pool calculations. In the event that the Win pool total for two or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number. The totalisator shall produce reports showing each of the wagering combinations with substituted betting interests which became winners as a result of the substitution, in addition to the normal winning combination.
6. The Place Pick (n) pool shall be cancelled and all Place Pick (n) wagers for the individual performance shall be refunded if:
 - a. At least two contests included as part of a Place Pick 3 are cancelled or declared "no contest."
 - b. At least three contests included as part of a Place Pick 4, Place Pick 5, or Place Pick 6 are cancelled or declared "no contest."
 - c. At least four contests included as part of a Place Pick 7, Place Pick 8, or Place Pick 9 are cancelled or declared "no contest."
 - d. At least five contests included as part of a Place Pick 10 are cancelled or declared "no contest."
7. If at least one contest included as part of a Place Pick (n) is cancelled or declared "no contest," but not more than

the number specified in subsection (H)(6) of this rule, the net pool shall be distributed as a single price pool to those whose selection finished first or second in the greatest number of Place Pick (n) contests for that performance. Such distribution shall include the portion ordinarily retained for the Place Pick (n) carryover but not the carry-over from previous performances.

8. The Place Pick (n) carryover may be capped at a designated level approved by the Department so that if, at the close of any performance, the amount in the Place Pick (n) carryover equals or exceeds the designated cap, the Place Pick (n) carryover will be frozen until it is won or distributed under other provisions of this rule. After the Place Pick (n) carryover is frozen, 100% of the net pool, part of which ordinarily would be added to the Place Pick (n) carryover, shall be distributed to those whose selection finished first or second in the greatest number of Place Pick (n) contests for that performance.
9. A written request for permission to distribute the Place Pick (n) carryover on a specific performance may be submitted to the Department. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.
10. Should the Place Pick (n) carryover be designated for distribution on a specified date and performance in which there are no wagers selecting the first- or second-place finisher in each of the Place Pick (n) contests, the entire pool shall be distributed as a single price pool to those whose selection finished first or second in the greatest number of Place Pick (n) contests. The Place Pick (n) carryover shall be designated for distribution on a specified date and performance under any of the following circumstances:
 - a. Upon written approval from the Department as provided in subsection (H)(9) of this rule.
 - b. Upon written approval from the Department when there is a change in the carryover cap, a change from one type of Place Pick (n) wagering to another, or when the Place Pick (n) is discontinued.
 - c. On the closing performance of the meet or split meet.
11. If, for any reason, the Place Pick (n) carryover must be held over to the corresponding Place Pick (n) pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the Department. The Place Pick (n) carryover plus accrued interest shall then be added to the net Place Pick (n) pool of the following meet on a date and performance so designated by the Department.
12. With the written approval of the Department, the permittee may contribute to the Place Pick (n) carryover a sum of money up to the amount of any designated cap.
13. Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of live tickets remaining is strictly prohibited. This shall not prohibit necessary communication between totalisator and pari-mutuel department employees for processing of pool data.
14. The permittee may suspend previously approved Place Pick (n) wagering with the prior approval of the Department. Any carryover shall be held until the suspended Place Pick (n) wagering is reinstated. A permittee may request approval of a Place Pick (n) wager or separate wagering pool for specific performances.

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I. Quinella Pools

1. The Quinella requires selection of the first two finishers, irrespective of order, for a single contest.
2. The net Quinella pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:
 - a. If contestants of a coupled entry or mutuel field finish as the first two finishers, as a single price pool to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish; otherwise
 - b. As a single price pool to those whose combination finished as the first two betting interests; but if there are no such wagers, then
 - c. As a profit split to those whose combination included either the first- or second-place finisher; but if there are no such wagers on one of the those two finishers, then
 - d. As a single price pool to those whose combination included the one covered betting interest included within the first two finishers; but if there are no such wagers, then
 - e. The entire pool shall be refunded on Quinella wagers for that contest.
3. If there is a dead heat for first involving:
 - a. Contestants representing the same betting interest, the Quinella pool shall be distributed to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish.
 - b. Contestants representing two betting interests, the Quinella pool shall be distributed as if no dead heat occurred.
 - c. Contestants representing three or more betting interests, the Quinella pool shall be distributed as a profit split.
4. If there is a dead heat for second involving contestants representing the same betting interest, the Quinella pool shall be distributed as if no dead heat occurred.
5. If there is a dead heat for second involving contestants representing two or more betting interests, the Quinella pool shall be distributed to wagers in the following precedence, based upon the official order of finish:
 - a. As a profit split to those combining the winner with any of the betting interests involved in the dead heat for second, but if there is only one covered combination, then
 - b. As a single price pool to those combining the winner with the one covered betting interest involved in the dead heat for second; but if there are no such wagers, then
 - c. As a profit split to those combining the betting interests involved in the dead heat for second; but if there are no such wagers, then
 - d. As a profit split to those whose combination included the winner and any other betting interest and wagers selecting any of the betting interests involved in the dead heat for second; but if there are no such wagers, then
 - e. The entire pool shall be refunded on Quinella wagers for that contest.

J. Quinella Double Pools

1. The Quinella Double requires selection of the first two finishers, irrespective of order, in each of two specified contests.

2. The net Quinella Double pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:
 - a. If a coupled entry or mutuel field finishes as the first two contestants in either contest, as a single price pool to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish for that contest, as well as the first two finishers in the alternate Quinella Double contest; otherwise
 - b. As a single price pool to those who selected the first two finishers in each of the two Quinella Double contests; but if there are no such wagers, then
 - c. As a profit split to those who selected the first two finishers in either of the two Quinella Double contests; but if there are no such wagers on one of those contests, then
 - d. As a single price pool to those who selected the first two finishers in the one covered Quinella Double contest; but if there were no such wagers, then
 - e. The entire pool shall be refunded on Quinella Double wagers for those contests.
3. If there is a dead heat for first in either of the two Quinella Double contests involving:
 - a. Contestants representing the same betting interest, the Quinella Double pool shall be distributed to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish for that contest.
 - b. Contestants representing two betting interests, the Quinella Double pool shall be distributed as if no dead heat occurred.
 - c. Contestants representing three or more betting interests, the Quinella Double pool shall be distributed as a profit split.
4. If there is a dead heat for second in either of the Quinella Double contests involving contestants representing the same betting interest, the Quinella Double pool shall be distributed as if no dead heat occurred.
5. If there is a dead heat for second in either of the Quinella Double contests involving contestants representing two or more betting interests, the Quinella Double pool shall be distributed as profit split.
6. Should a betting interest in the first half of the Quinella Double be scratched prior to the first Quinella Double contest being declared official, all money wagered on combinations including the scratched betting interest shall deducted from the Quinella Double pool and refunded.
7. Should a betting interest in the second half of the Quinella Double be scratched prior to the close of wagering on the first Quinella Double contest, all money wagered on combinations including the scratched betting interest shall be deducted from the Quinella Double pool and refunded.
8. Should a betting interest in the second half of the Quinella Double be scratched after the close of wagering on the first Quinella Double contest, all wagers combining the winning combination in the first contest with a combination including the scratched betting interest in the second contest shall be allocated a consolation payoff. In calculating the consolation payoff, the net Quinella Double pool shall be divided by the total amount wagered on the winning combination in the first contest and an unbroken consolation price obtained. The unbroken consolation price is multiplied by the dollar value of wagers

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on the winning combination in the first contest combined with a combination including the scratched betting interest in the second contest to obtain the consolation payoff. Breakage is not utilized in this calculation. The consolation payoff is deducted from the net Quinella Double pool before calculation and distribution of the winning Quinella Double payoff. In the event of a dead heat involving separate betting interests, the net Quinella Double pool shall be distributed as a profit split.

9. If either of the Quinella Double contests is cancelled prior to the first Quinella Double contest, or the first Quinella Double contest is declared "no contest," the entire Quinella Double pool shall be refunded on Quinella Double wagers for those contests.
10. If the second Quinella Double contest is cancelled or declared "no contest" after the conclusion of the first Quinella Double contest, the net Quinella Double pool shall be distributed as a single price pool to wagers selecting the winning combination in the first Quinella Double contest. If there are no wagers selecting the winning combination in the first Quinella Double contest, the entire Quinella Double pool shall be refunded on Quinella Double wagers for those contests.

K. Exacta Pools

1. The Exacta requires selection of the first two finishers, in their exact order, for a single contest.
2. The net Exacta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:
 - a. If contestants of a coupled entry or mutuel field finish as the first two finishers, as a single price pool to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish; otherwise
 - b. As a single price pool to those whose combination finished in correct sequence as the first two betting interests; but if there are no such wagers, then
 - c. As a profit split to those whose combination included either the first-place betting interest to finish first or the second-place betting interest to finish second; but if there are no such wagers on one of those two finishers, then
 - d. As a single price pool to those whose combination included the one covered betting interest to finish first or second in the correct sequence; but if there are no such wagers, then
 - e. The entire pool shall be refunded on Exacta wagers for that contest.
3. If there is a dead heat for first involving:
 - a. Contestants representing the same betting interest, the Exacta pool shall be distributed as a single price pool to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish.
 - b. Contestants representing two or more betting interests, the Exacta pool shall be distributed as a profit split.
4. If there is a dead heat for second involving contestants representing the same betting interest, the Exacta pool shall be distributed as if no dead heat occurred.
5. If there is a dead heat for second involving contestants representing two or more betting interests, the Exacta pool shall be distributed to ticket holders in the following precedence, based upon the official order of finish:
 - a. As a profit split to those combining the first-place betting interest with any of the betting interests

involved in the dead heat for second; but if there is only one covered combination, then

- b. As a single price pool to those combining the first-place betting interest with the one covered betting interest involved in the dead heat for second; but if there are no such wagers, then
- c. As a profit split to those wagers correctly selecting the winner for first place and those wagers selecting any of the dead-heated betting interests for second place; but if there are no such wagers, then
- d. The entire pool shall be refunded on Exacta wagers for that contest.

L. Trifecta Pools

1. The Trifecta requires selection of the first three finishers, in their exact order, for a single contest.
2. The net Trifecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:
 - a. As a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers, then
 - b. As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then
 - c. As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then
 - d. The entire pool shall be refunded on Trifecta wagers for that contest.
3. If less than three betting interests finish and the contest is declared official, payoffs will be made based upon the order of finish of those betting interests completing the contest. The balance of any selection beyond the number of betting interests completing the contest shall be ignored.

4. If there is a dead heat for first involving:
 - a. Contestants representing three or more betting interests, all of the wagering combinations selecting three betting interests which correspond with any of the betting interests involved in the dead heat shall share in a profit split.
 - b. Contestants representing two betting interests, both of the wagering combinations selecting the two dead-heated betting interests, irrespective of order, along with the third-place betting interest shall share in a profit split.
5. If there is a dead heat for second, all of the combinations correctly selecting the winner combined with any of the betting interests involved in the dead heat for second shall share in a profit split.
6. If there is a dead heat for third, all wagering combinations correctly selecting the first two finishers, in correct sequence, along with any of the betting interests involved in the dead heat for third shall share in a profit split.

M. Superfecta Pools

1. The Superfecta requires selection of the first four finishers, in their exact order, for a single contest.
2. The net Superfecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:
 - a. As a single price pool to those whose combination finished in correct sequence as the first four betting interests; but if there are no such wagers, then
 - b. As a single price pool to those whose combination included, in correct sequence, the first three betting interests; but if there are no such wagers, then

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- c. As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then
 - d. As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then
 - e. The entire pool shall be refunded on Superfecta wagers for that contest.
 - 3. If less than four betting interests finish and the contest is declared official, payoffs will be made based upon the order of finish of those betting interests completing the contest. The balance of any selection beyond the number of betting interests completing the contest shall be ignored.
 - 4. If there is a dead heat for first involving:
 - a. Contestants representing four or more betting interests, all of the wagering combinations selecting four betting interests which correspond with any of the betting interests involved in the dead heat shall share in a profit split.
 - b. Contestants representing three betting interests, all of the wagering combinations selecting the three dead-heated betting interests, irrespective of order, along with the fourth-place betting interest shall share in a profit split.
 - c. Contestants representing two betting interests, both of the wagering combinations selecting the two dead-heated betting interests, irrespective of order, along with the third-place and fourth-place betting interests shall share in a profit split.
 - 5. If there is a dead heat for second involving:
 - a. Contestants representing three or more betting interests, all of the wagering combinations correctly selecting the winner combined with any of the three betting interests involved in the dead heat for second shall share in a profit split.
 - b. Contestants representing two betting interests, all of the wagering combinations correctly selecting the winner, the two dead-heated betting interests, irrespective of order, and the fourth-place betting interest shall share in a profit split.
 - 6. If there is a dead heat for third, all wagering combinations correctly selecting the first two finishers, in correct sequence, along with any two of the betting interests involved in the dead heat for third shall share in a profit split.
 - 7. If there is a dead heat for fourth, all wagering combinations correctly selecting the first three finishers, in correct sequence, along with any of the betting interests involved in the dead heat for fourth shall share in a profit split.
- N. Twin Quinella Pools
1. The Twin Quinella requires selection of the first two finishers, irrespective of order, in each of two designated contests. Each winning ticket for the first Twin Quinella contest must be exchanged for a free ticket on the second Twin Quinella contest in order to remain eligible for the second-half Twin Quinella pool. Such tickets may be exchanged only at attended ticket windows prior to the second Twin Quinella contest. There will be no monetary reward for winning the first Twin Quinella contest. Both of the designated Twin Quinella contests shall be included in only one Twin Quinella pool.
 2. In the first Twin Quinella contest only, winning wagers shall be determined using the following precedence, based upon the official order of finish for the first Twin Quinella contest:
 - a. If a coupled entry or mutuel field finishes as the first two finishers, those who selected the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish shall be winners; otherwise
 - b. Those whose combination finished as the first two betting interests shall be winners; but if there are no such wagers, then
 - c. Those whose combination included either the first- or second-place finisher shall be winners; but if there are no such wagers on one of those two finishers, then
 - d. Those whose combination included the one covered betting interest included within the first two finishers shall be winners; but if there are no such wagers, then
 - e. The entire pool shall be refunded on Twin Quinella wagers for that contest.
 3. In the first Twin Quinella contest only, if there is a dead heat for first involving:
 - a. Contestants representing the same betting interest, those who selected the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish shall be winners.
 - b. Contestants representing two betting interests, the winning Twin Quinella wagers shall be determined as if no dead heat occurred.
 - c. Contestants representing three or more betting interests, those whose combination included any two of the betting interests finishing in the dead heat shall be winners.
 4. In the first Twin Quinella contest only, if there is a dead heat for second involving contestants representing two or more betting interests, the Twin Quinella pool shall be distributed to wagers in the following precedence, based upon the official order of finish:
 - a. As a profit split to those combining the winner with any of the betting interests involved in the dead heat for second; but if there is only one covered combination, then
 - b. As a single price pool to those combining the winner with the one covered betting interest involved in the dead heat for second, but if there are no such wagers, then
 - c. As a profit split to those combining the betting interests involved in the dead heat for second; but if there are no such wagers, then
 - d. As a profit split to those whose combination included the winner and any other betting interest and wagers selecting any of the betting interests involved in the dead heat for second; but if there are no such wagers, then
 - e. The entire pool shall be refunded on Twin Quinella wagers for the contest.
 5. In the second Twin Quinella contest only, the entire net Twin Quinella pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish for the second Twin Quinella contest:
 - a. If a coupled entry or mutuel field finishes as the first two finishers, as a single price pool to those who selected the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish; otherwise
 - b. As a single price pool to those whose combination finished as the first two betting interests; but if there are no such wagers, then

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- c. As a profit split to those whose combination included either the first- or second-place finisher; but if there are no such wagers on one of those two finishers, then
 - d. As a single price pool to those whose combination included the one covered betting interest included within the first two finishers; but if there are no such wagers, then
 - e. As a single price pool to all the exchange ticket holders for that contest; but if there are no such tickets, then
 - f. In accordance with subsection (N)(2) of the Twin Quinella rules.
6. In the second Twin Quinella contest only, if there is a dead heat for first involving:
- a. Contestants representing the same betting interest, the net Twin Quinella pool shall be distributed to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish.
 - b. Contestants representing two betting interests, the net Twin Quinella pool shall be distributed as if no dead heat occurred.
 - c. Contestants representing three or more betting interests, the net Twin Quinella pool shall be distributed as a profit split to those whose combination included any two of the betting interests finishing in the dead heat.
7. In the second Twin Quinella contest only, if there is a dead heat for second involving contestants representing two or more betting interests, the Twin Quinella pool shall be distributed to wagers in the following precedence, based upon the official order of finish:
- a. As a profit split to those combining the winner with any of the betting interests involved in the dead heat for second; but if there is only one covered combination, then
 - b. As a single price pool to those combining the winner with the one covered betting interest involved in the dead heat for second; but if there are no such wagers, then
 - c. As a profit split to those combining the betting interests involved in the dead heat for second; but if there are no such wagers, then
 - d. As a profit split to those whose combination included the winner and any other betting interest and wagers selecting any of the betting interests involved in the dead heat for second, then
 - e. As a single price pool to all the exchange ticket holders for that contest; but if there are no such tickets, then
 - f. In accordance with subsection (N)(2) of the Twin Quinella rules.
8. If a winning ticket for the first-half of the Twin Quinella is not presented for exchange prior to the close of betting on the second-half Twin Quinella contest, the ticket holder forfeits all rights to any distribution of the Twin Quinella pool resulting from the outcome of the second contest.
9. Should a betting interest in the first half of the Twin Quinella be scratched, those Twin Quinella wagers including the scratched betting interest shall be refunded.
10. Should a betting interest in the second half of the Twin Quinella be scratched, an announcement concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the

- scratched betting interest. If tickets have not been exchanged prior to the close of betting for the second Twin Quinella contest, the ticket holder forfeits all rights to the Twin Quinella pool.
- 11. If either of the Twin Quinella contests is cancelled prior to the first Twin Quinella contest, or the first Twin Quinella contest is declared "no contest," the entire Twin Quinella pool shall be refunded on Twin Quinella wagers for that contest.
 - 12. If the second-half Twin Quinella contest is cancelled or declared "no contest" after the conclusion of the first Twin Quinella contest, the net Twin Quinella pool shall be distributed as a single price pool to wagers selecting the winning combination in the first Twin Quinella contest and all valid exchange tickets. If there are no such wagers, the net Twin Quinella pool shall be distributed as described in subsection (N)(2) of the Twin Quinella rules.
- O. Twin Trifecta Pools**
- 1. The Twin Trifecta requires selection of the first three finishers, in their exact order, in each of two designated contests. Each winning ticket for the first Twin Trifecta contest must be exchanged for a free ticket on the second Twin Trifecta contest in order to remain eligible for the second-half Twin Trifecta pool. Such tickets may be exchanged only at attended ticket windows prior to the second Twin Trifecta contest. Winning first-half Twin Trifecta wagers will receive both an exchange and a monetary payoff. Both of the designated Twin Trifecta contests shall be included in only one Twin Trifecta pool.
 - 2. After wagering closes for the first half of the Twin Trifecta and commissions have been deducted from the pool, the net pool shall then be divided into separate pools: the first-half Twin Trifecta pool and the second-half Twin Trifecta pool.
 - 3. In the first Twin Trifecta contest only, winning wagers shall be determined using the following precedence, based upon the official order of finish for the first Twin Trifecta contest:
 - a. As a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers, then
 - b. As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then
 - c. As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then
 - d. The entire Twin Trifecta pool shall be refunded on Twin Trifecta wagers for that contest and the second half shall be cancelled.
 - 4. If no first-half Twin Trifecta ticket selects the first three finishers of that contest in exact order, winning ticket holders shall not receive any exchange tickets for the second-half Twin Trifecta pool. In such case, the second-half Twin Trifecta pool shall be retained and added to any existing Twin Trifecta carryover pool.
 - 5. Winning tickets from the first half of the Twin Trifecta shall be exchanged for tickets selecting the first three finishers of the second-half of the Twin Trifecta. The second-half Twin Trifecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish for the second Twin Trifecta contest:
 - a. As a single price pool, including any existing carry-over monies, to those whose combination finished in

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- correct sequence as the first three betting interests; but if there are no such tickets, then
- b. The entire second-half Twin Trifecta pool for that contest shall be added to any existing carryover monies and retained for the corresponding second-half Twin Trifecta pool of the next consecutive performance.
6. If a winning first-half Twin Trifecta ticket is not presented for cashing and exchange prior to the second-half Twin Trifecta contest, the ticket holder may still collect the monetary value associated with the first-half Twin Trifecta pool but forfeits all rights to any distribution of the second-half Twin Trifecta pool.
 7. Should a betting interest in the first half of the Twin Trifecta be scratched, those Twin Trifecta wagers including the scratched betting interest shall be refunded.
 8. Should a betting interest in the second-half of the Twin Trifecta be scratched, an announcement concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest. If tickets have not been exchanged prior to the close of betting for the second Twin Trifecta contest, the ticket holder forfeits all rights to the second-half Twin Trifecta pool.
 9. If, due to a late scratch, the number of betting interests in the second half of the Twin Trifecta is reduced to fewer than the minimum, all exchange tickets and outstanding first-half winning tickets shall be entitled to the second-half Twin Trifecta pool for that contest as a single price pool, but not the Twin-Trifecta carryover.
 10. If there is a dead heat or multiple dead heats in either the first- or second-half of the Twin Trifecta, all Twin Trifecta wagers selecting the correct order of finish, counting a betting interest involved in a dead heat as finishing in any dead-heated position, shall be a winner. In the case of a dead heat occurring in:
 - a. The first half of the Twin Trifecta, the payoff shall be calculated as a profit split.
 - b. The second half of the Twin Trifecta, the payoff shall be calculated as a single price pool.
 11. If either of the Twin Trifecta contests are cancelled prior to the first Twin Trifecta contest, or the first Twin Trifecta contest is declared "no contest," the entire Twin Trifecta pool shall be refunded on Twin Trifecta wagers for that contest and the second half shall be cancelled.
 12. If the second-half Twin Trifecta contest is cancelled or declared "no contest," all exchange tickets and outstanding first-half winning Twin Trifecta tickets shall be entitled to the net Twin Trifecta pool for that contest as a single price pool, but not Twin-Trifecta carryover. If there are no such tickets, the net Twin Trifecta pool shall be distributed as described in subsection (O)(3) of the Twin Trifecta rules.
 13. The Twin-Trifecta carryover may be capped at a designated level approved by the Department so that if, at the close of any performance, the amount in the Twin-Trifecta carryover equals or exceeds the designated cap, the Twin-Trifecta carryover will be frozen until it is won or distributed under other provisions of this rule. After the Twin Trifecta carryover is frozen, 100% of the net Twin Trifecta pool for each individual contest shall be distributed to carryover winners of the first half of the Twin Trifecta pool.
 14. A written request for permission to distribute the Twin-Trifecta carryover on a specific performance may be submitted to the Department. The request must contain justi-
- fication for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.
15. Should the Twin-Trifecta carryover be designated for distribution on a specified date and performance, the following precedence will be followed in determining winning tickets for the second half of the Twin Trifecta after completion of the first half of the Twin Trifecta:
 - a. As a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers, then
 - b. As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then
 - c. As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then
 - d. As a single price pool to holders of valid exchange tickets.
 - e. As a single price pool to holders of outstanding first-half winning tickets.
 16. Contrary to subsection (O)(4) of the Twin Trifecta rules, during a performance designated to distribute the Twin-Trifecta carryover, exchange tickets will be issued for those combinations selecting the greatest number of betting interests in their correct order of finish for the first half of the Twin Trifecta. If there are no wagers correctly selecting the first-, second-, and third-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first- and second-place betting interests. If there are no wagers correctly selecting the first- and second-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first-place betting interest only. If there are no wagers selecting the first-place betting interest only in the first half of the Twin Trifecta, all first-half tickets will become winners and will receive 100% of that day's net Twin Trifecta pool and any existing Twin-Trifecta carryover as a single price pool.
 17. The Twin-Trifecta carryover shall be designated for distribution on a specified date and performance only under the following circumstances:
 - a. Upon written approval from the Department as provided in subsection (O)(15) of the Twin Trifecta rules.
 - b. Upon written approval from the Department when there is a change in the carryover cap or when the Twin Trifecta is discontinued.
 - c. On the closing performance of the meet or split meet.
 18. If, for any reason, the Twin-Trifecta carryover must be held over to the corresponding Twin Trifecta pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the Department. The Twin-Trifecta carryover plus accrued interest shall then be added to the second-half Twin Trifecta pool of the following meet on a date and performance so designated by the Department.
 19. Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of valid exchange tickets is prohibited. This shall not prohibit necessary communication between totalisator and parimutuel department employees for processing of pool data.

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20. The permittee must obtain written approval from the Department concerning the scheduling of Twin Trifecta contests, the percentages of the net pool added to the first-half pool and second-half pool, and the amount of any cap to be set on the carryover. Any changes to the approved Twin Trifecta format require prior approval from the Department.
- P. Tri-Superfecta Pools
 1. The Tri-Superfecta requires selection of the first three finishers, in their exact order, in the first of two designated contests and the first four finishers, in exact order, in the second of the two designated contests. Each winning ticket for the first Tri-Superfecta contest must be exchanged for a free ticket on the second Tri-Superfecta contest in order to remain eligible for the second-half Tri-Superfecta pool. Such tickets may be exchanged only at attended ticket windows prior to the second Tri-Superfecta contest. Winning first-half Tri-Superfecta tickets will receive both an exchange and a monetary payoff. Both of the designated Tri-Superfecta contests shall be included in only one Tri-Superfecta pool.
 2. After wagering closes for the first-half of the Tri-Superfecta and commissions have been deducted from the pool, the net pool shall then be divided into two separate pools: the first-half Tri-Superfecta pool and the second-half Tri-Superfecta pool.
 3. In the first Tri-Superfecta contest only, winning tickets shall be determined using the following precedence, based upon the official order of finish for the first Tri-Superfecta contest:
 - a. As a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers, then
 - b. As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then
 - c. As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then
 - d. The entire Tri-Superfecta pool shall be refunded on Tri-Superfecta for that contest and the second half shall be cancelled.
 4. If no first-half Tri-Superfecta ticket selects the first three finishers of that contest in exact order, winning ticket holders shall not receive any exchange tickets for the second-half Tri-Superfecta pool. In such case, the second-half Tri-Superfecta pool shall be retained and added to any existing Tri-Superfecta carryover pool.
 5. Winning tickets from the first half of the Tri-Superfecta shall be exchanged for tickets selecting the first four finishers of the second-half of the Tri-Superfecta. The second-half Tri-Superfecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish for the second Tri-Superfecta contest:
 - a. As a single price pool, including any existing carryover monies, to those whose combination finished in correct sequence as the first four betting interests; but if there are no such tickets, then
 - b. The entire second-half Tri-Superfecta pool for that contest shall be added to any existing carryover monies and retained for the corresponding second-half Tri-Superfecta pool of the next performance.
 6. If a winning first-half Tri-Superfecta ticket is not presented for cashing and exchange prior to the second-half Tri-Superfecta contest, the ticket holder may still collect the monetary value associated with the first-half Tri-Superfecta pool but forfeits all rights to any distribution of the second-half Tri-Superfecta pool.
 7. Coupled entries and mutuel fields shall be prohibited in Tri-Superfecta contests.
 8. Should a betting interest in the first-half of the Tri-Superfecta be scratched, those Tri-Superfecta tickets including the scratched betting interest shall be refunded.
 9. Should a betting interest in the second-half of the Tri-Superfecta be scratched, an announcement concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest. If tickets have not been exchanged prior to the close of betting for the second Tri-Superfecta contest, the ticket holder forfeits all rights to the second-half Tri-Superfecta pool.
 10. If, due to a late scratch, the number of betting interests in the second-half of the Tri-Superfecta is reduced to fewer than the minimum, all exchange tickets and outstanding first-half winning tickets shall be entitled to the second-half Tri-Superfecta pool for that contest as a single price pool, but not the Tri-Superfecta carryover.
 11. If there is a dead heat or multiple dead heats in either the first or second half of the Tri-Superfecta, all Tri-Superfecta tickets selecting the correct order of finish, counting a betting interest involved in a dead heat as finishing in any dead-heated position, shall be a winner. In the case of a dead heat occurring in
 - a. The first-half of the Tri-Superfecta, the payoff shall be calculated as a profit split.
 - b. The second-half of the Tri-Superfecta, the payoff shall be calculated as a single price pool.
 12. If either of the Tri-Superfecta contests are cancelled prior to the first Tri-Superfecta contest, or the first Tri-Superfecta contest is declared "no contest," the entire Tri-Superfecta pool shall be refunded on Tri-Superfecta wagers for that contest and the second half shall be cancelled.
 13. If the second-half Tri-Superfecta contest is cancelled or declared "no contest," all exchange tickets and outstanding first-half winning Tri-Superfecta tickets shall be entitled to the net Tri-Superfecta pool for that contest as a single price pool, but not the Tri-Superfecta carryover. If no there are no such tickets, the net Tri-Superfecta pool shall be distributed as described in subsection (P)(3) of the Tri-Superfecta rules.
 14. The Tri-Superfecta carryover may be capped at a designated level approved by the Department so that if, at the close of any performance, the amount in the Tri-Superfecta carryover equals or exceeds the designated cap, the Tri-Superfecta carryover will be frozen until it is won or distributed under other provisions of this rule. After the second-half Tri-Superfecta carryover is frozen, 100% of the net Tri-Superfecta pool for each individual contest shall be distributed to winners of the first-half of the Tri-Superfecta pool.
 15. A written request for permission to distribute the Tri-Superfecta carryover on a specific performance may be submitted to the Department. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.
 16. Should the Tri-Superfecta carryover be designated for distribution on a specified date and performance, the following precedence will be followed in determining win-

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- ning tickets for the second half of the Tri-Superfecta after completion of the first half of the Tri-Superfecta:
- a. As a single price pool to those whose combination finished in correct sequence as the first four betting interests; but if there are no such wagers, then
 - b. As a single price pool to those whose combination included, in correct sequence, the first three betting interests; but if there are no such wagers, then
 - c. As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then
 - d. As a single price pool to those whose combination included, in correct sequence, the first-place betting interest only; but if there are no such wagers, then
 - e. As a single price pool to holders of valid exchange tickets.
 - f. As a single price pool to holders of outstanding first-half winning tickets.
17. Contrary to subsection (P)(4) of the Tri-Superfecta rules, during a performance designated to distribute the Tri-Superfecta carryover, exchange tickets will be issued for those combinations selecting the greatest number of betting interests in their correct order of finish for the first-half of the Tri-Superfecta. If there are no wagers correctly selecting the first-, second-, and third-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first- and second-place betting interests. If there are no wagers correctly selecting the first- and second-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first-place betting interest only. If there are no wagers selecting the first-place betting interest only in the first half of the Tri-Superfecta, all first-half tickets will become winners and will receive 100% of that day's net Tri-Superfecta pool and any existing Tri-Superfecta carryover as a single price pool.
18. The Tri-Superfecta carryover shall be designated for distribution on a specified date and performance only under the following circumstances:
- a. Upon written approval from the Department as provided in subsection (P)(15) of the Tri-Superfecta rules.
 - b. Upon written approval from the Department when there is a change in the carryover cap or when the Tri-Superfecta is discontinued.
 - c. On the closing performance of the meet or split meet.
19. If, for any reason, the Tri-Superfecta carryover must be held over to the corresponding Tri-Superfecta pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the Department. The Tri-Superfecta carryover plus accrued interest shall then be added to the second-half Tri-Superfecta pool of the following meet on a date and performance so designated by the Department.
20. Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of valid exchange tickets is prohibited. This shall not prohibit necessary communication between totalisator and parimutuel department employees for processing of pool data.
21. The permittee must obtain written approval from the Department concerning the scheduling of Tri-Superfecta contests, the percentages of the net pool added to the first-half pool and second-half pool, and the amount of any cap to be set on the carryover. Any changes to the approved Tri-Superfecta format require prior approval from the Department.
- Q. Twin Superfecta Pools**
1. The Twin Superfecta requires selection of the first four finishers, in their exact order, in each of two designated contests. Each winning ticket for the first Twin Superfecta contest must be exchanged for a free ticket on the second Twin Superfecta contest in order to remain eligible for the second-half Twin Superfecta pool. Such tickets may be exchanged only at attended ticket windows prior to the second Twin Superfecta contest. Winning first-half Twin Superfecta tickets will receive both an exchange and a monetary payoff. Both of the designated Twin Superfecta contests shall be included in only one Twin Superfecta pool.
 2. After wagering closes for the first half of the Twin Superfecta and commissions have been deducted from the pool, the net pool shall then be divided into two separate pools: the first-half Twin Superfecta pool and the second-half Twin Superfecta pool.
 3. In the first Twin Superfecta contest only, winning wagers shall be determined using the following precedence, based upon the official order of finish for the first Twin Superfecta contest:
 - a. As a single price pool to those whose combination finished in correct sequence as the first four betting interests; but if there are no such wagers, then
 - b. As a single price pool to those whose combination included, in correct sequence, the first three betting interests; but if there are no such wagers, then
 - c. As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then
 - d. As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then
 - e. The entire Twin Superfecta pool shall be refunded on Twin Superfecta wagers for that contest and the second half shall be cancelled.
 4. If no first-half Twin Superfecta ticket selects the first four finishers of that contest in exact order, winning ticket holders shall not receive any exchange tickets for the second-half Twin Superfecta pool. In such case, the second-half Twin Superfecta pool shall be retained and added to any existing Twin Superfecta carryover pool.
 5. Winning tickets from the first half of the Twin Superfecta shall be exchanged for tickets selecting the first four finishers of the second half of the Twin Superfecta. The second-half Twin Superfecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish for the second Twin Superfecta contest:
 - a. As a single price pool, including any existing carryover monies, to those whose combination finished in correct sequence as the first four betting interests; but if there are no such tickets, then
 - b. The entire second-half Twin Trifecta pool for that contest shall be added to any existing carryover monies and retained for the corresponding second-half Twin Superfecta pool of the next performance.
 6. If a winning first-half Twin Superfecta ticket is not presented for cashing and exchange prior to the second-half Twin Superfecta contest, the ticket holder may still collect the monetary value associated with the first-half

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- Twin Superfecta pool but forfeits all rights to any distribution of the second-half Twin Trifecta pool.
7. Coupled entries and mutuel fields shall be prohibited in Twin Superfecta contests.
 8. Should a betting interest in the first half of the Twin Superfecta be scratched, those Twin Superfecta tickets including the scratched betting interest shall be refunded.
 9. Should a betting interest in the second half of the Twin Superfecta be scratched, an announcement concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest. If tickets have not been exchanged prior to the close of betting for the second Twin Superfecta contest, the ticket holder forfeits all rights to the second-half Twin Superfecta pool.
 10. If, due to a late scratch, the number of betting interests in the second-half of the Twin Superfecta is reduced to fewer than the minimum, all exchange tickets and outstanding first-half winning tickets shall be entitled to the second-half Twin Superfecta pool for that contest as a single price pool but not the Twin Superfecta carryover.
 11. If there is a dead heat or multiple dead heats in either the first- or second-half of the Twin Superfecta, all Twin Superfecta tickets selecting the correct order of finish, counting a betting interest involved in a dead heat as finishing in any dead-heated position, shall be a winner. In the case of a dead heat occurring in:
 - a. The first half of the Twin Superfecta, the payoff shall be calculated as a profit split.
 - b. The second half of the Twin Superfecta, the payoff shall be calculated as a single price pool.
 12. If either of the Twin Superfecta contests is cancelled prior to the first Twin Superfecta contest, or the first Twin Superfecta contest is declared "no contest," the entire Twin Superfecta pool shall be refunded on Twin Superfecta wagers for that contest and the second half shall be cancelled.
 13. If the second-half Twin Superfecta contest is cancelled or declared "no contest," all exchange tickets and outstanding first-half winning Twin Superfecta tickets shall be entitled to the net Twin Superfecta pool for that contest as a single price pool but not the Twin Superfecta carryover. If there are no such tickets, the net Twin Superfecta pool shall be distributed as described in subsection (Q)(3) of the Twin Superfecta rules.
 14. The Twin Superfecta carryover may be capped at a designated level approved by the Department so that if, at the close of any performance, the amount in the Twin Superfecta carryover equals or exceeds the designated cap, the Twin Superfecta carryover will be frozen until it is won or distributed under other provisions of this rule. After the second-half Twin Superfecta carryover is frozen, 100% of the net Twin Superfecta pool for each individual contest shall be distributed to winners of the first half of the Twin Superfecta pool.
 15. A written request for permission to distribute the Twin Superfecta carryover on a specific performance may be submitted to the Department. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.
 16. Should the Twin Superfecta carryover be designated for distribution on a specified date and performance, the following precedence will be followed in determining winning tickets for the second half of the Twin Superfecta after completion of the first half of the Twin Superfecta:
 - a. As a single price pool to those whose combination finished in correct sequence as the first four betting interests; but if there are no such wagers, then
 - b. As a single price pool to those whose combination included, in correct sequence, the first three betting interests; but if there are no such wagers, then
 - c. As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then
 - d. As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then
 - e. As a single price pool to holders of valid exchange tickets.
 - f. As a single price pool to holders of outstanding first-half winning tickets.
 17. Contrary to subsection (Q)(4) of the Twin Superfecta rules, during a performance designated to distribute the Twin Superfecta carryover, exchange tickets will be issued for those combinations selecting the greatest number of betting interests in their correct order of finish for the first-half of the Twin Superfecta. If there are no wagers correctly selecting the first-, second-, third-, and fourth-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first-, second-, and third-place betting interests. If there are no wagers correctly selecting the first-, second-, and third-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first- and second-place betting interests. If there are no wagers correctly selecting the first- and second-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first-place betting interest only. If there are no wagers selecting the first-place betting interest only in the first half of the Twin Superfecta, all first-half tickets will become winners and will receive 100% of that day's net Twin Superfecta pool and any existing Twin Superfecta carryover as a single price pool.
 18. The Twin Superfecta carryover shall be designated for distribution on a specified date and performance only under the following circumstances:
 - a. Upon written approval from the Department as provided in subsection (Q)(15) of the Twin Superfecta rules.
 - b. Upon written approval from the Department when there is a change in the carryover cap or when the Twin Superfecta is discontinued.
 - c. On the closing performance of the meet or split meet.
 19. If, for any reason, the Twin Superfecta carryover must be held over to the corresponding Twin Superfecta pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the Department. The Twin Superfecta carryover plus accrued interest shall then be added to the second-half Twin Superfecta pool of the following meet on a date and performance so designated by the Department.
 20. Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of valid exchange tickets is prohibited. This shall not prohibit necessary communications between totalisator and parimutuel department employees for processing of pool data.

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21. The permittee must obtain written approval from the Department concerning the scheduling of Twin Superfecta contests, the percentages of the net pool added to the first-half pool and second-half pool, and the amount of any cap to be set on the carryover. Any changes to the approved Twin Superfecta format require prior approval from the Department.
- R. Grand Slam Pools**
1. The Grand Slam requires selection of the Exacta, Tri-fecta, and Superfecta, respectively, in three consecutive contests. Each winning ticket for the first Grand Slam contest must be exchanged for a free ticket on the second Grand Slam contest in order to remain eligible for the second contest share of the Grand Slam pool. Such tickets may be exchanged only at attended ticket windows prior to the second Grand Slam contest. Winning Grand Slam tickets on the first race shall receive both an exchange and a monetary payoff. Each winning ticket for the second Grand Slam contest must be exchanged for a free ticket on the third Grand Slam Contest in order to remain eligible for the third contest share of the Grand Slam pool. Such tickets must be exchanged only at attended ticket windows prior to the third Grand Slam contest. Winning tickets on the second race shall receive both an exchange and a monetary payoff. The three designated Grand Slam contests shall be included in only one Grand Slam pool.
 2. After wagering closes for the first contest of the Grand Slam and commissions have been deducted from the pool, the net pool shall be divided into three separate pools: the first contest pool (25%), the second contest pool (25%), and the third contest pool (50%).
 3. In the first Grand Slam contest only, winning wagers shall be determined using the following precedence, based upon the official order of finish for the first Grand Slam contest:
 - a. If contestants of a coupled entry or mutuel field finish as the first two finishers, as a single price pool to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish; otherwise
 - b. As a single price pool to those whose combination finished in correct sequence as the first two betting interests; but if there are no such wagers, then
 - c. As a profit split to those whose combination included either the first-place betting interest to finish first or the second-place betting interest to finish second; but if there are no such wagers on one of those two finishers, then
 - d. As a single price pool to those whose combination included the one covered betting interest to finish first or second.
 4. Winning tickets from the first contest of the Grand Slam shall be exchanged for tickets selecting the first three finishers of the second contest of the Grand Slam. The second contest pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish for the second Grand Slam contest:
 - a. As a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers, then
 - b. The entire pool for the second and third contests shall be added to any existing carryover monies and retained for the third contest pool of the next performance.
 5. Winning tickets for the second contest of the Grand Slam shall be exchanged for tickets selecting the first four finishers of the third contest of the Grand Slam. The third contest pool and any existing carryover monies shall be distributed to winning wagers in the following precedence, based upon the official order of finish for the third Grand Slam contest:
 - a. As a single price pool to those whose combination finished in correct sequence as the first four betting interests; but if there are no such wagers, then
 - b. The entire pool for the third contest shall be added to any existing carryover monies and retained for the corresponding third contest pool of the next performance.
 6. If a winning Grand Slam ticket is not presented for cashing and exchange prior to the next Grand Slam contest, the ticket holder may still collect the monetary value associated with the corresponding pool but forfeits all rights to any distribution of subsequent Grand Slam pools.
 7. Coupled entries and mutuel fields shall be prohibited in the second and third races of the Grand Slam.
 8. Should a betting interest in the first contest of the Grand Slam be scratched, those Grand Slam wagers including the scratched betting interest shall be refunded.
 9. Should a betting interest in the second or third contests of the Grand Slam be scratched, an announcement concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest. If tickets have not been exchanged prior to the close of betting for the corresponding contest, the ticket holder forfeits all rights to the remainder of the Grand Slam pool.
 10. If there is a dead heat or multiple dead heats in any of the contests of the Grand Slam, all Grand Slam wagers selecting the correct order of finish, counting a betting interest involved in a dead heat as finishing in any dead-heated position, shall be winners. Contrary to the usual practice, the aggregate number of winning tickets shall be divided into the net pool and paid the same price.
 11. If any of the Grand Slam contests are cancelled prior to the first Grand Slam contest, or the first Grand Slam contest is declared "no contest," the entire Grand Slam pool shall be refunded on Grand Slam wagers for that contest and the remaining Grand Slam contests shall be cancelled. Any existing carryover monies pursuant to subsections (R)(4) and (5) of this rule shall carryover to the next consecutive racing program of that meeting.
 12. If the second contest of the Grand Slam is canceled or declared "no contest," or if less than three contestants finish, the second contest pool of the Grand Slam shall be distributed equally among holders of second contest Grand Slam exchange tickets, and the third-contest pool of the Grand Slam shall carryover to the third-contest pool of the next performance.
 13. If the third contest of the Grand Slam is canceled or declared "no contest" before the second contest has been made official but after the first contest (pursuant to subsection (R)(11) of this rule), that racing day's third-contest pool shall be distributed equally among holders of second-contest Grand Slam exchange tickets. If the third contest of the Grand Slam is cancelled or declared "no contest" after the second contest has been made official, that racing day's third contest shall be distributed equally among holders of the third-contest Grand Slam exchange

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- tickets. In such instance, no carryover pool would be generated from that racing day.
14. If no distribution is made pursuant to subsection (R)(5)(a) of this rule, on the last day of the race meeting the permittee shall distribute the third-race pool and any existing carryover monies equally among the holders of exchange tickets selecting the finishing contestants in the third race. The net pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:
- As a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers, then
 - As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then
 - As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then
 - As a single price pool to all holders of third-race tickets.
15. If there were no winning wagers in the second race of the Grand Slam on the last day of the race meeting, the permittee shall distribute the second-race pool and any existing carryover monies equally among the holders of exchange tickets selecting the finishing contestants in the second race. The net pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:
- As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then
 - As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then
 - As a single price pool to all holders of second-race tickets.
16. If there were no winning wagers in the first race of the Grand Slam on the last day of the race meeting, the permittee shall distribute the first-race pool and any existing carryover monies as a profit split to the holders of tickets selecting either the first-place finisher to finish first or the second-place finisher to finish second. If there were still no winning wagers in the first race of the Grand Slam, such monies shall be distributed to all ticket holders.
17. Grand Slam tickets shall be issued in multiples of \$1.00.

Historical Note

Adopted effective October 21, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 93-4). Amended effective November 16, 1993, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18); inadvertently omitted from Supp. 93-4 (Supp. 94-2). Typographical corrections made to subsections (F)(6), (P)(3)(d), and (P)(21) (Supp. 94-4). R19-2-523 recodified from R4-27-523 (Supp. 95-1). Amended effective July 3, 1996 (Supp. 96-3). Amended effective September 17, 1997, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 41-1005(A)(18) (Supp. 97-3). Amended by exempt rulemaking at 6 A.A.R. 786, effective February 1, 2000 (Supp. 00-1). Amended by exempt rulemaking at 24 A.A.R. 2962, effective September 28, 2018 (Supp. 18-3).

ARTICLE 6. STATE BOXING AND MIXED MARTIAL ARTS COMMISSION: ADMINISTRATION OF UNARMED COMBAT SPORTS**R19-2-601. Renumbered****Historical Note**

New Section recodified from Section R4-3-415 at 5 A.A.R. 1175, April 23, 1999 (Supp. 99-2). Amended by final rulemaking at 7 A.A.R. 805, effective January 18, 2001 (Supp. 01-1). Section R19-2-601 renumbered to Section R19-2-A601 by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

R19-2-602. Renumbered**Historical Note**

New Section recodified from Section R4-3-416 at 5 A.A.R. 1175, April 23, 1999 (Supp. 99-2). Amended by final rulemaking at 7 A.A.R. 805, effective January 18, 2001 (Supp. 01-1). Section R19-2-602 renumbered to Section R19-2-A602 by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

R19-2-603. Renumbered**Historical Note**

New Section recodified from Section R4-3-417 at 5 A.A.R. 1175, April 23, 1999 (Supp. 99-2). Amended by final rulemaking at 7 A.A.R. 805, effective January 18, 2001 (Supp. 01-1). Section R19-2-603 renumbered to Section R19-2-B607 by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

R19-2-604. Renumbered**Historical Note**

New Section recodified from Section R4-3-418 at 5 A.A.R. 1175, April 23, 1999 (Supp. 99-2). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 805, effective January 18, 2001 (Supp. 01-1). Section R19-2-604 renumbered to Section R19-2-B608 by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

R19-2-605. Renumbered**Historical Note**

New Section recodified from Section R4-3-419 at 5 A.A.R. 1175, April 23, 1999 (Supp. 99-2). Former Section R19-2-605 repealed; new Section R19-2-605 renumbered from R19-2-609 and amended by final rulemaking at 7 A.A.R. 805, effective January 18, 2001 (Supp. 01-1). Section R19-2-605 renumbered to Section R19-2-C603 by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

R19-2-606. Renumbered**Historical Note**

New Section recodified from Section R4-3-420 at 5 A.A.R. 1175, April 23, 1999 (Supp. 99-2). Former Section R19-2-606 repealed; new Section R19-2-606 renumbered from R19-2-610 and amended by final rulemaking at 7 A.A.R. 805, effective January 18, 2001 (Supp. 01-1). Section R19-2-606 renumbered to Section R19-2-C607 by final rulemaking at 24 A.A.R. 445, effective February 7, 2018 (Supp. 18-1).

R19-2-607. Repealed**Historical Note**

New Section recodified from Section R4-3-421 at 5

5-104. Arizona racing commission; director; division; powers and duties

A. The commission shall:

1. Issue racing dates.
2. Prepare and adopt complete rules to govern the racing meetings that are required to protect and promote the safety and welfare of the animals participating in racing meetings, to protect and promote public health, safety and the proper conduct of racing and pari-mutuel wagering and any other matter pertaining to the proper conduct of racing within this state.
3. Conduct hearings on applications for permits and approve permits and shall conduct rehearings on licensing and regulatory decisions made by the director as required pursuant to rules adopted by the commission.
4. Conduct all reviews of applications to construct capital improvements at racetracks as provided in this chapter.

B. The director shall license personnel and shall regulate and supervise all racing meetings held and pari-mutuel wagering conducted in this state and cause the various places where racing meetings are held and wagering is conducted to be visited and inspected on a regular basis. The director may delegate to stewards any of the director's powers and duties that are necessary to fully carry out and effectuate the purposes of this chapter. The director shall exercise immediate supervision over the division. The director is subject to ongoing supervision by the commission, and the commission may approve or reject decisions of the director in accordance with rules established by the commission.

C. The commission or the division is authorized to allow stewards, with the written approval of the director, to require a jockey, apprentice jockey, sulky driver, groom, horseshoer, outrider, trainer, assistant trainer, exercise rider, pony rider, starter, assistant starter, jockey's agent, veterinarian, assistant veterinarian, cool-out, security or maintenance worker, official or individual licensed in an occupational category whose role requires direct hands-on contact with horses, while on the grounds of a permittee, to submit to a test if the stewards have reason to believe the licensee is under the influence of or unlawfully in possession of any prohibited substance regulated by title 13, chapter 34.

D. The division shall employ the services of the office of administrative hearings to conduct hearings on matters requested to be heard by the director or the commission for the division except for those rehearings that are required by the terms of this

chapter to be conducted by the commission. Any person adversely affected by a decision of a steward or by any other decision of the division may request a hearing on the decision. The decision of the administrative law judge becomes the decision of the director unless rejected or modified by the director within thirty days. The commission may hear any appeal of a decision of the director in accordance with title 41, chapter 6, article 10.

E. The division may visit and investigate the offices, tracks or places of business of any permittee and place in those offices, tracks or places of business expert accountants and other persons as the division deems necessary for the purpose of ascertaining that the permittee or any licensee is in compliance with the rules adopted pursuant to this article.

F. The division shall establish and collect the following licensing fees and regulatory assessments, which shall not be reduced for capital improvements pursuant to section 5-111.02:

1. For each racing license issued, a license fee.
2. From the purse accounts provided for in section 5-111, a regulatory assessment to pay for racing animal medication testing, animal safety and welfare.
3. From each permittee, a regulatory assessment for each day of dark day simulcasting conducted in excess of the number of live racing days conducted by the permittee.
4. From each commercial racing permittee, a regulatory assessment payable from amounts deducted from pari-mutuel pools by the permittee, in addition to the amounts the permittee is authorized to deduct pursuant to section 5-111, subsection B from amounts wagered on live and simulcast races from in-state and out-of-state wagering handled by the permittee.

G. The commission shall establish financial assistance procedures for promoting adoption of retired racehorses. The provision of financial assistance to nonprofit enterprises for the purpose of promoting adoption of retired racehorses is contingent on a finding by the commission that the program presented by the enterprise is in the best interest of the racing industry and this state. On a finding by the commission, the commission is authorized to make grants to nonprofit enterprises whose programs promote adoption of retired racehorses. The commission shall develop an application process. The commission shall require an enterprise to report to the commission on the use of grants under this subsection. Financial assistance for nonprofit enterprises that promote adoption of retired racehorses under this subsection shall not exceed the

amount of retired racehorse adoption surcharges collected pursuant to this subsection. The commission shall collect a retired racehorse adoption surcharge in addition to each civil penalty assessed in connection with horse or harness racing pursuant to this article. The amount of the retired racehorse adoption surcharge shall be five percent of the amount collected for each applicable civil penalty.

H. A license is valid for the period established by the commission, but not more than five years, except for a temporary license issued pursuant to section 5-107.01, subsection F. The licensing period shall begin July 1.

I. A person may submit an application in writing that objects to any decision of track stewards within three days after the official notification of the decision. On application, the division or administrative law judge shall review the objection. In the case of a suspension of a license by the track stewards, the suspension shall run for a period of not more than six months. Before the end of this suspension period, filing an application for review is not cause for reinstatement. If at the end of this suspension period the division or administrative law judge has not held a hearing to review the decision of the stewards, the suspended license shall be reinstated until the division or administrative law judge holds a hearing to review the objection. Except as provided in section 41-1092.08, subsection H, a final decision of the commission is subject to judicial review pursuant to title 12, chapter 7, article 6.

J. The commission or the director may issue subpoenas for the attendance of witnesses and the production of books, records and documents relevant and material to a particular matter before the commission or division and the subpoenas shall be served and enforced in accordance with title 41, chapter 6, article 10.

K. Any member of the commission, the administrative law judge or the director or the director's designee may administer oaths, and the oaths shall be administered to any person who appears before the commission to give testimony or information pertaining to matters before the commission.

L. The commission shall adopt rules that require permittees to retain for three months all official race photographs and videotapes. The division shall retain all photographs and videotapes that are used as evidence in an administrative proceeding until the conclusion of the proceeding and any subsequent judicial proceeding. All photographs and videotapes must be available to the public on request, including photographs and videotapes of races concerning which an objection is made, regardless of whether the objection is allowed or disallowed.

M. The director may establish a management review section for the development, implementation and operation of a system of management reports and controls in

major areas of division operations, including licensing, workload management and staffing, and enforcement of this article and the rules of the commission.

N. In cooperation with the department of public safety, the director shall establish a cooperative fingerprint registration system. Each applicant for a license or permit under this article or any other person who has a financial interest in the business or corporation making the application shall submit to fingerprint registration as part of the background investigation conducted pursuant to section 5-108. The cooperative fingerprint registration system shall be maintained in an updated form using information from available law enforcement sources and shall provide current information to the director on request as to the fitness of each racing permittee and each racing licensee to engage in the racing industry in this state.

O. The director shall develop and require division staff to use uniform procedural manuals in the issuance of any license or permit under this article and in the enforcement of this article and the rules adopted under this article.

P. The director shall submit an annual report containing operational and economic performance information as necessary to evaluate the department's budget request for the next fiscal year to the governor, the speaker of the house of representatives, the president of the senate and the secretary of state not later than September 30 each year. The annual report shall be for the preceding fiscal year and shall contain performance information as follows:

1. The total state revenues for the previous fiscal year from the overall pari-mutuel handle with an itemization for each horse racing meeting, each harness racing meeting, each advanced deposit wagering permittee and each additional wagering facility.
2. The total state revenues for the previous fiscal year from the regulation of racing, including licensing fees assessed pursuant to subsection F of this section and monetary penalties assessed pursuant to section 5-108.02.
3. The amount and use of capital improvement funds pursuant to section 5-111.02 that would otherwise be state revenues.
4. The number of licenses and permits issued, renewed, pending and revoked during the previous fiscal year.
5. The investigations conducted during the previous fiscal year and any action taken as a result of the investigations.

6. The division budget for the immediately preceding three fiscal years, including the number of full-time, part-time, temporary and contract employees, a statement of budget needs for the forthcoming fiscal year and a statement of the minimum staff necessary to accomplish these objectives.

7. Revenues generated for this state for the preceding fiscal year by persons holding racing meeting and advanced deposit wagering permits.

8. Recommendations for increasing state revenues from the regulation of the racing industry while maintaining the financial health of the industry and protecting the public interest.

Q. The commission may certify animals as Arizona bred or as Arizona stallions. The commission may delegate this authority to a breeders' association it contracts with for these purposes. The commission may authorize the association, racing organization or division to charge and collect a reasonable fee to cover the cost of breeding or ownership certification or transfer of ownership for racing purposes.

R. The commission may obtain the services of the office of administrative hearings on any matter that the commission is empowered to hear.

S. The division may adopt rules pursuant to title 41, chapter 6 to carry out the purposes of this article, ensure the safety and integrity of racing in this state and protect the public interest.

5-111. Wagering percentage to permittee and state; exemptions

A. The commission shall prescribe rules governing wagering on races under the system known as pari-mutuel wagering. Wagering shall be conducted by a permittee only by pari-mutuel wagering and only on the dates for which racing or dark day simulcasting has been authorized by the commission. Wagering for a licensed racing meeting shall be conducted by a commercial live-racing permittee only within an enclosure and, in counties having a population of less than five hundred thousand persons or at least one million five hundred thousand persons, at those additional facilities that are owned or leased by a permittee, that are approved by the commission and that are used by a permittee for handling wagering as part of the pari-mutuel system of the commercial live-racing permittee. In all other counties, wagering may also be conducted at additional facilities that are owned or leased by a commercial live-racing permittee who is licensed to conduct live racing in those counties or, until January 1, 2019, who has the consent of all commercial permittees currently licensed to conduct live racing in those counties, and that are used by a permittee for handling wagering and as part of the pari-mutuel system of the commercial live-racing permittee. Beginning January 1, 2019, consent of commercial permittees licensed to conduct live racing in those counties is not required. From and after December 31, 2016, any agreement concerning simulcasting that is executed between a permittee that conducted live dog racing in 2016 and a horse racing facility that is located in a county with a population of more than three million persons shall provide that twenty percent of the commission fee paid to a permittee that conducted live dog racing in 2016 under that agreement be distributed to the recognized horsemen's association that represents horsemen participating in race meets in this state. If the additional facilities have not been used for authorized racing before their use for handling wagering, a permittee shall not use the facilities for handling wagering before receiving approval for use by the governing body of the city or town, if located within the corporate limits, or by the board of supervisors, if located in an unincorporated area of the county. A permittee may televise any live or simulcast races received at the permittee's racing enclosure to the additional facilities at the times the races are conducted or received at the permittee's enclosure. For the purpose of section 5-110, subsection C only, a race on which wagering is permitted under this subsection shall be deemed to also occur at the additional facility in the county in which the additional facility is located, and shall be limited in the same manner as actual live racing in that county. For the purpose of subsection B of this section, the wagering at the additional facility shall be deemed to occur in the county in which the additional facility is located.

B. During the period of a permit for horse or harness racing, the permittee that conducts the meeting may deduct up to and including twenty-five percent of the total

amount handled in the regular pari-mutuel pools and, at the permittee's option, may deduct up to and including thirty percent of the total amount handled in the exacta, daily double, quinella and other wagering pools involving two horses, and up to and including thirty-five percent of the total amount handled in the trifecta or other wagering pools involving more than two horses in one or more races. The amounts if deducted shall be distributed as prescribed in subsection C of this section and section 5-111.02 for horse or harness racing permittees.

C. During the period of a permit for horse or harness racing, the state shall receive two percent of the gross amount of the first one million dollars of the daily pari-mutuel pools and five percent of the gross amount exceeding one million dollars of the daily pari-mutuel pools. Notwithstanding any other provision of this subsection, the percentage paid by a permittee to the state does not apply to monies handled in a pari-mutuel pool for wagering on simulcasts of out-of-state races. The permittee shall retain the balance of the total amounts deducted pursuant to subsection B of this section. Of the amount retained by the permittee, minus the amount payable to the permittee for capital improvements pursuant to section 5-111.02, breakage distributed to the permittee pursuant to section 5-111.01 and other applicable state, county and city transaction privilege or other taxes, unless otherwise agreed by written contract, fifty percent shall be used for purses. Unless otherwise agreed by written contract, fifty percent of the revenues received by the permittee from simulcasting races as provided in section 5-112, net of costs of advertising, shall be utilized as a supplement to the general purse structure. All amounts that are deducted from the pari-mutuel pool for purses pursuant to this section and sections 5-111.01, 5-112 and 5-114 and revenues that are received from simulcasting and that are to be used as a supplement to the general purse structure pursuant to this subsection shall be deposited daily into a trust account for the payment of purse amounts.

D. Any county fair racing association may apply to the commission for one racing meeting each year and the commission shall set the number of days and the dates of the meetings. A racing meeting conducted under this subsection shall be operated in such manner so that all profits accrue to the county fair racing association, and the county fair racing association may deduct from the pari-mutuel pool the same amount as prescribed in subsection B of this section. All county fair racing meetings, whether conducted by county fair racing associations under this subsection or by an individual, corporation or association other than a county fair racing association, are exempt from the payment to the state of the percentage of the pari-mutuel pool prescribed by subsection C of this section and are also exempt from the provisions of section 5-111.01.

E. Monies from charity racing days are exempt from the state percentage of the pari-mutuel pool prescribed in this section.

F. Sums held by a permittee for payment of unclaimed pari-mutuel tickets are exempt from the revised Arizona unclaimed property act, title 44, chapter 3.

G. All of the amounts received by a permittee from the gross amount of monies handled in a pari-mutuel pool and all amounts held by a permittee for payment of purses pursuant to this section and sections 5-111.01, 5-112 and 5-114 are exempt from the provisions of title 42, chapter 5.

G.

CONSIDERATION AND DISCUSSION OF PETITION SUBMITTED PURSUANT TO A.R.S. § 41-1033 (G)



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM

MEETING DATE: December 3, 2019

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

FROM: Council Staff

DATE: November 13, 2019

SUBJECT: A.R.S. 41-1033(G) Petition - Board of Cosmetology

Summary

On November 1, 2019, GRRC staff received a letter dated October 28, 2019 (petition) from Kathleen Tucker, a nail technician in Tucson, Arizona. Ms. Tucker raises several issues with the Board of Cosmetology (Board) in her petition. However, for the purposes of Council review, Ms. Tucker appears to indicate that Board rule R4-10-111 (Display of Licenses and Signs), which requires a licensee performing mobile services to “prominently display a duplicate personal and establishment license in the area where mobile services are provided” is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern pursuant to A.R.S. § 41-1033(G).

Specifically, she states: “[r]equiring us to purchase another license for every single location where we work would be/is a hardship that serves no safety concern, and does not seem to be a written practice of AZBOC.”

Further, Ms. Tucker asks the Council to “consider that requiring multiple purchases of the same license (as opposed to displaying a clear copy of a licensee’s valid AZBOC license), is an undue burden on all AZBOC licensees that it does not serve the needs or safety of the public in the least.”

Relevant Statutes

A.R.S. § 41-1033(G) allows a person to “petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that is not specifically authorized by statute pursuant to title 32 based on the person's belief that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. If the council determines that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement applies to a profession for which the average wage in that profession in this state does not exceed two hundred percent of the federal poverty guidelines for a family of four, the council shall review the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement as prescribed by this section.”

According to the federal Department of Health and Human Services (HHS), the federal poverty guideline for a family of four is \$27,750 per year.¹ Two hundred percent (200%) of this amount equals \$51,500. According to information obtained from Indeed.com, the average hourly wage for a nail technician in the state of Arizona is \$16.68 per hour.² This equals approximately \$33,360 per year based on a 40-hour work week working 50 weeks per year. Thus, it appears the average wage of a nail technician in Arizona does not exceed 200% of the federal poverty guidelines for a family of four, making this petition eligible for review pursuant to A.R.S. § 41-1033(G).

If the Council receives information pursuant to A.R.S. § 41-1033(G), and at least four Council members request of the Chairperson that the matter be heard in a public meeting:

1. Within ninety days after receipt of the fourth council member's request, the council shall determine whether the agency practice or substantive policy statement constitutes a rule, whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement meets the guidelines prescribed in subsection G of this Section.
2. Within ten days after receipt of the fourth council member's request, the council shall notify the agency that the matter has been or will be placed on an agenda.
3. Not later than thirty days after receiving notice from the council, the agency shall submit a statement to the council that addresses whether the existing agency practice, substantive policy statement constitutes a rule or whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy

¹ [Federal Register/Vol. 84, No. 22/Friday, February 1, 2019 ...](#)

² <https://www.indeed.com/salaries/nail-technician-Salaries,-Arizona>

statement, final rule or regulatory licensing requirement meets the guidelines prescribed in subsection G of this section.

See A.R.S. § 41-1033(H)

Analysis and Conclusion

A.R.S. § 41-1033 does not provide requirements or standards to guide the Council in determining whether this petition should be given a hearing. Therefore, Council members should make their own assessments as to what information is relevant in determining whether this petition may be heard.

In Council staff's view, Ms. Tucker's petition raises issues related to potential burdens imposed on stakeholders by R4-10-111 (Display of Licenses and Signs) and whether the Board adequately assessed those burdens against any benefits of the rule. Council staff recommends that Council members vote to request that the petition be given a hearing, thereby allowing Ms. Tucker and the Board an opportunity to provide more information on this matter in a public meeting.

October 28 2019

Governor Doug Ducey,
AZ Governor's Regulatory Review Council,
AZ Dept. of Administration,
100 N 15th St #305
Phoenix, AZ 85007

Dear Governor Ducey, AZ Regulatory Review Council and AZ Dept of Administration,

I am writing to Petition your assistance and to request a Review of a current AZ Agency (AZ Board of Cosmetology, the AZBOC) Practice that I believe does not meet the requirements of ARS 41-1030 because it is unduly burdensome, does not specifically fulfill a public health, safety or welfare concern, does ~~not~~ not appear to be in any written form as either a AZBOC Practice or AZBOC Rule, and is not evenly enforced or consistently enforced.

I ask you to view the attached copy of my valid AZ BOC license and read the Notice on the license prohibiting the copying of a license for "fraudulent purposes".

I would now ask you to view the attached correspondence between myself and the AZBOC Compliance Officer and note the numerous highlighted requests that I have made in the last 9 weeks,

ever since an AZBOC Inspector inspected on or about Aug 28, an Assisted Living Salon where I have a copy of my license on display,

that I be provided a copy of the AZBOC "Rule" or "Practice" that prohibits a lawful licensee owner of a AZBOC license from copying it or displaying it for NON-Fraudulent use.

I have been asking since September 3, 2019. I have made a diligent search for a AZBOC Rule or Prohibition and searched in Arizona Revised Statutes regarding such and found nothing.

I have been an AZ licensed Nail Tech and Salon Owner since 1998. I have been inspected and been "In Compliance" every single time and many times, over the years, whether the inspection was my own Salon or one where I was working at the time an AZBOC Inspector visited the site(s). I have had my mobile kit inspected by AZBOC. Always In Compliance. I've always used copies of my valid licenses on display when working away from my own salon during the last 20 yrs.

I work with seniors and others who have special needs in that they are in assisted living situations, or in homes, who have mobility, cognitive, communication impairments. I am especially experienced and trained to work with people with impairments. I take extra special care with my clients. I go the extra mile in safety and sanitation. I do not make a lot of money. This is a calling, a career, and I am a professional.

You see, many of us AZBOC licensees have to work at multiple locations to make ends meet.

Requiring us to purchase another license for every single location where we work would be/is a hardship that serves no safety concern, and does even not seem to be a written practice at AZBOC. (Unless they are now hurriedly cobbling one together).

In the past 2 decades, I have asked for duplicate license. Both times, my check was returned to me by AZBOC with a note saying purchase wasn't necessary. The first time was when I was invited to be on call for a resort here in Tucson, the 2nd time was when I took my kit off site of my own salon.

The last time my Salon was inspected was 2012, I was actually kit-packed and on my way out to the Academy Villa salon for scheduled appointments. I called the Villa due to being delayed, and then the inspector inspected my Salon and my mobile kit, noticing my application of my license inside the cover of the kit, and gave my Salon another clear Passing inspection.

When I called to question AZBOC following a late AUG 2019 inspection of the Salon at Academy Villas, where I still work part time, AZBOC could not locate my salon name in their data base! I had to pull out my license and read my Salon license number to AZBOC. A Salon license I've had over 21 yrs.

The issue with the inspection on Aug 2019, was that the inspector disapproved of the photocopied current license I have displayed in that Salon for every one of the 9.5 years I have been providing services there, and, during that time, hanging during the several AZBOC inspections that occurred during those years.

In my call to AZBOC on Sept 3, I stated that I am that licensee and that I am not using the copy for 'fraudulent purposes'. I said I carry a copy of my licenses in my mobile kit too. "WHAT MOBILE PRACTICE!?!?", she asked. I responded that it is the mobile kit that I carry with me that contains all required docs and materials. The same kit that has been inspected many times by AZBOC over the years. She "has no record of any mobile work by me".

I am stunned. A licensed Salon may send a licensed nail tech (me) to any area in AZ that requests the service I am AZ licensed to provide, or if I had licensed employees, to provide. Plus, AZBOC says they have NO RECORD of inspecting my mobile kit.

Mobile work has stringent guidelines just as any Salon does: Sterilization/sanitation, cleanliness, record keeping, 1st aid, HAZMAT, MSDS material info, proper labels, wet storage of tools submersed in approved liquid, dry storage of clean files, towels, etc.). My kit is in full compliance at all times. This AZBOC clerk was speaking to me in the most insulting manner after not even being able to locate me in the AZBOC database.

I asked the unnamed AZBOC clerk for a copy of the Rule she said I was breaking regarding photocopying my own license. I have been asking the AZBOC Compliance Officer ever since.

I have left recorded requests on AZBOC phone messaging. I have, many times, written AZBOC my request for the rule or practice that prohibits the use of a valid license copy. I have multiply requested to communicate in writing with AZBOC, and AZBOC has answered with a request that we "just talk".

I also, early on, tried calling the "direct line" of the Compliance Officer at AZBOC, as she requested, but it always, always just went to the message machine.

I have always answered her calls with an email response and also asked for confirmation of receipt and received confirmation.. I repeatedly asked to communicate in writing only, esp since the last message I left got me so upset that I became tearful with frustration. And because these issues require clear and concise communication.

The last written communication I had from the AZBOC Compliance Officer is her statement that she believes I am “not in compliance”. And yet, I always am.. I am also wondering why I have not been immediately inspected if they believe I am wrongdoing.. I feel that I am being intimidated by AZBOC to be silent but this will not stop me from seeking the facts and assistance from you.

I had outlined some serious concerns I had at the place of business where the inspection and this issue arose.

None of my requests have been addressed in these past 9 weeks.

*****However, on October 25, I received a call from the Director of the Academy Villas Assisted Living where the Aug 2019 inspection occurred. She has apparently been contacted by AZBOC. She said she is worried that my actions might cause AZBOC to fine the facility in which their Salon is located. I have to be concerned that I will be let go, after nearly 10 years due to AZBOC conduct/intimidating tactics. The Director also said that she thinks both myself and the hairdresser must always have our original (not photocopied) licenses on display at all times, 24/7, inside the Villa Salon even though we both work other locations. .and the hairdresser has been carrying her original license to each location, while mine remains inside my own Salon and I carry a photocopy.

I have (saved) phone messages I have received from AZBOC Compliance:

(the reason why my timely license renewal has been delayed long past my license expiration) and (even though my check had been cashed for over a month), (“It takes 2 weeks for a 1st class letter from PHX to reach Tucson”, she says in the phone message).

I saved the message from the AZBOC Compliance Officer saying that she has listed me as the Complainant for mentioning some suspicious acts that the Aug 2019 Inspector failed to notice. You will find both my written response and the Compliance Officers response in the attached paperwork.

Specifically, A hairdresser renting space inside the salon is advertising a nonexistent hair salon business to the Public, the Academy Village residents, and inside the actual licensed Salon out there

And, unless I “contact the Compliance Officer and tell her I want to be an “Anonymous Complainant” I will be named as the complainer. Until all of this happened, I felt the AZBOC inspector would certainly have noticed the advertising and questioned it during her August inspection.

I replied in writing that it is the responsibility of AZBOC to discover fraudulent salons, or unregistered hair styling businesses during their inspections, and to leave my name out of it.

Pressure has been applied to get me to be quiet about wanting the written practices of AZBOC as pertains to use a copy of a license owner, and I feel it is still being applied.

I also feel that the AZBOC should have initiated their own re-inspection. Very important things were missed during that Aug 2019 inspection. Innocent clients should not be unaware that they are handing their credit card to a licensee who is advertising a salon/hair business that does not exist.

If there are written Procedures or written AZBOC Rules regarding the display of a photocopied

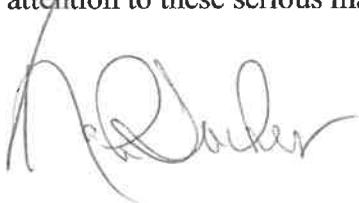
licensee's license, the AZBOC is refusing to provide it to me by ignoring my multiple verbal and written requests for it.

Please consider that requiring multiple purchases of the same license (as opposed to displaying a clear copy of a licensee's valid AZBOC license), is an undue burden on all AZBOC licensees that it does not serve the needs or safety of the public in the least.

I am very concerned why AZBOC cannot or will not provide the written AZBOC Rules or Practice requiring repeated purchase of a licensee license.

Thank you for your attention to these serious matters,

Kathleen Tucker
9241 E Helen St.
Tucson, AZ 85715

A handwritten signature in black ink, appearing to read "Kathleen Tucker".

520 885-2247 for telephone messages, deadline@cox.net
520 305-7093, ambientbohemia@gmail.com



Kathleen Tucker <ambientbohemia@gmail.com>

Re: From K Tucker Re Inspection Salon at the Villas Tucson

1 message

Irma Telles-Stewart <itelles@azboc.gov>
To: Kathleen Tucker <ambientbohemia@gmail.com>

Mon, Oct 7, 2019 at 11:20 AM

I understand. I am hoping you get your license soon. Please let me know if you are having issues with your license..

As your unresolved issues, I talked to the assigned inspector regarding her visit regarding posting of salon license. I did try calling you twice in reference to inspector's inspection to no avail. At this time, I do not have your salon file in front of me or investigator's report. I am out of the office today but I will call you first thing tomorrow morning.

Thank you.

Thank you.

Thank you.

On Mon, Oct 7, 2019 at 10:58 AM Kathleen Tucker <ambientbohemia@gmail.com> wrote:

I have received your email. I am in Tucson so going to your office for pickup is a no.

On Mon, Oct 7, 2019, 8:51 AM Irma Telles-Stewart <itelles@azboc.gov> wrote:

I apologize I have not returned your call. I am out of the office. I called the office this morning for status of your 2021 renewal. Your personal 2021 license renewal was received in the office on the 9th of September (take 2 to 3 weeks) for license to be processed. On the 3rd of October your 2021 license was printed and mailed to your address listed in the system. Pickup mail for Board is twice a day morning & late afternoon. I can have a license printed today at no charge and you may pick it up today. Once you received the initial 2021 license that was mailed on the 3rd, you will need to return one of the licenses. Please confirm that you will pick up license or wait until you get the initial license that was mailed to you on the 3rd.

On Mon, Oct 7, 2019 at 8:18 AM Kathleen Tucker <ambientbohemia@gmail.com> wrote:

Dear Ms Telles,

I prefer communicating in writing so that there are no misunderstandings regarding my frustration over not receiving my personal license in the mail even though I mailed it on Sept 3, it was received in PHX Sept 4, and cleared my bank before Sept 10.

My birthday was Oct 2. I now have no paper license to carry with me, hang in my shop, or make copies of. This is NOT acceptable especially since I left a voice mail to you on Oct. 3 without any reply as yet. I was so upset my voice was quivering and I repeated myself several times. I am today even more upset after still not receiving either.

I will likely be sent home today and my scheduled appts cancelled if I am asked for a current license that I cannot produce - but was paid for over a month ago. This has never happened in my 21 yrs of being an AZ licensed nail tech. I will disappoint all my senior clients and lose my income over this. The stress is unhealthy and losses unforgivable.

I also previously, verbally and in writing, asked for a paper copy of the AZBOC Rule to require multiple duplicate purchases of the same valid license. I read every word of the Board's written Rules. I read that a Duplicate costs \$30 and that a reason must be given for the duplicate request. I do not see a Rule saying anything past the Rule of having a valid license in plain sight.

I need my license delivered to me ASAP. I have made a screen shot of my license being ACTIVE thru Oct 2 2021. This is not the same as having the license in plain sight, and the 1st time EVER I will go to work without proper paperwork ie a license.

Because I am concerned about retaliatory actions over my multiple recent complaints to you, I feel that I should report these issues to Governor's Office, the Auditor Generals Office and the Ombudsmen and a private attorney in the coming days if I don't receive written assurance that my license will be delivered to me immediately and with any known reason for the egregious delay, and with the docs I've requested outlining the requirement to purchase

the same license. As I stated, I have twice, in the past 21 years, sent a check for a Duplicate license to carry on my kit, and had my checks returned with a notice that the purchase was not necessary. . and containing the requested a Duplicate license both times. I mentioned this to you and said that your records in my license can confirm my statement. You should have been able to verify this and the 180* change from the Aug 19 shop inspection and the one prior (when all ref to any salons other than the one for that address were ordered taken down) etc.

There were many other compliance concerns that we discussed in Sept (3 & 4) that remain unresolved. At this point, I am focusing on my undelivered renewed license, when to expect it, and the reason why.

Sincerely,

Kathleen C Tucker Lic#59818065

9241 E Helen St
Tucson 85715

On Fri, Sep 6, 2019, 8:31 AM Irma Telles-Stewart <itelles@azboc.gov> wrote:

In receipt to your email, you may call me I am here to speak with you with any concerns you have.

Thank you,

Irma

On Fri, Sep 6, 2019 at 5:33 AM ambientbohemia@gmail.com <ambientbohemia@gmail.com> wrote:

I've had a hard time connecting with you this week regarding the recent inspection and the msg passed on to me that the photocopy of my license is inadequate.

I am frustrated. Prior inspector had me remove all signage mentioning my Nail Fairy Salon. She had the Assisted Livings Director take it off the wall right [then](#). That inspector said the only Salon License to be hanging was the one issued to that address.

I go out there using my mobile kit and have had my mobile kit inspected a number of times over the past 20 yrs. A copy of my license is attached to it and every area of my kit is always pass ready and has passed all inspectors ie cleanliness, MSDS sheets, 1st aid kit with procedures, etc. I keep a copy on the wall also and it was never questioned these past 9 years.

As I mentioned earlier this week to you: I have twice sent a check to purchase a duplicate license and twice had the check returned to me with a note that the purchase wasn't required. You should be able to verify that in my files. I have been the administrator, in the past, for the Tucson prisons' Policies and Procedures and I imagine you also have numerous notebooks of these rules and amendments. I know things change. I would like the document that requires the purchase (as opposed to the carrying of) an original for every place services are performed. I noticed this week that the hair stylist has taken her license off the wall at the Villas. The head caregiver told me that she is (now) keeping it with her since she works other salons.

I am sure that a part of my frustration stems from the fact that I was rather looking forward to the next inspection since I felt the inspector would have hard questions about just who or what The Silver Studio is . which is what this hair stylist has named her business. Note: There isn't a salon licensed in AZ by that name on these attached photos and there is no business registered to Sandra Cavataio nor The Silver Studio in either Tucon or Pima County, as verified by Michael in the Pima County Dept of Licensing and Revenue. There are shady doings here that I thought the inspector would notice and correct. The business office for the entire Academy Village including the Assisted Livings thinks that Sandra Cavataio (unsure of spelling) is being sent out by Rincon Family Salons yet there is nothing indicating current involvement by Rincon Family Salon shown inside this salon. Yes. It is a box of rocks that needs sorting out. I live my life and business without needing reprimand because I follow and exceed requirements and rules. Please advise me on how to sort this mess out. Sandra Cavataio is not the salon manager. Please see attachments of this unlicensed hair business and the true licensee of the Villa.

Regards, Kathleen Tucker [520 885-2247](tel:5208852247) or cell [520 305-7093](tel:5203057093).

On Wed, Oct 9, 2019 at 3:19 PM Kathleen Tucker <ambientbohemia@gmail.com> wrote:
Ms Telles,

Please confirm that you are aware that my Nail Tech license has still not been received by me. lic #59818065. As discussed, the license expired Oct 2.

The renewal check was received by AZBOC no later than Sept 4. This is impacting me because I have never been out of compliance.

I carry a valid AZBOC license, a current Tucson business license and salon and personal liability docs on my person/in my work space. I cannot seek new business nor buy product without a current license.

Our 1st conversation was on Sept 3 regarding the late-August 2019 inspection Salon at the Villas. I have sent you photos of the Salon at the Villas license, a photo of that inspection report and photos of a fake business advertising hair services that was and still is advertising out there:

Here is the summary of what we have previously discussed and what I have previously written:

: The Salon inside the Academy Villas belongs to the Academy Villas.

1. No AZ salon exists for the entity that Sandra Cavataio is selling ie "The Silver Studio" in her advertising to the people inside Academy Villas Assisted Living bldgs, it's Salon, to the neighborhood of the Academy Village, and to the public with her sandwich board sign inviting the public into her (bogus) "Silver Studio", and with the price list flyers she is distributing advertising The Silver Studio.

2. Ms Cavataio has no authority to change the name of the Salon at the Villas.

3. AZBOC rules are clear that any salon name change must be reported.

4. The price list for her bogus business is not readable from 10 ft.

5. Sandra Cavataio had no business license in Pima County whatsoever.

6. Sandra Cavataio is not the Salon Manager at Academy Villas aka Salon at the Villas.

I do not know Sandra Cavataio. I have never seen her. I know the residents are pleased with her hair work. I have no desire to have her leave the Salon. However:

I also know she is not a child and that her 30plus years as an AZ licensed cosmetologist includes the knowledge that she is breaking city, county and state laws with this unlicensed salon business.

I feel certain that the public is not adequately protected when a rogue salon business is allowed to continue deceiving the public as to being a licensed salon business.

As I stated in previous emails, I was rather looking forward to the next AZBOC inspection bc I felt these suspicious actions by Rincon Family Salons' making up the salon name "The Silver Studio at Academy Villas", then hiring cosmetologists to work inside the Academy Villas/Village on their behalf..

Rincon Family salon removed all reference to Rincon Family Salon several months ago while leaving Sandra Cavataio in place to continue to operate the bogus Silver Studio on Thurs and Fri inside actual The Salon at The Villas.

UPDATE: There was some kind of blowup between the owner of Rincon Family Salon (Tammy) and Sandra Cavataio late last week. Tammy wasn't getting her cut of the bogus Silver Studio income? Tammy stormed the Academy Villas and removed her property that Cavataio had been using (tools, hand mirror, rubber under chair pad, electric vac, etc).

I told you this is a box of rocks with silent shadow partners in a bogus hair business.

I am also still waiting for (please send me) a copy of the AZBOC Rule that states the requirement of purchasing additional copies ie "Duplicate Licenses" and the Rule that prohibits the use of a copy by the lawful owner of AZBOC licenses.

Sincerely
Kathleen Tucker

I have my new personal license already ordered and look forward to receiving a copy of the Policy requiring purchasing additional copies as opposed to carrying the original from place to place.
Powered by Cricket Wireless

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Irma Telles-Stewart
Investigator Supv.III
480-889-2954
itelles@azboc.gov

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Kathleen Tucker <ambientbohemia@gmail.com>

Re: License Received

1 message

Irma Telles-Stewart <itelles@azboc.gov>
To: Kathleen Tucker <ambientbohemia@gmail.com>

Thu, Oct 10, 2019 at 3:51 PM

Ms. Tucker,

As I mentioned, Inspector did not find any of the concerns that you listed on your email dated 10.9.2019 during Inspection of Salon at Villas on 8.29.19. However, a complaint was generated regarding your concerns. Investigator will conduct an investigation of Salon at Villas #SCOS19835.

As for inspector requesting your salon license not to be displayed at said location, your salon license is for your home salon. In order to conduct mobile services, you are required to comply with the rules & laws for mobile services. This is a concern & I would like to review the mobile service & home salon for :Nail Fairy Salon.".

My office hours are from 7:30 - 4 but I am here from 7 - 5 or 5:30.

Thank you.

On Thu, Oct 10, 2019 at 9:29 AM Kathleen Tucker <ambientbohemia@gmail.com> wrote:

I have now received my license. I really must insist that we discuss Board issues in writing and not thru phone calls.. These issues are much too important. Especially since my initial call regarding the Aug 2019 inspection of the Salon at the Villas was a telephone disaster. I was talked to like I was a criminal.

I had called and identified myself stated the question at hand:

Why was I being told that a photocopy of my valid current license not sufficient when it has historically been approved.. since 1998 thru that prior Villa inspection. .in 2017? 2018? .and why was I being told that I must also display my Salon license when the last inspector from AZBOC had made the Director of the Villas remove all reference to The Nail Fairy Salon right then and there.

This is where my interest on verbal communication ended:

AZBOC staff asked me what salon I own. She looked up The Nail Fairy Salon multiple times. Had me spell it. Spelled it back to me. Yes. Then told me she has no record of a The Nail Fairy Salon. I pulled out my wallet. Got out my AZBOC issued wallet card and read her my Salon License number. She was then able to locate me Salon on your database. I then mentioned my mobile kit. WHAT MOBILE KIT!?, she said, in a tone that accused me. I said, the kit I carry, with my licenses, as in being sent out from my lawful salon, to wherever I am asked to perform services. The kit that has been inspected and approved multiple times by AZBOC inspectors for over two decades. The kit that contains MSDS sheet, 1st aid kit with AZBOC Procedures and hazmat protections, nail supplies, dry storage, wet storage Barbicide Hospital grade along with a hospital grade surface disinfectant that exceeds AZBOC standards 6 times over.

I wonder how many times AZBOC has also told people over the phone that they have no record of a Nail Fairy Salon!

I also have become so upset on subsequent phone calls and while leaving messages that I stuttered, lost my voice, started crying.

This entire saga is so upsetting and exhausting. Of course I want to have your database corrected so that your own staff can find my Salon in it. Of course I want to obtain all Rules that effect me. I want to challenge those Rules that cause undue hardship to myself and others. I want to know that inspections are consistent and that any perceived deficiency is communicated to the license holder directly, in writing.

I will not be available today, tomorrow and thru the wknd. I'm exhausted. I look forward to receiving a copy of the Rule that does not allow the owner of a license to make and use copies.

Regards,
Kathleen Tucker
9241 E Helen Tucson 85715



Kathleen Tucker <ambientbohemia@gmail.com>

Fwd: Kathleen Tucker

1 message

Kathleen Tucker <ambientbohemia@gmail.com>

To: me <deadline@cox.net>

Thu, Oct 10, 2019 at 7:50 PM

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

From: Irma Telles-Stewart <itelles@azboc.gov>
Date: Thu, Oct 10, 2019, 5:02 PM
Subject: Re: Kathleen Tucker
To: Kathleen Tucker <ambientbohemia@gmail.com>

I will remove your name as the complainant. As I mentioned the Investigator did not find any findings of advertising differently. Investigator will conduct an investigation in reference with your concerns.

I do believe you may not be in compliance with mobile services.

Thank you.

On Thu, Oct 10, 2019 at 3:49 PM Kathleen Tucker <ambientbohemia@gmail.com> wrote:

I received your voice mail. I do NOT want to be named as the complainant for the reinspection of the Academy Villas salon.

I am the complainant regarding the on and off approval of the use of license copies for nonfraudulent purposes by the assigned owner of the license(s).

I expected the issues of the unregistered

"The Silver Studio At Academy Village/Altura"

to be noticed and corrected by AZBOC on inspection..

The residents of the 2 Villas (assisted living residences) are happy with the hair services that Sandra Cavataio is providing. Upheavals should be kept to a minimum.

These are vulnerable adults, (and the public) innocently handing their credit cards to a non-existent business. She uses the space on Thursdays and sometimes on Fridays.

If what she is doing is wrong then it is your place to redirect her, not mine. I have never seen her. Do not know her. Never heard her voice. Never communicated with her. We are out there on different days.

I have been going out there for around 10 years. Taking care of seniors is a lifelong calling. I love when I come in and they all say, "It's the Nail Fairy!", and we laugh and smile. It's a good and happy place and needs to stay that way.

Kathleen Tucker
9241 E Helen Tucson 85715

On Wed, Oct 9, 2019, 3:38 PM Irma Telles-Stewart <itelles@azboc.gov> wrote:

I am aware. I did leave you a message this morning for a call back in reference with your concerns and the Board's concern. I am in the office.

Thank you.



Kathleen Tucker <ambientbohemia@gmail.com>

Re: Kathleen Tucker

1 message

Irma Telles-Stewart <itelles@azboc.gov>
To: Kathleen Tucker <ambientbohemia@gmail.com>

Wed, Oct 9, 2019 at 3:37 PM

I am aware. I did leave you a message this morning for a call back in reference with your concerns and the Board's concern. I am in the office.

Thank you.

On Wed, Oct 9, 2019 at 3:19 PM Kathleen Tucker <ambientbohemia@gmail.com> wrote:
Ms Telles,

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I feel certain that the public is not adequately protected when a rogue salon business is allowed to continue deceiving the public as to being a licensed salon business.

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Sincerely
Kathleen Tucker
9241 E Helen St
Tucson 85715

--
Irma Telles-Stewart
Investigator Supv.III
480-889-2954
itelles@azboc.gov

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Kathleen Tucker <ambientbohemia@gmail.com>

Re: Kathleen Tucker

1 message

Kathleen Tucker <ambientbohemia@gmail.com>
To: Az Bd Cosmetology IRMA TELLES <itelles@azboc.gov>

Thu, Oct 10, 2019 at 6:23 PM

I can't imagine why I'm not in compliance with my mobile activities but I will immediately do whatever is required including being inspected any time anywhere. My mobile kit has been inspected many times as part of ea salon inspection. The only things inspector mentioned was that pedi scrub blocks may soon be disallowed. So I switched to a different product and put my unused foot scrub blocks in storage. She inspected my mobile kit and my Salon before I headed out to work at Academy Villas that morning. She also wanted a larger door sign. The next day I made a "The Nail Fairy Salon" door sign using 5 inch tall letters. I am happy to see your inspectors. The inspectors are the reason why we no longer hear of disease being spread by salons in AZ and why Nail Techs can buy liability insurance for our businesses. Twenty years ago no insurance company would touch a Nail salon business to insure them..

I work where complete scrubbing sanitation and tool soaking can be completed between each client. I carry dirty towels in separated bags back to the Salon for washing bleaching drying. My tools are scrubbed scalded and submerged in Barbicide Hospital no rust formula between clients. Every file is also brush scrubbed in hot water with antibacterial soap. And Sprayed with hospital grade disinfectant and air dried before returning to dry storage. I scrub up before touching anyone and often. I do not cut corners. I do not slack off. This is my business, my calling, my reputation. My people. I'm really concerned why you aren't aware of previous inspections of my mobile activity.

To clarify: In 2017/18 your inspector had my Villa director take all reference to The Nail Fairy out of the Salon at the Villas during that inspection. This past Aug 2019 inspector told staff that I must have my Nail Fairy license out there. Today you write that it only belongs in my own salon. Wouldn't I need to carry a copy in the mobile kit along with my personal nail tech license? Wouldn't/shouldn't I be allowed to send myself out from my Salon to do mobile services anywhere in Arizona?

Kathleen Tucker

--
Irma Telles-Stewart
Investigator Supv.III
480-889-2954
itelles@azboc.gov

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Board of Cosmetology

Amended by final rulemaking at 21 A.A.R. 3441, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 23 A.A.R. 3028, effective December 31, 2017 (Supp. 17-4).

R4-10-111. Display of Licenses and Signs

- A. The name on an establishment's exterior sign, advertising, and publications shall be the same as the name on the establishment license issued by the Board. The establishment's exterior sign shall contain lettering at least 2 1/2 inches in height.
- B. A school shall prominently post a class schedule that lists the names of instructors and classes. The school shall display the school and instructor licenses near the school entrance, visible to the public.
- C. A salon shall prominently post the salon license and ensure that the personal license of each licensee performing services in the salon is posted at the licensee's station.
- D. A licensee performing mobile services shall prominently display a duplicate personal and establishment license in the area where mobile services are provided. The licensee's original license shall be prominently displayed in the salon from which the licensee was dispatched in accordance with subsection (C).
- E. A copy of R4-10-112 shall be prominently posted in each establishment.
- F. A salon shall prominently post a notice of salon services that are not regulated by the Board and that are provided at the salon.

Historical Note

Adopted effective April 9, 1996 (Supp. 96-2). Former Section R4-10-111 renumbered to Section R4-10-114; new Section R4-10-111 renumbered from R4-10-108 by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1).

R4-10-112. Infection Control and Safety Standards

- A. An establishment shall have and maintain the following minimum equipment and supplies:
 - 1. Non-leaking, waste receptacles, which shall be emptied, cleaned, and disinfected daily;
 - 2. Ventilated containers for soiled linens including towels and capes;
 - 3. Closed, clean containers to hold clean linens including towels and capes;
 - 4. A covered, wet disinfectant container made of stainless steel or a material recommended by the manufacturer of the wet disinfectant that:
 - a. Is large enough to contain sufficient disinfectant solution to allow for the total immersion of tools and instruments,
 - b. Is set up with disinfectant at all times the establishment is open, and
 - c. Is changed as determined by manufacturer's instructions or when visibly cloudy or contaminated;
 - 5. An Environmental Protection Agency (EPA)-registered bactericidal, virucidal, fungicidal, and pseudomonacidal (formulated for hospitals) disinfectant which shall be mixed and used according to manufacturer's directions on all tools, instruments, and equipment, except those that have come in contact with blood or other body fluids; and
 - 6. An EPA-registered disinfectant that is effective against HIV-1 and Human Hepatitis B Virus or Tuberculocidal which shall be mixed and used according to the manufacturer's directions on tools, instruments, and equipment that come in contact with blood or other body fluids.
- B. Procedure for disinfecting non-electrical equipment.
 - 1. Non-electrical equipment shall be disinfected by cleaning with soap or detergent and warm water, rinsing with clean water, and patting dry; and
 - 2. Totally immersing in the wet disinfectant required under subsection (A)(5) or (A)(6) following manufacturer's recommended directions.
- C. Procedure for storage of tools and instruments.
 - 1. A tool or implement that has been used on a client or soiled in any manner shall be placed in a properly labeled receptacle; and
 - 2. A disinfected implement shall be stored in a disinfected, dry, covered container and isolated from contaminants.
- D. Procedure for disinfecting electrical equipment, which shall be in good repair, before each use.
 - 1. Remove all foreign matter;
 - 2. Clean and spray or wipe with a disinfectant, compatible with electrical equipment, as required in subsection (A)(5) or (A)(6); and
 - 3. Disinfect removable parts as described in subsection (B).
- E. Tools, instruments and supplies.
 - 1. All tools, instruments, or supplies that come into direct contact with a client and cannot be disinfected (for example, cotton pads, sponges, porous emery boards, and neck strips) shall be disposed of in a waste receptacle immediately after use;
 - 2. Disinfected tools and instruments shall not be stored in a leather storage pouch;
 - 3. A sharp cosmetology tool or implement that is to be disposed of shall be sealed in a rigid, puncture-proof container and disposed of in a manner that keeps licensees and clients safe;
 - 4. An instrument or supply shall not be carried in or on a garment while practicing in the establishment;
 - 5. Clips or other tools and instruments shall not be placed in mouths, pockets, or other unsanitized holders;
 - 6. Pencil cosmetics shall be sharpened before each use;
 - 7. All supplies, equipment, tools, and instruments shall be kept clean, disinfected, free from defects, and in good repair;
 - 8. Cutting equipment shall be kept sharp; and
 - 9. A client's personal cosmetology tools and instruments that are brought into and used in the establishment shall comply with these rules.
- F. If there is a blood spill or exposure to other body fluids during a service, licensees and students shall stop the service and:
 - 1. Before returning to service, clean the wound with an anti-septic solution;
 - 2. Cover the wound with a sterile bandage;
 - 3. If the wound is on a licensee's or student's hand in an area that can be covered by a glove or finger cover, the licensee or student shall wear a clean, fluid-proof protective glove or finger cover. If the wound is on the client, the licensee or student providing service to the client shall wear gloves on both hands;
 - 4. Blood-stained tissue or cotton or other blood-contaminated material shall be placed in a sealed plastic bag and that plastic bag shall be placed into another plastic bag (double bagged), labeled with a red or orange biohazard warning, and discarded;
 - 5. All equipment, tools, and instruments that have come in contact with blood or other body fluids shall be disinfected as discussed in subsections (A)(6) and (B); and
 - 6. Electrical equipment shall be disinfected as discussed in subsection (D).

41-1033. Petition for a rule or review of an agency practice, substantive policy statement, final rule or unduly burdensome licensing requirement; notice

A. Any person may petition an agency to do either of the following:

1. Make, amend or repeal a final rule.
2. Review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule.

B. An agency shall prescribe the form of the petition and the procedures for the petition's submission, consideration and disposition. The person shall state on the petition the rulemaking to review or the agency practice or substantive policy statement to consider making into a rule.

C. Not later than sixty days after submission of the petition, the agency shall either:

1. Reject the petition and state its reasons in writing for denial to the petitioner.
2. Initiate rulemaking proceedings in accordance with this chapter.
3. If otherwise lawful, make a rule.

D. The agency's response to the petition is open to public inspection.

E. If an agency rejects a petition pursuant to subsection C of this section, the petitioner has thirty days to appeal to the council to review whether the existing agency practice or substantive policy statement constitutes a rule. The council chairperson shall place this appeal on the agenda of the council's next meeting if at least three council members make such a request of the council chairperson within two weeks after the filing of the appeal.

F. A person may petition the council to request a review of a final rule based on the person's belief that the final rule does not meet the requirements prescribed in section 41-1030.

G. A person may petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that is not specifically authorized by statute pursuant to title 32 based on the person's belief that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. If the council determines that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement applies to a profession for which the average wage in that profession in this state does not exceed two hundred percent of the federal poverty guidelines for a family of four, the council shall review the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement as prescribed by this section. This subsection does not apply to an individual or institution that is subject to title 36, chapter 4, article 10 or chapter 20.

H. If the council receives information that indicates an existing agency practice or substantive policy statement may constitute a rule, that a final rule does not meet the requirements prescribed in section 41-1030 or that an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement does not meet the guidelines prescribed in subsection G of this section and at least four council members request of the chairperson that the matter be heard in a public meeting:

1. Within ninety days after receipt of the fourth council member's request, the council shall determine whether the agency practice or substantive policy statement constitutes a rule, whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement meets the guidelines prescribed in subsection G of this section.

2. Within ten days after receipt of the fourth council member's request, the council shall notify the agency that the matter has been or will be placed on an agenda.
3. Not later than thirty days after receiving notice from the council, the agency shall submit a statement to the council that addresses whether the existing agency practice, substantive policy statement constitutes a rule or whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement meets the guidelines prescribed in subsection G of this section.
 - I. For the purposes of subsection H of this section, the council meeting shall not be scheduled until the expiration of the agency response period prescribed in subsection H, paragraph 3 of this section.
 - J. An agency practice, substantive policy statement, final rule or regulatory licensing requirement considered by the council pursuant to this section shall remain in effect while under consideration of the council. If the council ultimately decides the agency practice or substantive policy statement constitutes a rule or that the final rule does not meet the requirements prescribed in section 41-1030, the practice, policy statement or rule shall be considered void. If the council determines that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern and meets the requirements of subsection G of this section, the council may modify, revise or declare void any such existing agency practice, substantive policy statement, final rule or regulatory licensing requirement.
 - K. A council decision pursuant to this section shall include findings of fact and conclusions of law, separately stated. Conclusions of law shall specifically address the agency's authority to act consistent with section 41-1030.
 - L. A decision by the agency pursuant to this section is not subject to judicial review, except that, in addition to the procedure prescribed in this section or in lieu of the procedure prescribed in this section, a person may seek declaratory relief pursuant to section 41-1034.
 - M. Each agency and the secretary of state shall post prominently on their websites notice of an individual's right to petition the council for review pursuant to this section.

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Committee on Vital and Health Statistics: Meeting**

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Privacy, Confidentiality and Security.

Date and Times: Thursday, March 21, 2019: 9:00 a.m.–5:30 p.m. (EDT), Friday, March 22, 2019: 8:30 a.m.–3:00 p.m. (EDT).

Place: Centers for Disease Control and Prevention, National Center for Health Statistics, 3311 Toledo Road, Auditorium, Hyattsville, Maryland 20782.

Status: Open. There will be an opportunity for public comment at the end of the first day of the meeting.

Purpose: NCVHS is charged with studying and identifying privacy and security and access measures to protect individually identifiable health information in an environment of electronic networking and multiple uses of data. Further, the Committee advises the Secretary and is mandated to report to Congress on the status of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), which establishes the regulatory framework for personally identifiable health information by covered entities and business associates.

Through the Subcommittee on Privacy, Confidentiality and Security, the Committee undertook a “Beyond HIPAA” initiative to examine emerging health information privacy and security issues that are beyond the scope of HIPAA to consider a health data privacy and security framework for the 21st century. The goals for the Beyond HIPAA initiative are to:

1. Identify and describe the changing environment and the risks to privacy and security of confidential health information; highlight promising policies, practices and technology;

2. Lay out integrative models for how best to protect individuals’ privacy and secure health data uses outside of HIPAA protections while enabling useful uses, services and research;

3. Formulate recommendations for the Secretary on actions that HHS and other federal Departments might take; and

4. Prepare a report for data stewardship.

The objective of this meeting is to develop recommendations to define a

contemporary framework of data stewardship for the HHS Secretary, including a pathway for improving private and public sector governance of health information over the next decade. To accomplish this, the Subcommittee plans to:

- (a) Outline key principles for stewardship of health data in the environment described in a recent NCVHS environmental scan report and the essential public and private levers to ensure appropriate governance;

- (b) Reach consensus on actions to update NCVHS’ 2008 report, “Enhanced Protections for Uses of Health Data: A Stewardship Framework for “Secondary Uses” of Electronically Collected and Transmitted Health Data—Summary for Policy Makers.”

Through this work, the Subcommittee also plans to identify key themes for communications with individuals, policymakers, and stakeholders in the private sector. The times and topics for this meeting are subject to change. Please refer to the posted agenda for any updates.

Contact Persons for More Information: Substantive program information may be obtained from Rebecca Hines, MHS, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone (301) 458–4715. Information pertaining to meeting content may be obtained from Rachel Seeger, MA, MPA, Office of the Secretary/Office of Civil Rights, Room 509E, Department of Health and Human Services, 200 Independence Avenue SW, Washington, DC 20201, telephone: (202) 260–7106. Summaries of meetings and a roster of Committee members are available on the NCVHS website: www.ncvhs.hhs.gov, where further information including a meeting agenda and instructions to access the live broadcast of the meeting will be posted.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (770) 488–3210 as soon as possible.

Dated: January 28, 2019.

Sharon Arnold,

Associate Deputy Assistant Secretary for Planning and Evaluation, Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2019–00706 Filed 1–31–19; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Office of the Secretary****Annual Update of the HHS Poverty Guidelines**

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice provides an update of the Department of Health and Human Services (HHS) poverty guidelines to account for last calendar year’s increase in prices as measured by the Consumer Price Index.

DATES: *Applicable Date:* January 11, 2019 unless an office administering a program using the guidelines specifies a different effective date for that particular program.

ADDRESSES: Office of the Assistant Secretary for Planning and Evaluation, Room 404E, Humphrey Building, Department of Health and Human Services, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: For information about how the guidelines are used or how income is defined in a particular program, contact the Federal, state, or local office that is responsible for that program. For information about poverty figures for immigration forms, the Hill-Burton Uncompensated Services Program, and the number of people in poverty, use the specific telephone numbers and addresses given below.

For general questions about the poverty guidelines themselves, contact Kendall Swenson, Office of the Assistant Secretary for Planning and Evaluation, Room 422F.5, Humphrey Building, Department of Health and Human Services, Washington, DC 20201—telephone: (202) 690–7409—or visit <http://aspe.hhs.gov/poverty/>.

For information about the percentage multiple of the poverty guidelines to be used on immigration forms such as USCIS Form I–864, Affidavit of Support, contact U.S. Citizenship and Immigration Services at 1–800–375–5283.

For information about the Hill-Burton Uncompensated Services Program (free or reduced-fee health care services at certain hospitals and other facilities for persons meeting eligibility criteria involving the poverty guidelines), contact the Health Resources and Services Administration Information Center at 1–800–638–0742. You also may visit <https://www.hrsa.gov/get-health-care/affordable/hill-burton/index.html>.

For information about the number of people in poverty, visit the Poverty section of the Census Bureau's website at <https://www.census.gov/topics/income-poverty/poverty.html> or contact the Census Bureau's Customer Service Center at 1-800-923-8282 (toll-free) or visit <https://ask.census.gov> for further information.

SUPPLEMENTARY INFORMATION:

Background

Section 673(2) of the Omnibus Budget Reconciliation Act (OBRA) of 1981 (42 U.S.C. 9902(2)) requires the Secretary of the Department of Health and Human Services to update the poverty guidelines at least annually, adjusting them on the basis of the Consumer Price Index for All Urban Consumers (CPI-U). The poverty guidelines are used as an eligibility criterion by Medicaid and a number of other Federal programs. The *poverty guidelines* issued here are a simplified version of the *poverty thresholds* that the Census Bureau uses to prepare its estimates of the number of individuals and families in poverty.

As required by law, this update is accomplished by increasing the latest published Census Bureau poverty thresholds by the relevant percentage change in the Consumer Price Index for All Urban Consumers (CPI-U). The guidelines in this 2019 notice reflect the 2.4 percent price increase between calendar years 2017 and 2018. After this inflation adjustment, the guidelines are rounded and adjusted to standardize the differences between family sizes. In rare circumstances, the rounding and standardizing adjustments in the formula result in small decreases in the poverty guidelines for some household sizes even when the inflation factor is not negative. In cases where the year-to-year change in inflation is not negative and the rounding and standardizing adjustments in the formula result in reductions to the guidelines from the previous year for some household sizes, the guidelines for the affected household sizes are fixed at the prior year's guidelines. As in prior years, these 2019 guidelines are roughly equal to the poverty thresholds for calendar year 2018 which the Census Bureau expects to publish in final form in September 2019.

The poverty guidelines continue to be derived from the Census Bureau's current official poverty thresholds; they are not derived from the Census Bureau's Supplemental Poverty Measure (SPM).

The following guideline figures represent annual income.

2019 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA

Persons in family/household	Poverty guideline
1	\$12,490
2	16,910
3	21,330
4	25,750
5	30,170
6	34,590
7	39,010
8	43,430

For families/households with more than 8 persons, add \$4,420 for each additional person.

2019 POVERTY GUIDELINES FOR ALASKA

Persons in family/household	Poverty guideline
1	\$15,600
2	21,130
3	26,660
4	32,190
5	37,720
6	43,250
7	48,780
8	54,310

For families/households with more than 8 persons, add \$5,530 for each additional person.

2019 POVERTY GUIDELINES FOR HAWAII

Persons in family/household	Poverty guideline
1	\$14,380
2	19,460
3	24,540
4	29,620
5	34,700
6	39,780
7	44,860
8	49,940

For families/households with more than 8 persons, add \$5,080 for each additional person.

Separate poverty guideline figures for Alaska and Hawaii reflect Office of Economic Opportunity administrative practice beginning in the 1966–1970 period. (Note that the Census Bureau poverty thresholds—the version of the poverty measure used for statistical purposes—have never had separate figures for Alaska and Hawaii.) The poverty guidelines are not defined for Puerto Rico or other outlying jurisdictions. In cases in which a Federal program using the poverty guidelines serves any of those jurisdictions, the Federal office that

administers the program is generally responsible for deciding whether to use the contiguous-states-and-DC guidelines for those jurisdictions or to follow some other procedure.

Due to confusing legislative language dating back to 1972, the poverty guidelines sometimes have been mistakenly referred to as the “OMB” (Office of Management and Budget) poverty guidelines or poverty line. In fact, OMB has never issued the guidelines; the guidelines are issued each year by the Department of Health and Human Services. The poverty guidelines may be formally referenced as “the poverty guidelines updated periodically in the **Federal Register** by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).”

Some federal programs use a percentage multiple of the guidelines (for example, 125 percent or 185 percent of the guidelines), as noted in relevant authorizing legislation or program regulations. Non-Federal organizations that use the poverty guidelines under their own authority in non-Federally-funded activities also may choose to use a percentage multiple of the guidelines.

The poverty guidelines do not make a distinction between farm and non-farm families, or between aged and non-aged units. (Only the Census Bureau poverty thresholds have separate figures for aged and non-aged one-person and two-person units.)

Note that this notice does not provide definitions of such terms as “income” or “family,” because there is considerable variation in defining these terms among the different programs that use the guidelines. These variations are traceable to the different laws and regulations that govern the various programs. This means that questions such as “Is income counted before or after taxes?”, “Should a particular type of income be counted?”, and “Should a particular person be counted as a member of the family/household?” are actually questions about how a specific program applies the poverty guidelines. All such questions about how a specific program applies the guidelines should be directed to the entity that administers or funds the program, since that entity has the responsibility for defining such terms as “income” or “family,” to the extent that these terms are not already defined for the program in legislation or regulations.

Alex M. Azar,
Secretary of Health and Human Services.

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