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**DEPARTMENT OF ECONOMIC SECURITY (R-19-0201)**

Title 6, Chapter 5, Article 33, Achieving a Better Life Experience (Proposed)

**New Article:** Article 33

**New Section:** R6-5-3301; R6-5-3302; R6-5-3303; R6-5-3304; R6-5-3305; R6-5-3306;  
R6-5-3307

# GOVERNOR'S REGULATORY REVIEW COUNCIL

## STAFF MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** February 5, 2019

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

**FROM:** Council Staff

**DATE:** January 22, 2019

**SUBJECT: DEPARTMENT OF ECONOMIC SECURITY (R-19-0201)**  
Title 6, Chapter 5, Article 33, Achieving a Better Life Experience

**New Article:** Article 33

**New Section:** R6-5-3301; R6-5-3302; R6-5-3303; R6-5-3304; R6-5-3305;  
R6-5-3306; R6-5-3307

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This rulemaking, from the Department of Economic Security (Department), seeks to add one new article containing seven rules in A.A.C. Title 6, Chapter 5. The new rules relate to the Achieving a Better Life Experience (ABLE) program.<sup>1</sup> The federal ABLE Act was enacted in 2014 to allow families and individuals with disabilities to create tax-advantaged accounts for the purposes of maintaining health, independence, and quality of life.

Arizona's ABLE program was established in 2016. The proposed rules are intended to provide clarity related to the implementation and administration of the program. The rules relate to definitions, program management, fees, account opening, contributions, statements, and program to program transfers and rollovers.

**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 the rules. Under A.R.S. § 41-1954(A)(3), the Department is required to "[a]dopt rules it deems necessary or desirable to further the objectives and programs of the [D]epartment."

**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.

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<sup>1</sup> For more information on the ABLE program, staff encourages the Council to review <https://az-able.com>

**3. Summary of the agency’s economic impact analysis:**

In this rulemaking, the Department is adopting rules that will align with statutory mandates to create a framework for administering Arizona’s Achieving a Better Life Experience (ABLE) program. First, the earnings of ABLE accounts defer taxes until withdrawal, and taxes can be fully avoided if the funds are used for qualified disability expenses. Second, funds saved in an ABLE account are not counted as a resource for the purposes of most public assistance programs like Medicaid or the Supplemental Nutritional Assistance Program (SNAP). Supplemental Security Income (SSI) begins to count ABLE funds over \$100,000 as a resource, but this is significantly higher than the current SSI resource limit of \$2,000.

**4. 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 concludes that this rulemaking will only impose minimal administrative costs on the Department. This rulemaking will greatly benefit individuals with disabilities. The benefits outweigh the costs.

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

Key stakeholders are the Department and individuals with disabilities. The Department notes that it will incur only minimal costs to administer this program. Individuals with disabilities will greatly benefit from this program because it provides an investment vehicle that reduces the disincentives to saving that individuals with disabilities face. Sheltering some savings from public assistance resource limits and taxes incentivizes saving without incurring the hardships associated with ineligibility for public assistance programs due to excessive resources. The Department notes that individuals who open ABLE accounts will pay a small maintenance fee; however, participation in the program is completely voluntary.

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

The Department indicates that it received no public comments on the rulemaking.

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

No. Only non-substantive technical corrections have been made between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

**8. 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 the federal ABLE Act of 2014.

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

No. The rules do not require a permit or license.

**10. 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?**

No. The Department did not review or rely on any study for this rulemaking.

**11. Conclusion**

The Department accepts the usual 60-day delayed effective date for the rulemaking. Council staff recommends approval of the rulemaking.



DEPARTMENT OF ECONOMIC SECURITY

*Your Partner For A Stronger Arizona*

Douglas A. Ducey  
Governor

Michael Traylor  
Director

NOV 20 2018

Mr. Gilbert Davison  
Interim Director  
Governor's Regulatory Review Council  
Department of Administration  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

Dear Mr. Davison:

The attached 6AAC5 Article 33 Achieving a Better Life Experience (ABLE) final rulemaking package is respectfully submitted for review and approval by the Council. The following information is provided for use in reviewing the rulemaking package:

1. Close of Record Date: The rulemaking record closed on September 24, 2018, following the public comment period. This rulemaking package is being submitted within the 120 day timeframe provided by A.R.S. § 41-1024(B). The Arizona Department of Economic Security (Department) scheduled and hosted an oral proceeding on October 3, 2018 at which there were no attendees.
2. General and Specific Statutes Authorizing the Rules; Definitions of Terms Contained in Statutes or Other Rules: General Statutes: A.R.S. §§ 46-202 and 41-1954(A)(3). Implementing Statute: A.R.S. § 46-902(1). No definitions are used from other statutes or rules in the making of these rules.
3. Relation of the Rulemaking to a Five-year Review Report: This rulemaking is in response to the federal Achieving a Better Life Experience Act of 2014 (ABLE Act) that was enacted on December 19, 2014 as part of the Tax Increase Prevention Act of 2014 (Public Law 113-295) and was not part of a previous Five-year Review Report.
4. New Fee or Fee Increase: This rulemaking does not establish a new fee or increase an existing fee.
5. Effective Date: The Department is requesting an effective date of 60 days from filing with the Secretary of State under A.R.S. § 41-1032(A).

Mr. Gilbert Davison,  
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6. Material Incorporated by Reference: No material is incorporated by reference in this rulemaking.
7. Certification Regarding Studies: The Department certifies that the preamble accurately discloses that no study relevant to the rules was reviewed and was not relied on in the Department's evaluation of or justification of the rules.
8. Joint Legislative Budget Committee (JLBC) Certification: The Department was not required to make a certification to JLBC because the rule does not require any new full-time employees.
9. List of Documents Enclosed:
  - a. Cover letter;
  - b. Notice of Final Rulemaking including preamble, table of contents for the rulemaking, and rule text;
  - c. Economic Impact Statement;
  - d. Applicable statutes; and
  - e. Governor's Office Approval.

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

Sincerely,



Michael Trailor  
Director

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 6. ECONOMIC SECURITY

CHAPTER 5. DEPARTMENT OF ECONOMIC SECURITY

SOCIAL SERVICES

PREAMBLE

<b><u>1.</u></b>	<b><u>Article, Part, or Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
	Article 33	New Section
	R6-5-3301	New Section
	R6-5-3302	New Section
	R6-5-3303	New Section
	R6-5-3304	New Section
	R6-5-3305	New Section
	R6-5-3306	New Section
	R6-5-3307	New Section

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

Authorizing statute: A.R.S. §§ 46-202 and 41-1954(A)(3)

Implementing statute: A.R.S. § 46-902(1)

**3.** **The effective date of the rules:**

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

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

Not applicable.

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

Not applicable.

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

Notice of Rulemaking Docket Opening: 24 A.A.R. 2362, August 24, 2018

Notice of Proposed Rulemaking: 24 A.A.R. 2357, August 24, 2018

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

Name: Christian J. Eide

Address: Department of Economic Security

P.O. Box 6123, Mail Drop 1292

Phoenix, AZ 85005

or

Department of Economic Security

1789 W. Jefferson St., Mail Drop 1292

Phoenix, AZ 85007

Telephone: (602) 542-9199

Fax: (602) 542-6000

E-mail: [ceide@azdes.gov](mailto:ceide@azdes.gov)

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

The federal Achieving a Better Life Experience Act of 2014 (ABLE Act) was enacted on December 19, 2014 as part of the Tax Increase Prevention Act of 2014 (Public Law 113-295). The ABLE Act amends the Internal Revenue Code to exempt a qualified ABLE program from taxation. A qualified ABLE program is defined as "a program established by a state, or agency or instrumentality thereof under which a person may make contributions for a taxable year, for the benefit of an individual...to an ABLE account which is established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account." Public Law 113-295. H.B. 2388, signed into law on May 12, 2016, established the state Achieving a Better Life Experience (ABLE) Program, through which contributions may be made to an account of an eligible disabled person to meet qualifying disability expenses. H.B. 2388 requires the Department to adopt rules for the ABLE Program. The proposed rulemaking will provide clarification for the implementation and administration of the program.

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

The economic impact of operating the program is expected to be minimal (less than \$1,000) on small businesses, consumers, and the Department. Operating the program does not have any negative financial impact upon private persons and consumers, except for the minimal fees that may be associated with their participation in the program, if they choose to open an account. The public benefits from the program because it gives certain individuals with disabilities, as well as their families and friends, the opportunity to contribute to a tax-exempt savings account at a lower cost that can be used for maintaining health, independence, and quality of life.

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

No changes were made.

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

The Department received no comments on this rulemaking.

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

No other matters are prescribed.

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

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:**

Achieving a Better Life Experience Act of 2014 (Public Law 113-295).

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

No analysis was submitted.

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

None.

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

Not applicable.

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

NOTICE OF PROPOSED RULEMAKING

TITLE 6. ECONOMIC SECURITY

CHAPTER 5. SOCIAL SERVICES

ARTICLE 33. ACHIEVING A BETTER LIFE EXPERIENCE

- R6-5-3301. Reserved Definitions
- R6-5-3302. Reserved Program Manager
- R6-5-3303. Reserved Fees
- R6-5-3304. Reserved Opening an Account
- R6-5-3305. Reserved Contributions
- R6-5-3306. Reserved Statements
- R6-5-3307. Reserved Program to Program Transfers and Rollovers

**ARTICLE 33. RESERVED ACHIEVING A BETTER LIFE EXPERIENCE**

**R6-5-3301. Reserved Definitions**

The following definitions apply to this Article:

1. “ABLE” means the Achieving a Better Life Experience Act.
2. “Account” means an individual account in the fund established as prescribed for a single designated beneficiary.
3. “Aggregate Account Balance” means the total amount in an account on a particular date.
4. “Applicant” means any individual who applies to open an Account in the Program.
5. “Cash” means check, money order, credit card, electronic transfer, or similar

method.

6. “Code” means the federal Internal Revenue Code of 1986, as amended (26 U.S.C. 529A).
7. “Committee” means the same as in A.R.S. § 46-901(3).
8. “Department” means the Arizona Department of Economic Security.
9. “Designated Beneficiary” means the same as in A.R.S. § 46-901(5).
10. “Designated Representative” means a person who is authorized to act on behalf of a Designated Beneficiary.
11. “Disability Certification” means the certification described in Section 529A of the Code.
12. “Eligible Individual” means the same as in A.R.S. § 46-901(6).
13. “IRS” means the federal Internal Revenue Service.
14. “Program” means the same as in A.R.S. § 46-901(9).
15. “Program Manager” means the entity selected by the Department for the Program in accordance with A.R.S. § 46-903(C)(1)-(8).
16. “Qualified Disability Expenses” means the same as in A.R.S. § 46-901(10).
17. “Qualified Withdrawal” or “Qualified Distribution” means a withdrawal from an Account to pay Qualified Disability Expenses of the Designated Beneficiary.
18. “Secretary” means the United States Secretary of the Treasury or his/her delegate.
19. “SSA” means the Social Security Administration.

**R6-5-3302. Reserved Program Manager**

**A. Responsibilities of the Program Manager**

1. The Program Manager shall implement the Program, including the administration and management of the Program.
2. The Program Manager shall ensure adequate safeguards to prevent aggregate contributions on behalf of a Designated Beneficiary in excess of the limit established by the Department under section 529(b)(6) of the Code. For purposes of this Section, aggregate contributions include contributions under any prior qualified ABLE program of any state or agency or instrumentality of either.
3. The Program Manager shall compile or cause to be compiled the necessary information to complete any reports.
4. The Program Manager may contract with third parties to assist the Department and Program Manager in the educational and promotional activities for the Program.
5. The Program Manager may use forms provided or promulgated by the SSA, the IRS, or other federal agencies for the purposes of the ABLE Program. The Program Manager may also promulgate its own forms reasonably necessary to implement the ABLE Program.

**R6-5-3303. Reserved Fees**

1. The Program Manager may impose administrative, maintenance, investment management and investment fees on Designated Beneficiaries.
2. The Program Manager may impose a nonrefundable application fee to review and process paper applications.

**R6-5-3304. Reserved Opening an Account**

1. To open an Account in the Program, an individual shall submit a completed application form, pay the application fee, if any, and pay an initial minimum contribution to the Account, if any, to the Program Manager at <https://az-able.com/>.
2. The Program Manager may require a minimum initial contribution to open an Account.
3. The content of the application form shall be prescribed by the Program Manager, but shall include at a minimum, the following information:

  - a. The name, address, social security number and birth date of the Designated Beneficiary;
  - b. The name, address and social security number of the Designated Representative, if the Designated Beneficiary is not the applicant;
  - c. Evidence that the Designated Beneficiary is an Eligible Individual.
  - d. Any additional information required by the Program Manager.
4. Completed applications shall be submitted as specified on the application form.
5. Applications that are incomplete or fail to meet the requirements established by the Department and the Program Manager shall be rejected. Reapplication is permissible.

**R6-5-3305. Reserved Contributions**

1. Any person may make contributions to an Account, subject to the limitations imposed by federal law.

2. Except in the case of program-to-program transfers, contributions may only be made in cash.
3. Annual contributions to an Account from all sources, except contributions received in program-to-program transfers, are limited to the per-beneficiary amount excluded from the federal gift tax under federal law.
4. Excess contributions and excess aggregate contribution shall be returned to contributors.

**R6-5-3306. Reserved Statements**

1. Account statements shall be provided to Designated Beneficiaries and Designated Representatives in accordance with the Act.
2. Account statements may be provided to other individuals authorized to receive that information under the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 96 *et seq.*) and the Truth in Lending Act (15 U.S.C. 1601 *et seq.*).
3. The Account statements may be provided using U.S. Mail or provided electronically via website access or e-mail, as selected by the Designated Beneficiary or Designated Representative.

**R6-5-3307. Reserved Program-to-Program Transfers and Rollovers**

1. Subject to federal law, the Program shall permit a program-to-program transfer through which a Designated Beneficiary transfers the entire amount of an Account from the AZ ABLE Program to or from a different state's ABLE program, or for the transfer of an Account from a Designated Beneficiary to another Eligible Individual who is a member of the family of the former

Designated Beneficiary, without any intervening distribution.

2. Subject to federal law, the Program shall permit rollovers through which a contribution to an Account of a Designated Beneficiary (or an Eligible Individual who is a member of the family of the Designated Beneficiary) of all or a portion of the amount withdrawn from the Designated Beneficiary's Account, provided the contribution is made within 60 days of the date of the withdrawal, and, in the case of a rollover to the Designated Beneficiary's Account, no rollover has been made to another account established under an ABLÉ program within the prior 12 months.

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

**TITLE 6. ECONOMIC SECURITY**

**CHAPTER 5. SOCIAL SERVICES**

**ARTICLE 33. ACHIEVING A BETTER LIFE EXPERIENCE PROGRAM**

**1. Identification of the rulemaking:**

HB 2388, signed into law on May 12, 2016, established the state Achieving a Better Life Experience (ABLE) Program, through which contributions may be made to an account of an eligible disabled person to use on qualifying disability expenses. HB 2388 requires the Department to adopt rules for the ABLE Program. The proposed rulemaking will provide clarification for the implementation and administration of the program.

**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](mailto:ceide@azdes.gov)

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

The economic impact of operating the program is expected to be minimal (less than \$1,000) on small businesses, consumers, and the Department. An individual who chooses to participate in the program shall benefit from this rulemaking because the program gives certain individuals with disabilities, their families and friends, the opportunity to contribute to a tax-exempt savings account at a lower cost that can be used for maintaining health, independence, and quality of life.

**4. Cost-benefit analysis:**

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

There are no additional costs or benefits to the Department or other state agencies anticipated by operating this program.

**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 is not expected to impact public and private employment.

**6. Impact on small businesses:**

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

This rulemaking does not impact small businesses.

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

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

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

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

Not applicable

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

Not applicable

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

Not applicable

**iv. Establish separate performance standards:**

Not applicable

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

Not applicable

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

Operating the program does not have any negative financial impact upon private persons and consumers, except for the minimal fees that may be associated with their participation in the program, if they choose to open an account. The public benefits from the program because it gives certain individuals with disabilities, their families and friends, the opportunity to contribute to a tax-exempt savings account at a lower cost that can be used for maintaining health, independence, and quality of life.

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

None

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

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

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

Not applicable

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

Not applicable

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

Not applicable

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.

46-202. Rules

The director shall adopt rules with respect to the time in which a recipient must notify the department of a change in circumstances affecting the recipient's eligibility. In adopting such rules the director shall consider and comply with federal regulations concerning notice of change of eligibility status.

46-902. Qualified ABLÉ program; duties

The department shall:

1. Develop and implement the program in a manner consistent with this article through the adoption of rules, guidelines and procedures in consultation with the committee.
2. Retain professional services, if necessary, including accountants, auditors, consultants and other experts.
3. Seek rulings and other guidance from the United States department of the treasury and the internal revenue service relating to the program.
4. Make changes to the program, as necessary, to comply with 26 United States Code section 529A and any regulations issued pursuant to that section.
5. Provide notification to the chairpersons of the senate health and human services committee and the house of representatives children and family affairs committee or their successor committees of any material changes to the federal program that would necessitate changes in this article or rules adopted pursuant to this article.
6. Negotiate and select the financial institution or institutions to act as the depository and manager of the program in accordance with this article. The department shall consult with the committee when selecting the financial institution or institutions.
7. Negotiate a fee with the financial institution or institutions.
8. Maintain the program on behalf of this state as required by 26 United States Code section 529A and any regulations issued pursuant to that section.
9. Develop and implement requirements, in consultation with the committee, for disbursements from accounts for qualified disability expenses.
10. Provide for separate accounting for each designated beneficiary of the designated beneficiary's account.
11. Develop procedures for educating account owners about nonqualified and qualified expenses if the department finds that distributions from any account were made for nonqualified expenses.
12. Develop and provide, in consultation with the committee, educational materials on the program, qualified disability expenses and requirements for being a designated beneficiary.

**BOARD OF PHYSICAL THERAPY (R-19-0202)**

Title 4, Chapter 24, Article 1, General Provisions; Article 2, Licensing Provisions; Article 4, Continuing Compliance

**Amend:** R4-24-101; R4-24-201; R4-24-207; R4-24-208; Table 1; R4-24-210;  
R4-24-211; R4-24-401; R4-24-402; R4-24-403

# GOVERNOR'S REGULATORY REVIEW COUNCIL

## STAFF MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** February 5, 2019

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

**FROM:** Council Staff

**DATE:** January 22, 2019

**SUBJECT: BOARD OF PHYSICAL THERAPY (R-19-0202)**

Title 4, Chapter 24, Article 1, General Provisions; Article 2, Licensing Provisions; Article 4, Continuing Compliance

**Amend:** R4-24-101; R4-24-201; R4-24-207; R4-24-208; Table 1;  
R4-24-210; R4-24-211; R4-24-401; R4-24-402; R4-24-403

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This rulemaking, from the Board of Physical Therapy (Board), seeks to amend nine rules and one table in A.A.C. Title 4, Chapter 24, related to licensing and continuing competence. The Board indicates that it is making its rules consistent with A.R.S. § 32-2053, related to the Physical Therapy Licensure Compact (Compact). The Compact was enacted in Arizona in 2016, and the Board states that it allows eligible licensed physical therapists and certified physical therapist assistants to work in a Compact state, outside of their home state, without going through the usual process for licensure or certification.

As a Compact state, Arizona is required to ensure that the Board's statutes and rules are consistent with Compact requirements. One amendment required by the Compact relates to continuing competence, as physical therapist assistants will now need to complete 10 hours of continuing competence during each two-year compliance period. The Board is also making a number of clarifying and technical changes. An exemption from the rulemaking moratorium was approved by the Governor's Office on July 2, 2018.

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

In this rulemaking, the Board is aligning rules to meet requirements of the Physical Therapy Licensure Compact. Participating states have equivalent licensure and certification requirements for physical therapists and physical therapist assistants.

This rulemaking will allow licensed physical therapists and certified physical therapist assistants to work in other Compact states without applying for a new license from that state. Currently, there are 5,150 licensed physical therapists and 1,728 certified physical therapy assistants in Arizona.

**4. 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 this rulemaking is required by state statute to ensure Arizona's participation as a Compact state. Certified physical therapy assistants will bear minimal costs in the form of 10 hours of continuing competence every two years. Licensed physical therapists and certified physical therapy assistants will benefit greatly from the portability of their licenses and certifications in other Compact states. The benefits outweigh the costs.

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

Key stakeholders are the Board, licensed physical therapists, and certified physical therapist assistants.

The Board has incurred the costs associated with creating this rulemaking, and it will incur minimal costs to enforce the provisions of this rulemaking. The Board will benefit from having rules that are consistent with statute and the Physical Therapy Licensure Compact. The Board anticipates that the Compact will reduce new applications for licensure and certification by roughly 20 percent, and this will minimally reduce revenue to the state's general fund.

Licensed physical therapists in Arizona will benefit from this rulemaking because they will be able to work in Compact states with their Arizona license. Licensed physical therapists in other Compact states will benefit from this rulemaking because they will be able to work in Arizona without applying for licensure in Arizona.

Certified physical therapist assistants in Arizona will benefit from this rulemaking because they will be able to work in Compact states with their Arizona certification. Certified physical therapist assistants in other Compact states will benefit from this rulemaking because they will be able to work in Arizona without applying for certification in Arizona. In order to meet Compact requirements, certified physical therapy assistants will need to complete 10 hours of continuing competence during each two-year competency period.

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

The Board indicates that it received no public comments and no one attended the oral proceeding.

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

No. Only non-substantive technical corrections have been made between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

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

No. Federal law is not directly applicable to the subject matter of the rules.

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

Yes. The Board indicates that the license and certificate addressed under R4-24-208 are general permits consistent with A.R.S. § 41-1037 because they are issued to qualified individuals to conduct activities that are substantially similar in nature.

**10. 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?**

No. The Board did not review or rely on any study for this rulemaking.

**11. Conclusion**

The Board accepts the usual 60-day delayed effective date for the rulemaking. Council staff recommends approval of the rulemaking.



**ARIZONA STATE BOARD OF PHYSICAL THERAPY**

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Public Member

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Professional Member

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KAREN DONAHUE PT, DPT  
Executive Director

December 10, 2018

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 24. Board of Physical Therapy**

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 December 7, 2018, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).
- B. Relation of the rulemaking to a five-year-review report: The rulemaking does not relate to a five-year-review report
- C. New fee: The rulemaking does not establish a new fee.
- D. Fee increase: The rulemaking does not increase an existing fee.
- E. Immediate effective date: An immediate effective date is not requested.
- F. Certification regarding studies: I certify that the preamble accurately discloses 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,

Karen Donahue PT, DPT  
Executive Director

**NOTICE OF FINAL RULEMAKING**  
**TITLE 4. PROFESSIONS AND OCCUPATIONS**  
**CHAPTER 24. BOARD OF PHYSICAL THERAPY**

**PREAMBLE**

**1. Articles, Parts, and Sections Affected**

**Rulemaking Action**

R4-24-101	Amend
R4-24-201	Amend
R4-24-207	Amend
R4-24-208	Amend
Table 1	Amend
R4-24-210	Amend
R4-24-211	Amend
R4-24-401	Amend
R4-24-402	Amend
R4-24-403	Amend

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

Authorizing statute: A.R.S. § 32-2003(A)(7)

Implementing statute: A.R.S. §§ 32-2026, 32-2027, 32-2028(B)(3), 32-2031, 32-2032, 32-2044, and 32-2053

**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: 24 A.A.R. 3107, November 2, 2018

Notice of Proposed Rulemaking: 24 A.A.R. 3085, November 2, 2018

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

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

**6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about 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 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 complete 10 hours of continuing competence during each two-year compliance period.

An exemption from Executive Order 2018-02 was provided for this rulemaking in an e-mail from Emily Rajakovich, of the Governor's Office, dated July 2, 2018.

**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:**

This rulemaking will impose some economic costs on certified physical therapist assistants who wish to renew certification. They will now be required to have obtained 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 physical therapists and physical therapist assistants 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.

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

The Board made the following changes between the Notice of Proposed Rulemaking and this notice:

R4-24-101(16): Language was added clarifying that endorsement is a procedure available for granting a certificate to a certified physical therapist assistant from another jurisdiction.

Table 1: Language was added clarifying that endorsement applies to certification as well as licensure.

Typographical errors were corrected in R4-24-201(A)(3), R4-24-207(A)(3), R4-24-210(C)(1)(a), R4-24-211(C)(1), and R4-24-401(B)(2) and (3).

**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.

**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 license and certificate addressed in R4-24-208 are general permits consistent with A.R.S. § 41-1037 because they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

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

There are numerous federal laws that impact the provision of health care services such as physical therapy. However, no federal law is directly applicable to any rule in this rulemaking.

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

No analysis was submitted.

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

None

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

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

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

**TITLE 4. PROFESSIONS AND OCCUPATIONS**  
**CHAPTER 24. BOARD OF PHYSICAL THERAPY**

**ARTICLE 1. GENERAL PROVISIONS**

Section

R4-24-101. Definitions

**ARTICLE 2. LICENSING PROVISIONS**

Section

R4-24-201. Application for a Physical Therapist License

R4-24-207. Application for a Physical Therapist Assistant Certificate

R4-24-208. License or Certificate Renewal; Address Change

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

R4-24-210. Business Entity Registration; Display of Registration Certificate

R4-24-211. Renewal of Business Entity Registration

**ARTICLE 4. CONTINUING COMPETENCE**

Section

R4-24-401. Continuing Competence Requirements for Renewal

R4-24-402. Continuing Competence Activities

R4-24-403. Activities not Eligible for Continuing Competence Credit

## ARTICLE 1. GENERAL PROVISIONS

### R4-24-101. Definitions

In addition to the definitions in A.R.S. § 32-2001, in this Chapter:

1. No change
2. No change
  - a. No change
  - b. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. No change
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. No change
12. No change
13. No change
14. No change
15. No change
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. No change
18. No change
  - a. No change
  - b. An applicant, licensee, or ~~certificate-holder~~ certificate holder is engaged in a supervised clinical practice; or
  - c. No change
19. No change
20. No change

21. “Good moral character” means the applicant has not taken any action that is grounds for disciplinary action against a licensee or ~~certificate-holder~~ certificate holder under A.R.S. § 32-2044.
22. No change
23. No change
24. No change
25. No change
26. No change
27. No change
28. No change
29. No change
30. No change
31. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
32. No change
33. No change
34. No change
35. No change
36. No change
37. No change
38. No change

## **ARTICLE 2. LICENSING PROVISIONS**

### **R4-24-201. Application for a Physical Therapist License**

#### **A. No change**

1. An application form provided by the Board that is signed, ~~and dated,~~ and verified by the applicant ~~and notarized~~ and contains:
  - a. The applicant’s name, business, ~~and residential,~~ and e-mail addresses, business and residential telephone ~~number~~ numbers, birth date, and Social Security number;

- b. No change
  - c. No change
  - d. No change
  - e. No change
  - f. No change
  - g. No change
  - h. No change
  - i. A statement of whether the applicant has ever been the subject of disciplinary action by a professional association or postsecondary educational institution;
  - j. No change
  - k. No change
  - l. No change
  - m. No change
  - n. No change
  - o. No change
  - 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. No change
  - 3. ~~Evidence~~ 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. No change
- B.** No change
- 1. No change
  - 2. No change
  - 3. No change
- C.** In addition to the requirements in subsections ~~(A)(1) through (A)(3)~~ (A) and ~~subsection~~ (B), an applicant for a physical therapist license by endorsement shall submit to the Board:
- 1. No change
  - 2. No change
    - a. No change
    - b. No change
    - c. No change

- d. No change
- e. No change
- f. No change

**D.** No change

**R4-24-207. Application for a Physical Therapist Assistant Certificate**

**A.** No change

1. No change

- a. The applicant's name, business, ~~and~~ residential, and e-mail addresses, business and residential telephone ~~number~~ numbers, birth date, and Social Security number;
- 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

2. No change

3. ~~Evidence~~ 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. No change

**B.** No change

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 school or college where the

applicant completed the accredited educational program and signature of the registrar of the school or college;

2. No change

3. No change

**C.** 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

**D.** No change

**R4-24-208. License or Certificate Renewal; Address Change**

**A.** No change

1. The following information for the ~~license or certificate~~ compliance period immediately preceding the renewal application:

a. No change

i. No change

ii. No change

iii. 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

- i. No change
  - ii. No change
  - iii. No change
- l. No change
  - i. No change
  - ii. No change
  - iii. No change
- m. No change
- 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(A) and (E); and
- 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;
- ~~o-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
- ~~p-q.~~ No change
- 2. No change
- 3. Evidence of the applicant's U.S. citizenship, alien status, legal residency, or lawful presence in the U.S. 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. No change
- B.** No change
- C.** No change
  - 1. Approve or deny the application within the ~~time-frames~~ time frames in R4-24-209 and Table 1, and
  - 2. No change
- D.** No change
- E.** No change

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

<b>Type of Applicant</b>	<b>Type of Approval</b>	<b>Statutory Authority</b>	<b>Overall Time-frame Time Frame</b>	<b>Administrative Completeness Time-frame Time Frame</b>	<b>Substantive Review Time-frame Time Frame</b>
Original License (R4-24-201)	License	A.R.S. §§ 32-2022; 32-2023	75	30	45
License <u>or</u> Certificate by Endorsement (R4-24-201; R4-24-207)	License <u>or</u> 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

**R4-24-210. Business Entity Registration; Display of Registration Certificate**

A. No change

**B.** No change

**C.** No change

1. No change

a. Name, ~~and~~ 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. No change

d. No change

e. No change

f. No change

g. No change

i. No change

ii. No change

iii. No change

h. Dated ~~and notarized~~ signature of an officer or director attesting that:

i. No change

ii. No change

2. No change

**D.** No change

1. No change

2. No change

3. No change

**R4-24-211. Renewal of Business Entity Registration**

**A.** No change

**B.** No change

**C.** No change

1. Name, ~~and~~ 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. No change

4. No change

5. No change

6. No change
  7. No change
    - a. No change
    - b. No change
    - c. No change
  8. No change
  9. Dated ~~and notarized~~ 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 ~~R4-24-207(A)(3)~~ R4-24-107(A)(3).

#### **ARTICLE 4. CONTINUING COMPETENCE**

**R424401. Continuing Competence Requirements for Renewal**

- A.** Except as provided in subsection ~~(F)~~ (G), ~~beginning September 1, 2000~~, a licensed physical therapist shall earn 20 contact hours of continuing competence ~~activities~~ for each compliance period to be eligible for license renewal of license.
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 ~~shall~~ 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.

**B.C.** A licensee or certificate holder shall not receive contact hour credit for repetitions of the same activity.

**C.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 a ~~license renewal~~ certificate and ends on August 31 of evennumbered years.

**D.E.** A licensee or certificate holder shall not carry over contact hours from one compliance period to another.

**E.F.** An applicant for ~~license~~ 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.

**F.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 ~~that~~ the Board may request in support of the waiver.

**G.H.** A licensee or certificate holder is subject to Board auditing for continuing competence compliance.

1. Selection for audit shall be random and notice of audit sent within 60 calendar days following the ~~license~~ 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. No change
- b. No change
- c. No change

**H.I.** A licensee or certificate holder shall retain evidence of participation in a continuing competence activity for ~~the two preceding~~ compliance periods after participation.

**H.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. ~~A licensee~~ The Board shall ~~be notified by~~ provide the Board notice; electronically or by certified mail; within 30 working days following the determination by the Board.

**H.K.** ~~A~~ 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 ~~shall have six months from the notice of noncompliance~~ 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.

**K.L.** No change

**R424402. Continuing Competence Activities**

**A.** No change

- 1. No change
- 2. No change
- 3. No change

**B.** No change

- 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 ~~shall be~~ is determined by dividing the total minutes of instruction by 60. Breaks shall not be included as part of instructional time;
- 2. No change
- 3. No change
- 4. No change

**C.** No change

- 1. Study ~~Group, maximum 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~~ Self instruction: Maximum five contact hours for physical therapists and two contact hours for physical therapist assistants.
- a. ~~Self instruction~~ 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~~ Self instruction may be directed by a correspondence course, video, internet, or satellite program.
  - b. Each 60 minutes of ~~self instruction~~ self instruction equals one contact hour.
3. ~~Inservice Education, maximum~~ education: Maximum five contact hours for physical therapists and two contact hours for physical therapist assistants.
- a. No change
  - b. No change
- D.** No change
1. Physical therapy practice management coursework, ~~maximum~~ : Maximum of five contact hours for physical therapists and two contact hours for physical therapist assistants.
- a. No change
  - 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~~ : Maximum five contact hours for physical therapists and two contact hours for physical therapist assistants.
- a. No change
  - b. No change
  - c. No change
3. Publication, ~~maximum~~ : 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 thirdparty publisher of physical therapy material.

- b. Each article published in a refereed journal, book chapter, or book equals ~~10~~ five contact hours for physical therapists and two contact hours for physical therapist assistants. Articles published in nonrefereed journals, magazines, newsletters, or periodicals equal ~~five~~ 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.

**R424403. 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 ~~a licensee~~ 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.

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT<sup>1</sup>**

**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.

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

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](mailto:Karen.donahue@ptboard.az.gov)

Web site: [www.ptboard.az.gov](http://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 businesses<sup>2</sup>:

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:

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

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.

#### **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 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 to an applicant already licensed as a physical therapist 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 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.

#### **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 and dated by the applicant and notarized and contains:
    - a. The applicant's name, business and residential addresses, telephone number, 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 pending for malpractice, or entered into a settlement from a malpractice suit and if so, an explanation;
  - l. 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);
  - 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. Evidence 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)(1) through (A)(3) and subsection (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.

**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 and residential addresses, telephone number, 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;
  - i. A statement of whether the applicant has committed any of the actions referenced in the definition of good moral character in R4-24-101;
  - j. A statement of whether the applicant has ever had a malpractice judgment or has a lawsuit currently pending for malpractice and if so, an explanation;
  - k. 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;
  - l. A statement of whether the applicant has any impairment to the applicant's cognitive, communicative, or physical ability to participate in therapeutic interventions with skill and safety and if so, an explanation;
  - m. 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 participate in therapeutic interventions with skill and safety and if so, an explanation;
  - n. 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 participate in therapeutic interventions with skill and safety and if so, an explanation;
  - o. A statement of whether the applicant has ever violated A.R.S. § 32-2044(10); and
  - p. A sworn statement by the applicant verifying 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. Evidence 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 that 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;
    - 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.

**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 license or certificate 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(A) and (E); and
  - o. If a licensee, a statement of whether the licensee has complied with the medical records protocol as required in A.R.S. § 32-3211.
  - p. 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;
  - 3. Evidence of the applicant's U.S. citizenship, alien status, legal residency, or lawful presence in the U.S.; 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.

**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 and primary address of the business entity;
    - b. Name, title, 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 and notarized 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.

**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 and primary address of the business entity;
  - 2. Name, title, 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 and notarized 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 R4-24-207(A)(3).

#### **R4-24-401. Continuing Competence Requirements for Renewal**

- A.** Except as provided in subsection (F), beginning September 1, 2000, a licensed physical therapist shall earn 20 contact hours of continuing competence activities for each compliance period to be eligible for renewal of license.
  - 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 shall be obtained from nonclinical course work.
  - 2. No more than 10 contact hours may be earned by the licensee during any compliance period from Categories B and C continuing competence activities. No more than five contact hours from categories B and C may be obtained from nonclinical course work.
  - 3. If the licensee's initial license is for one year or less, the licensee shall earn 10 contact hours during the initial compliance period.
- B.** A licensee shall not receive contact hour credit for repetitions of the same activity.
- C.** The continuing competence compliance period for a licensee begins on September 1 following the issuance of an initial license or a license renewal and ends on August 31 of even-numbered years.
- D.** A licensee shall not carry over contact hours from one compliance period to another.
- E.** An applicant for license 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.
- F.** 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 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 that the Board may request in support of the waiver.
- G.** A licensee is subject to Board auditing for continuing competence compliance.
  - 1. Selection for audit shall be random and notice of audit sent within 60 calendar days following the license renewal deadline.

2. Within 30 days of receipt of a notice of audit, a licensee 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.
- H.** A licensee shall retain evidence of participation in a continuing competence activity for the two preceding compliance periods.
- I.** The Board shall notify a licensee who has been audited whether the licensee is in compliance with continuing competence requirements. A licensee shall be notified by the Board, by certified mail, within 30 working days following the determination by the Board
- J.** A licensee found not in compliance with continuing competence requirements shall have six months from the notice of noncompliance to satisfy the continuing competence requirements. A licensee may request a hearing to contest the Board's decision under A.R.S. Title 41, Chapter 6, Article 10.
- K.** 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.

#### **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 shall be 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.
    - 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. A study group shall have a minimum of three participants and two hours of participation to equal one contact hour.
  - 2. Self-Instruction, maximum five contact hours.
    - 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.
    - 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.
    - 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 shall receive a “pass” in a pass/fail course or a minimum of a C in a graded course to receive credit.
    - c. 60 minutes of practice management coursework equals one contact hour.
  - 2. Teaching or lecturing, maximum five contact hours.
    - 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.
  - 3. Publication, maximum five contact hours.
    - 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 10 contact hours. Articles published in non-refereed journals, magazines, newsletters, or periodicals equal five contact hours.

### 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.

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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.

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(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.

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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.

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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.

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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.

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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.

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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

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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.

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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.

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### 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.

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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.

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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.

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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.

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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**

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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.

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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

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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:

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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

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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.

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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.

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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

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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.

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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

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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.

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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.

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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.

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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.

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### 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.
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.

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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.

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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.

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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.

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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.

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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.

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(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.

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(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

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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

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## 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.

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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:

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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

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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

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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

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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.

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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.

**D-3**

**GAME AND FISH COMMISSION (R-19-0203)**

Title 12, Chapter 4, Article 1, Definitions and General Provisions; Article 2, Licenses, Permits, Stamps, Tags; Article 3, Taking and Handling of Wildlife; Article 4, Live Wildlife

**Amend:** R12-4-101; R12-4-216; R12-4-301; R12-4-302; R12-4-303; R12-4-304;  
R12-4-305; R12-4-306; R12-4-307; R12-4-308; R12-4-309; R12-4-310;  
R12-4-311; R12-4-313; R12-4-318; R12-4-319; R12-4-320; R12-4-321;  
R12-4-322; R12-4-401

**New Section:** R12-4-314

**Repeal:** R12-4-315; R12-4-316; R12-4-317

# GOVERNOR'S REGULATORY REVIEW COUNCIL

## STAFF MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** February 5, 2019

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

**FROM:** Council Staff

**DATE:** January 22, 2019

**SUBJECT: GAME AND FISH COMMISSION (R-19-0203)**

Title 12, Chapter 4, Article 1, Definitions and General Provisions; Article 2, Licenses, Permits, Stamps, Tags; Article 3, Taking and Handling of Wildlife; Article 4, Live Wildlife

**Amend:** R12-4-101; R12-4-216; R12-4-301; R12-4-302; R12-4-303; R12-4-304; R12-4-305; R12-4-306; R12-4-307; R12-4-308; R12-4-309; R12-4-310; R12-4-311; R12-4-313; R12-4-318; R12-4-319; R12-4-320; R12-4-321; R12-4-322; R12-4-401

**New Section:** R12-4-314

**Repeal:** R12-4-315; R12-4-316; R12-4-317

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This rulemaking comes from the Game and Fish Commission (Commission), the public body with rulemaking authority for policies that are implemented by the Game and Fish Department (Department). The rulemaking seeks to amend 20 rules, repeal three rules, and create one new rule in A.A.C. Title 12, Chapter 4. An exemption from the rulemaking moratorium was provided by the Governor's Office on August 22, 2017.

The Commission is amending its rules related to the taking and handling of wildlife. The Commission provides a comprehensive summary of its proposed actions on pages 3-21 of the Notice of Final Rulemaking. The Commission states that the rulemaking is intended to:

- Clarify current rule language,
- Protect public health and safety and private property rights,
- Facilitate job growth and economic development,
- Support "Fair Chase" principles and the tenets of the North American Model of Wildlife Conservation,
- Enable the Department to provide better customer service, and
- Reduce regulatory and administrative burdens wherever possible.

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

Yes. The Commission cites to both general and specific authority for the rules. Under A.R.S. § 17-231(A)(1), the Commission must “[a]dopt rules and establish services it deems necessary to carry out the provisions and purposes of this title [A.R.S. Title 17, Game and Fish].”

**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. Summary of the agency’s economic impact analysis:**

In this rulemaking, the Commission is amending its Article 3 rules, which govern the taking and handling of wildlife. In 2011, hunters and anglers supported approximately 18,220 jobs in Arizona, and spending by by this group generated \$132M in state and local taxes.

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

The Commission has determined amendments to the Article 3 rules will result in minimal or no costs to those who are impacted by the regulations. The proposed rulemaking will provide clarity and consistency to the rules governing the taking and handling of wildlife and will reduce the frequency of conduct that diminishes the principle of Fair Chase. The Commission has determined that there are no alternative methods for achieving the objectives of the proposed rulemaking and that the benefits outweigh the costs.

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

Key stakeholders are the Commission, businesses that provide hunting gear and excursions, political subdivisions, and residents impacted by the rulemaking. The Commission reports that the amendments will provide the necessary authority to more effectively manage the taking of wildlife, and the Commission does not anticipate any additional costs to implement the regulations. The Commission anticipates that the rulemaking will have no substantial impact on businesses, their revenues, or their payroll expenditures. Any costs to businesses are expected to be administrative in nature and are expected to be minimal. The rulemaking was found to have no substantial impact on political subdivisions of the state. The public benefits from the proposed rulemaking due to the increased clarity gained surrounding regulations governing angling and hunting.

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

The Commission received approximately 215 public comments on the rulemaking. The Commission indicates that the Department conducted outreach activities with a number of

organizations around the state and issued press releases to encourage public participation in the rulemaking process. The Department also hosted a webinar on the rule changes that was viewed by 104 persons.

The text of the public comments, along with the Commission's responses, have been provided on pages 23-99 of the Notice of Final Rulemaking. Council staff believes that the Commission has adequately addressed the public comments.

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

No. After the original Notice of Proposed Rulemaking was published in March 2018, the Commission made a number of changes to the rules and a Notice of Supplemental Proposed Rulemaking was published on July 13, 2018.

A list of the changes made between the Notice of Supplemental Proposed Rulemaking and the Notice of Final Rulemaking is provided on pages 22-23 of the Notice of Final Rulemaking. Council staff believes that the final rules are not a substantial change, when considered as a whole, from the proposed rules.

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

No. The Commission indicates that the rules are not more stringent than federal law.

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

Yes. The Commission indicates that the licenses and permits issued under Article 3 are general permits in compliance with A.R.S. § 41-1037.

**10. 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?**

Yes. The Commission indicates that it reviewed and relied upon one study<sup>1</sup> titled "Chronic Wasting Disease Prions in Elk Antler Velvet."

**11. Conclusion**

The Commission accepts the usual 60-day delayed effective date for the rulemaking. Council staff recommends approval of the rulemaking.

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<sup>1</sup> The study can be viewed online at <https://dx.doi.org/10.3201/eid1505.081458>



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December 11, 2018

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

**Re: A.A.C. Title 12. Natural Resources, Chapter 4. Game and Fish Commission  
Article 3. Taking and Handling of Wildlife**

Dear Ms Sornsin:

The Arizona Game and Fish Commission respectfully submit the accompanying final rule package for inclusion on the Council agenda.

In compliance with R1-6-201(A)(1), the Department provides you with the following information:

- a. The rulemaking record closed on December 7, 2018.
- b. This rulemaking activity is related to the five-year-review report approved by the Council on June 6, 2017.
- c. This rulemaking does not establish a new fee .
- d. This rulemaking does not contain a fee increase.
- e. An immediate effective date is requested.
- f. The preamble discloses a reference to all studies relevant to the rule that the agency reviewed and either did or did not rely on in its evaluation of, or justification for, the rule.
- g. The preparer of the Economic, Small Business, and Consumer Impact Statement did not notify the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule as the Commission determined that the implementation of the amended rule does not require any new full-time employees.

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**azgfd.gov | 602.942.3000**

**5000 W. CAREFREE HIGHWAY, PHOENIX AZ 85086**

**GOVERNOR: DOUGLAS A. DUCEY COMMISSIONERS: CHAIRMAN, JAMES S. ZIELER, ST. JOHNS | ERIC S. SPARKS, TUCSON | KURT R. DAVIS, PHOENIX  
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A.A.C. Title 12. Natural Resources, Chapter 4. Game and Fish Commission Article 3. Taking and Handling of Wildlife

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**h. Items included in the rulemaking package are as follows:**

- Signed cover letter
- Notice of Final Rulemaking
- Economic Impact Statement
- Written comments
- Materials incorporated by reference: 50 C.F.R. 10.13 revised October 1, 2014; C.F.R. 17.11, revised October 1, 2013; and 50 C.F.R. 20.21, revised October 1, 2015.
- Authorizing statute: A.R.S. § 17-231(A)(1)
- Implementing statute: A.R.S. §§ A.R.S. §§ 13-3107, 13-3108, 17-102, 17-211(E)(4), 17-231(A)(1), 17-231(A)(2), 17-231(A)(3), 17-231(A)(4), 17-231(B)(8), 17-232, 17-233, 17-234, 17-235, 17-236, 17-239, 17-251, 17-301, 17-302, 17-305, 17-306, 17-307, 17-309, 17-331, 17-332, 17-333, 17-333.02, 17-335, 17-346, 17-361, and 17-371
- Definitions of terms contained in statute or other rules and used in the rulemaking

Sincerely,

A handwritten signature in black ink, appearing to read "Ty Gray", written in a cursive style.

Ty Gray  
Director

**NOTICE OF FINAL RULEMAKING**  
**TITLE 12. NATURAL RESOURCES**  
**CHAPTER 4. GAME AND FISH COMMISSION**

**PREAMBLE**

<b><u>1. Article, Part, or Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
R12-4-101	Amend
R12-4-216	Amend
R12-4-301	Amend
R12-4-302	Amend
R12-4-303	Amend
R12-4-304	Amend
R12-4-305	Amend
R12-5-306	Amend
R12-4-307	Amend
R12-4-308	Amend
R12-4-309	Amend
R12-4-310	Amend
R12-4-311	Amend
R12-4-313	Amend
R12-4-314	New Section
R12-4-315	Repeal
R12-4-316	Repeal
R12-4-317	Repeal
R12-4-318	Amend
R12-4-319	Amend
R12-4-320	Amend
R12-4-321	Amend
R12-4-322	Amend
R12-4-401	Amend
<b><u>2. Citations to the agency's statutory authority to include the authorizing statute (general) and the implementing statute (specific):</u></b>	
Authorizing statute:	A.R.S. § 17-231(A)(1)
Implementing statute:	A.R.S. §§ 13-3107, 13-3108, 17-102, 17-211(E)(4), 17-231(A)(1), 17-231(A)(2), 17-231(A)(3), 17-231(A)(4), 17-231(B)(8), 17-232, 17-233, 17-234, 17-235, 17-236, 17-239, 17-251, 17-301, 17-302, 17-305, 17-306, 17-307, 17-309, 17-331, 17-332, 17-333,

**3. The effective date of the rules:** Pursuant to A.R.S. § 41-1032, the rules becomes effective sixty days after being filed in the office of the Secretary of State.

**a. If the agency selected a date earlier than the 60 days 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 days 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 earlier effective date as provided in A.R.S. § 41-1032(A)(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: 24 A.A.R. 577, March 16, 2018

Notice of Proposed Rulemaking: 24 A.A.R. 529, March 16, 2018

Notice of Supplemental Proposed Rulemaking: 24 A.A.R. 1936, July 13, 2018

Notice of Supplemental Proposed Rulemaking: 24 A.A.R. 2910, October 19, 2018

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

Name: Celeste Cook, Rules and Policy Manager

Address: Arizona Game and Fish Department  
5000 W. Carefree Highway  
Phoenix, AZ 85086

Telephone: (623) 236-7390

Fax: (623) 236-7110

E-mail: [CCook@azgfd.gov](mailto:CCook@azgfd.gov)

Please visit the AZGFD website to track the progress of this rule; view the regulatory agenda and all previous Five-year Review Reports; and learn about any other agency rulemaking matters at <https://www.azgfd.com/agency/rulemaking/>.

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

The Arizona Game and Fish Commission proposes to amend its Article 3 rules, governing the taking and handling of wildlife, to enact amendments developed during the preceding Five-year Review Report. The amendments proposed in the five-year review report are designed to clarify current rule language; protect public health and safety and private property rights; facilitate job growth and economic development; support Fair Chase principles and the tenets of the North American Model of Wildlife Conservation; enable the Department to provide better customer service; and reduce regulatory and administrative burdens wherever possible. After evaluating the scope and effectiveness of the proposed amendments specified in the review, the Commission

proposes additional amendments to further implement the original proposals.

Arizona's great abundance and diversity of native wildlife can be attributed to careful management and the important role of the conservation programs the Arizona Game and Fish Department has developed. The Department's management of both game and nongame species as a public resource depends on sound science and active management. As trustee, the state has no power to delegate its trust duties and no freedom to transfer trust ownership or management of assets to private establishments. Without strict agency oversight and management, the fate of many of our native species would be in jeopardy. Wildlife can be owned by no individual and is held by the state in trust for all the people.

An exemption from Executive Order 2015-01 was provided for this rulemaking by Hunter Moore, Natural Resource Policy Advisor, Governor's Office, in an email dated August 22, 2017.

In addition to replacing the term "buffalo" with "bison" and "individual" with "person", nonsubstantive amendments made to make rules clearer and more concise; the Commission proposes the following substantive amendments:

#### **R12-4-101. Definitions**

The objective of the rule is to establish definitions that assist persons regulated by the rule and members of the public in understanding the unique terms that are used throughout 12 A.A.C. 4. Game and Fish Commission Rules. The rule was adopted to facilitate consistent interpretation of Commission rules and to prevent persons regulated by the rule from misinterpreting the intent of Commission rules.

Because the terms "cervid," "nonprofit organization," and "person" are used in multiple Game and Fish Commission rules, the Commission proposes to amend the rule to define these terms under R12-4-101. The Commission proposes to amend the rule to define terms used in multiple Game and Fish Commission rules and Commission Orders: "bow," "crossbow," and "handgun." Defining these terms will aid in facilitating a consistent interpretation of Commission Orders and rules. In addition, the Commission proposes to amend the rule to define "export" and "import" to reduce regulatory ambiguity. It is often assumed the terms "import" and "export" mean something is being brought into or taken out of the country. For the purposes of Game and Fish Commission rules, "import" and "export" mean something is being brought into or taken out of the State. These changes are proposed as a result of customer comments received by the Department.

The Commission proposes to amend the rule to replace the term "animal" with "wildlife" to make the rule more concise.

#### **R12-4-216. Crossbow Permit**

The objective of the rule is to establish eligibility requirements, conditions, and restrictions for the crossbow permit. The permit allows a person, who cannot draw and hold a bow, to use a crossbow during an archery-only hunt.

The Commission proposes to amend the rule to allow a Crossbow Permit holder to use a pre-charged pneumatic weapon, as defined under R12-4-301, using bolts or arrows and with a capacity of holding and firing only one arrow or bolt at a time during an archery-only season. This change is proposed as a result of customer comments received by the Department.

### **R12-4-301. Definitions**

The objective of the rule is to establish definitions that assist persons regulated by the rule and members of the public in understanding the unique terms that are used throughout Article 3. The rule was adopted to facilitate consistent interpretation of Article 3 rules and to prevent persons regulated by the rule from misinterpreting the intent of Commission rules.

The Commission proposes to amend the definition of "administer" to remove the phrase "pursue, capture, or otherwise restraining wildlife" as the language is unnecessarily restrictive.

In recent years, due to the affordability and availability of drones, their use has significantly increased. While the definition of "aircraft" includes any lighter-than-air contrivance designed for flight, confusion remains as to whether a drone is considered an aircraft. The Commission proposes to amend the definition of "aircraft" to clearly state that drones are considered aircraft.

Many anglers believe scented, flavored, and chemically treated devices are legal artificial lures because the definition of "artificial lures" does not specifically address them. Since this definition was adopted, the popularity of these types of baits, often marketed as "lures" and "artificial," has increased; and their use is causing unacceptable mortality rates in released trout caught in some catch-and-release waters. The Commission proposes to amend the definition to clearly state that artificial flies and lures does not include chemical and organic attractants. The purpose of restricting scented, flavored, and chemically treated flies and lures is to minimize the mortality of fish, particularly trout mortalities because trout tend to gulp the lure deeper, resulting in a 30 to 90% mortality rate after being released. In addition, the Commission proposes to amend the definition of "artificial lures and flies" to increase consistency between Commission rules, Commission Orders and public outreach materials; Commission rules use the phrase "artificial lures and flies;" Commission Orders, and all other public outreach materials use the phrase "artificial flies and lures."

The Commission proposes to repeal the definition of "cervid." Because the term is used in multiple Game and Fish Commission rules, the Commission intends to define this term under R12-4-101.

Under A.R.S. § 13-3102(A)(4), a person commits misconduct involving weapons by knowingly possessing a deadly weapon or prohibited weapon if such person is a prohibited possessor. Under A.R.S. § 13-3101(A)(1), "deadly weapon" means anything that is designed for lethal use. As a result of amendments made to R12-4-303 (Unlawful Devices, Methods, and Ammunition), the Commission proposes to define "deadly weapon," "prohibited possessor," and "prohibited weapon."

The Commission also proposes to define "edible portions of game meat" to increase consistency between statute, Commission Orders, and rules. While A.R.S. § 17-340 defines edible portions of bighorn sheep, bison, deer, elk, game fish, javelina, migratory game birds, pronghorn antelope, upland game birds, and wild turkey, the statute does not address bear or mountain lion, which are considered big game. This change is in response to customer comments received by the Department.

A.R.S. §§ 17-231(A)(3) and 17-301(D)(2) authorizes the Commission to adopt rules establishing the taking of wildlife with firearms, fishing equipment, archery equipment, or other implements in hand as may be defined. The Commission also proposes to amend the rule to define "device," "hybrid device," "muzzleloading

shotgun," "pneumatic weapon," "rifle," and "shotgun." Defining these terms will aid in facilitating a consistent interpretation of Commission Orders and rules.

In addition, the Commission is aware of devices that use lasers and computers that enable a person with no hunting or shooting experience to easily hit a target up to 500 yards away. As a result of amendments made to R12-4-303 (Unlawful Devices, Methods, and Ammunition), the Commission proposes to define "smart device." This change is in response to customer comments received by the Department.

#### **R12-4-302. Use of Tags**

The objective of the rule is to establish requirements for the possession and lawful use of tags issued by the Department. A.R.S. § 17-332 authorizes the Commission to prescribe the manner in which a licensee shall attach a tag to a big game animal. The rule was adopted to establish the manner and method in which a person shall attach a tag to wildlife and ensure consistent interpretation of and compliance with A.R.S. § 17-332.

The Commission is aware of a problem with the enforcement of the rule. The rule establishes that only the hunter listed on the tag shall use the tag and attach it to game lawfully harvested by the hunter listed on the tag. When two persons are hunting, and knowingly deviate from this mandate - both parties are involved in the violation. There is a circumstance within the current rule that results in only one of the two persons unlawfully using a tag to be in violation of the rule. For example: Hunter A harvests an elk. Hunter A then allows Hunter B to place Hunter B's tag on the elk, enabling Hunter A to continue hunting for another elk after having reached their bag limit for elk. Even though both parties were involved in the unlawful tagging of the elk, only Hunter B would be cited under this rule. The Commission proposes to amend the rule to establish that it is unlawful for a person to allow another person's tag to be attached to wildlife that person harvested.

The Commission proposes to amend the rule to replace the term "hunt area" with "taking wildlife" to clarify unlawful uses of a tag.

#### **R12-4-303. Unlawful Devices, Methods, and Ammunition**

The objective of the rule is to establish those devices, methods, and ammunition that are unlawful for taking of any wildlife in Arizona. A.R.S. § 17-301(D)(2) authorizes the Commission to adopt rules establishing the taking of wildlife with firearms, archery equipment, or other implements in hand as may be defined. The rule was adopted to establish methods and devices that are unlawful for the take of wildlife and ensure consistent interpretation of and compliance with 17-301(D)(2). The Commission believes the reason the rule exists is to prohibit those devices and methods that compromise safe hunting practices or the spirit of fair chase. "Fair Chase" means the ethical and lawful pursuit and take of free-range wildlife in a manner that does not give the hunter or angler improper or unfair advantage over such wildlife. The following criteria are used to evaluate whether a new technology or practice violates the Fair Chase ethic; does the technology or practice allow a hunter or angler to: locate or take wildlife without acquiring necessary hunting and angling skills or competency; pursue or take wildlife without being physically present and pursuing wildlife in the field; or almost guarantee the harvest of wildlife when the technology or practice prevents wildlife from eluding take.

The Commission is aware that confusion exists regarding the use of full-jacketed ammunition. Full-jacketed ammunition is sold by sporting goods stores and is often labeled by the manufacturer for use in target

practice, but there are manufacturers who also label the ammunition for use in hunting. Confusion exists because full-jacketed ammunition is readily available in sporting goods stores and the rule prohibits the use of full-jacketed ammunition "designed for military use." A person could assume the ammunition sold by a sporting goods store may be used for hunting purposes because it is readily available to the public for purchase. The use of full-jacketed ammunition for hunting is prohibited because it does not create a substantial wound for the humane harvest of big game. The uniform and aerodynamic design means the ammunition is more likely to penetrate the animal and keep going out the other side, possibly injuring people or wildlife farther downrange and leaving only a small wound in the big game animal, resulting in wounding loss. This would impact hunter opportunity, because a person who wounds a big game animal may not be aware the animal was wounded and may continue to hunt and possibly wound or take another big game animal. Ammunition designed to expand creates a wound cavity and slows the bullet down so that it will not continue beyond the target with much force, if at all. The Commission proposes to amend the rule to remove specify that any ammunition that does not expand on impact shall not be used for the take of big game to make the rule more concise. This change also allows the continued use of ammunition that does not expand for the take of small game, fur bearers, and predators. This change is in response to customer comments received by the Department.

The Commission is aware of arrows or bolts capable of being fitted with explosive tips that discharge upon impact, some allow the user to insert a bullet into a modified broadhead and others are manufactured with a small broadhead inside a shotgun shell. Under R12-4-303, a person is prohibited from using any projectile that contains explosives because the Commission believes they compromise the spirit of fair chase. The Commission proposes to amend the rule to include projectiles that contain a secondary propellant to proactively address emerging technology.

Due to technological advances in hunting scopes (for any lawful hunting device), the Commission proposes to clarify the rule to address laser range finders that project a non-visible light onto an animal. A laser distance meter emits a pulse of laser at a target. The pulse then reflects off the target and back to the sending device (in this case, a laser distance meter). This "time of flight" principle is based on the fact that laser light travels at a fairly constant speed through the Earth's atmosphere. Inside the meter, a simple computer quickly calculates the distance to target. The Commission does not believe these types of hunting scopes compromise the spirit of fair chase because the hunter still must possess the necessary hunting skills or competency in order to take an animal. This change is in response to customer comments received by the Department.

Smart devices are becoming more prevalent in the firearm and hunting industries (devices equipped with a target-tracking system or an electronically-controlled, electronically-assisted, or computer-linked trigger or release). These smart devices enable a person with little or no experience to easily hit a target more than 500 yards away with very high accuracy; once a target is selected, the smart device controls the trigger mechanism and discharges only when the weapon is pointed at the designated target, taking into account dozens of variables, including wind, barometric pressure, elevation, inclination or declination, ballistic performance, etc. Normally, it takes years of practice to hit a target at that distance, but a smart device can make a person into a sharpshooter in a matter of hours or even less. Because the Commission believes these devices compromise the

spirit of fair chase and the Commission's Fair Chase Policy, the Commission proposes to amend the rule to prohibit the use a smart device while taking wildlife. This change is in response to customer comments received by the Department.

While the current use of self-guided ammunition is not popular due to limited availability and the high costs involved, the Commission believes it is necessary to proactively address concerns about the use of self-guided ammunition and prohibit its use for taking or aiding in the take of wildlife.

The Commission is aware of instances where a person will use a watercraft to chase and harass waterfowl in an effort to force the waterfowl to take flight so they may be hunted by another person. The Commission proposes to amend the rule to clarify federally prohibited activities to ensure consistent interpretation of A.R.S. § 17-301 as it applies to migratory birds and prevent persons from inadvertently violating federal regulations applicable to migratory bird hunting.

Under A.R.S. § 17-309(A)(4), it is unlawful to discharge a firearm while taking wildlife within one-fourth mile of an occupied farmhouse or other residence, cabin, lodge or building without permission of the owner or resident. Under R12-4-303(A)(3)(h), it is unlawful to discharge a pneumatic weapon .30 caliber or larger while taking wildlife within one-fourth mile of an occupied farmhouse or other residence, cabin, lodge or building without permission of the owner or resident. In addition, the Commission is aware of instances where a hunter who lives on the edge of a municipal boundary is unable to archery hunt on his own property because Commission Order closes areas within one-fourth mile of an occupied residence. For example, a hunter who lives on the edge of a forest boundary and who is miles away from the nearest residence is unable to archery hunt on their own property because of the location of their own home. In addition, the Commission and Department have received a number of complaints about persons archery hunting near their private property. The Commission proposes to amend the rule to prohibit the discharge of hybrid device, arrow, or bolt while taking wildlife within one-fourth mile of an occupied farmhouse or other residence, cabin, lodge or building without permission of the owner or resident, to increase consistency between statute and rules. This language mirrors statutory language under A.R.S. § 17-309, which prohibits a person from discharging a firearm while taking wildlife within one-fourth mile of an occupied farmhouse or other residence, cabin, lodge, or building without permission of the owner or resident. This change is in response to customer comments received by the Department.

In addition, the Commission is aware confusion exists as to what distance constitutes "one-fourth mile" and "one-half mile." The Commission proposes to clarify this distance by also referencing this distance in yards (440 or 880, as applicable) to reduce regulatory uncertainty. This change is in response to customer comments received by the Department.

The Commission recognized the need to evaluate regulatory measures pertaining to the use of trail cameras, as they relate to the 'take of wildlife' and the Fair Chase hunting ethic, and directed the Department to evaluate current rule language as it pertains to trail cameras. The team benchmarked with other states and spoke with members of industry and ultimately made recommendations to prohibit the use of trail cameras capable of sending a wireless remote signal to another electronic device for the purpose of taking or aiding in the taking of

wildlife or taking or aiding in the take of wildlife, or locating wildlife for the purpose of taking or aiding in the take of wildlife.

While the current use of satellite imagery for hunting is not popular due to the costs involved, the Commission believes it is necessary to proactively address concerns about the use of satellite imagery and prohibit its use for taking or aiding in the take of wildlife. The Commission proposes to amend the rule to prohibit the use of images of wildlife produced or transmitted from a satellite or other device that orbits the earth; this prohibition does not include mapping systems or programs. This change is in response to customer comments received by the Department.

Under A.R.S. § 13-3102(A)(4), a person commits misconduct involving weapons by knowingly possessing a deadly weapon or prohibited weapon if such person is a prohibited possessor. Under A.R.S. § 13-3101(A)(1), "deadly weapon" means anything that is designed for lethal use. The Commission proposes to amend the rule to prohibit a person who is a prohibited possessor from using a deadly weapon or prohibited weapon to take wildlife to remove regulatory uncertainty.

#### **R12-4-304. Lawful Methods for Taking Wild Mammals, Birds, and Reptiles**

The objective of the rule is to establish lawful devices and methods a person may use to take wild mammals, birds, and reptiles during seasons established by Commission Order. A.R.S. § 17-301(D)(2) authorizes the Commission to adopt rules establishing the taking of wildlife with firearms, archery equipment, or other implements in hand as may be defined. The rule was adopted to establish methods and devices that may be used for the take of specific wildlife and ensure consistent interpretation of and compliance with A.R.S. § 17-301(D)(2).

The availability of hybrid devices (weapons with components from two or more different devices) is increasing. Depending on the species, some hybrid devices may be used for the take of wildlife, while others cannot. The Commission proposes to amend the rule to allow the use of a hybrid device for the taking of wildlife provided all components of the device are authorized for the take of that species. This change is in response to customer comments received by the Department.

The Commission proposes to amend the rule to replace references to "antelope" with "pronghorn antelope" to reflect language used in Commission Order and public outreach materials.

In 2013, the Commission amended the rule to allow the use of pre-charged pneumatic weapons for the take of all wildlife, except bison, elk, and turkey due to concerns that pre-charged pneumatic weapons would not create a substantial wound for the humane harvest of a large animal (bison and elk) and public safety concerns (turkey). Subsequent discussions with persons in the pre-charged pneumatic weapon industry indicate that it is also necessary to reference the caliber of the bullet. This change enables the Commission to establish a lethal standard for the take of bison and elk using a pre-charged pneumatic weapon. These changes are in response to customer comments received by the Department.

The Commission believes technological advances in ceramic or ceramic coated broadheads have proven they can be as effective as traditional metal broadheads. A ceramic broadhead is typically produced by dry-pressing zirconia powder and then hardening the broadheads through the process of compacting and forming a

solid mass of material by heat or pressure to make the ceramic as hard as metal. The broadhead is then sharpened by grinding the edges with a diamond-dust-coated grinding wheel. Zirconia is 8.5 on the Mohs scale of mineral hardness, compared to 4.5 for normal steel and 7.5 to 8 for hardened steel and 10 for diamond. This very hard edge significantly reduces the need for sharpening, making them a desirable product for archery hunters. The Commission proposes to amend the rule to allow the use of ceramic and ceramic-coated broadheads. This change is in response to customer comments received by the Department.

The Commission proposes to allow the use of pre-charged pneumatic weapons using arrows or bolts for the take of wildlife during a general season wherever a bow or crossbow is listed as a lawful method of take for that species: bear, bighorn sheep, bison, deer, elk, javelina, mountain lion, pronghorn antelope, and turkey. The Commission believes these types of devices do not compromise the spirit of fair chase. This change is in response to customer comments received by the Department.

Under A.R.S. § 17-235, the Commission is required to prescribe seasons, bag limits, possession limits and other regulations pertaining to taking migratory birds in accordance with the Migratory Bird Treaty Act and regulations issued thereunder. The Commission proposes to incorporate by reference the most recent version of 50 C.F.R. 20.21 and reflect the most recent Government Printing Office contact information.

The Commission proposes to amend the rule to replace references to "handguns using black powder or synthetic black powder" with "muzzleloading handguns" to make the rule more concise.

#### **R12-4-305. Possessing, Transporting, Importing, Exporting, and Selling Carcasses or Parts of Wildlife**

The objective of the rule is to conserve wildlife resources by establishing requirements for the lawful possession, transport, import, export, or sale of wildlife. The Commission's rule protects native wildlife by preventing the spread of disease, reducing the risk of released animals competing with native wildlife, discouraging illegal trade of native wildlife, and preventing interactions between humans and wildlife that may threaten public health or safety. The rule was adopted to prevent the unlawful possession, transport, import, export, or sale of wildlife and allow for lawful possession by establishing the methods for complying with governing statutes.

The Commission proposes to amend the rule to state the tag shall be attached in the manner indicated on the tag to increase consistency between Commission rules.

In addition, the Commission proposes to amend the rule to specify the manner in which a person may provide evidence of legality for Eurasian collared-doves to reduce regulatory ambiguity.

The rule requires a person who receives a portion of wildlife to provide the identity of the person who took and gave the wildlife, but does not state under what circumstances this action is required. The Commission proposes to amend the rule to add "upon request to any peace officer, wildlife manager, or game ranger" to reduce ambiguity and increase consistency between Commission rules.

The Department issues both permit-tags (through computer draw) and nonpermit-tags (over the counter) for the take of wildlife. The Commission proposes to amend the rule to reflect both types of tags issued by the Department to make the rule more concise.

Under A.R.S. § 17-302(A), a landowner or lessee who is a livestock operator and whose livestock were recently attacked or killed by bear or mountain lion may lawfully exercise such measures as necessary to prevent further damage from the offending bear or mountain lion, including the taking of such bear or mountain lion; and further states that dogs may be used to facilitate the pursuit of the depredating bear or mountain lion. The statute also states that no portion of an animal taken pursuant to A.R.S. § 17-302 shall be retained or sold by any person except as authorized by the Commission. In response to comments made by hunters, the Commission amended R12-4-305(H) to allow a person who takes a depredating bear or mountain lion to retain the carcass provided the person has a valid hunting license and the carcass is immediately tagged with a valid hunt permit-tag or nonpermit-tag (unless the person has already taken the applicable bag limit for that big game animal). This change also prevents the animal from going to waste.

The Commission proposes to amend the rule to restrict the import of velvet antlers of cervids to address Chronic Wasting Disease (CWD) concerns. Growing antlers of cervids are covered by a highly innervated and vascularized apical skin layer, referred to as velvet, which is shed after an increase in testosterone and ossification of antlers. In a recent study, findings of prions in antler velvet of CWD-affected elk suggest that this tissue may play a role in disease transmission among cervids. At this time, the most effective management approach has to be to take measures to ensure, to the greatest extent possible, that the disease does not enter into Arizona. If it does, there will be substantial financial impact to the Department, captive cervid breeders, and the rural economy that is supported, in part, by hunting.

The Commission proposes to amend the rule to clarify that, when possessing, transporting, or importing cervid meat that has been cut and packaged, the meat may be personally or commercially cut and packaged. This change is in response to customer comments received by the Department.

The Commission also proposes to replace the phrase "wild mammal, bird, or reptile" with "wildlife" to indicate the rule applies to all wildlife, unless otherwise specified, to make the rule more concise.

#### **R12-4-306. Buffalo Hunt Requirements**

The objective of the rule is to establish rules of practice governing bison hunts, which are conducted by the Department to harvest bison appropriate to management objectives and land carrying capacity. In Arizona, bison are found on two wildlife areas operated solely by the Department; Raymond, located east of Flagstaff, and House Rock, located east of the North Kaibab National Forest. Both wildlife areas are managed to provide viewing opportunities as well as hunting opportunity. The rule was adopted to ensure the Department manages these herds on a sustainable basis.

In the past, the hunts on Raymond and House Rock were managed differently to allow the Department greater flexibility in conducting these hunts. Over time, the Department has implemented more effective control measures for these hunts and, as a result, now manages both areas in the same manner. The Commission proposes to amend the rule to combine bison hunt requirements into one subsection to make the rule more concise.

Currently, a hunter who takes a bison, or their designee, is required to present the bison in person to the Department for inspection. The Commission proposes to amend the rule to allow the hunter to check out either

in person or by telephone to reduce the burden and costs on persons regulated by the rule. This change is in response to customer comments received by the Department.

The Commission is aware of electronic methods implemented by other fish and wildlife agencies that allow a person to check-in or check-out electronically, such as an online system or mobile device application. The Commission proposes to amend the rule to allow a person to check-in and check-out electronically, when made available by the Department, to reduce the costs and burdens to persons regulated by the rule. This change is in response to customer comments received by the Department.

#### **R12-4-307. Trapping Regulations, Licensing; Methods; Tagging of Bobcat Pelts**

The objective of the rule is to establish requirements and restrictions necessary to regulate trapping in a fair and humane manner with the utmost regard for wildlife management principles and public safety. In addition, the rule establishes trapping reporting requirements as required under A.R.S. § 17-361(D). Trapping is the use of a device to remotely catch an animal. Fur-bearing and predatory animals may be trapped for a variety of purposes, including food, the fur trade, pest control, and wildlife management. Under A.R.S. § 17-301, it is unlawful to take wildlife with any leghold trap, instant kill body gripping design trap, or by a poison or a snare on any public land. The rule was adopted to establish requirements and restrictions to ensure responsible trapping and safeguard the future of trapping and ensure consistent interpretation of and compliance with A.R.S. § 17-301.

The Commission proposes to amend the rule to remove redundant language regarding the issuance of a trapping registration number.

In 2013, the Legislature amended A.R.S. Title 17 to allow the Arizona Game and Fish Commission to establish license classifications and fees. As a result of the subsequent rulemaking, any person age 10 and older is required to possess a license in order to lawfully take wildlife; this change was consistent with other Western states. The Commission proposes to amend the rule to require a person age 10 or older to possess a trapping license in order to trap in Arizona to increase consistency between Commission rules. In addition, under A.R.S. § 17-361(D) a person who possesses a trapping license is required to submit a trapping report. A trapper under the age of 14 was not required to submit a trapping report because they were not required to possess a trapping license. Reducing the trapping license age requirement will also enable the Department to gather additional valuable harvest data.

The Commission has amended license rules within Article 2 (licenses; permits; stamps; tags) and 4 (live wildlife) to increase consistency in format between application requirements. The Commission proposes to amend the rule to reflect changes made to other license application rules to increase consistency between Commission rules.

The Commission is aware of some confusion as to the daily trap check requirement prescribed under A.R.S. § 17-361(B). The statute requires a trapper to inspect all traps in use daily. Some trappers have asked if a trail camera could be used to meet this statutory mandate. Because "inspect" and "view" are very different actions, the Commission believes a trapper should be physically present in the trap area when inspecting their traps in order to meet the inspection requirements prescribed in statute.

Under R12-4-321, a city, county, or town may limit or prohibit any person from hunting within one-fourth mile (440 yards) or trapping within one-half mile (880 yards) of any developed picnic area, campground, boat ramp, shooting range, occupied structure, or golf course. The Commission also proposes to amend the rule to incorporate other areas developed for public use, as referenced under R12-4-321, to increase consistency between rules within Article 3.

In addition, under A.R.S. § 17-309 and R12-4-303, a person is prohibited from conducting certain activities involving the take of wildlife within a specific distance from "an occupied farmhouse or other residence, cabin, lodge or building," while this rule references "occupied residence or building." The Commission proposes to amend the rule to mirror statutory language to increase consistency between statute and Commission rule.

In addition, the Commission is aware confusion exists as to what distance constitutes "one-fourth mile" and "one-half mile." The Commission proposes to clarify this distance by also referencing this distance in yards (440 or 880, as applicable) to reduce regulatory uncertainty. This change is in response to customer comments received by the Department.

To comply with CITES (Convention on International Trade in Endangered Species), which aims to protect against over-exploitation of certain species, a person is required to obtain and attach a bobcat seal to all bobcats exported (trapped or hunted) out of Arizona. The information gathered from persons obtaining these seals is used to record population and biological information that helps in conservation management decisions. Currently, a person who traps a bobcat in Arizona is required to obtain a bobcat seal from the Department and attach the seal to the bobcat pelt within ten days of the end of the bobcat trapping season. The Commission proposes to amend the rule to require a trapper to ensure a bobcat seal is attached to a bobcat no later than April 1 of each year to reduce the burden on persons regulated by the rule; this is approximately 30 days after the close of the trapping season and coincides with the date the annual trapping report is due.

Since the rule was last amended, the Department implemented a new organizational structure; the Game Branch is now referred to as the Terrestrial Wildlife Branch. The Commission proposes to amend the rule to reference the Terrestrial Wildlife Branch to make the rule more concise.

In light of comments received by the Department, the Commission proposes to amend the rule to allow a trapper to use a trail camera for the purpose of remotely observing traps they have lawfully set. While this change will allow the trapper to view their traps without disturbing the immediate area, this change does not allow the trapper to use the trail camera to meet the daily inspection requirement prescribed under A.R.S. § 17-361(B).

#### **R12-4-308. Wildlife Inspections, Check Stations, and Roadblocks**

The objective for the rule is to establish requirements for wildlife check stations and wildlife inspections, as authorized by the Director. Wildlife check stations and inspections enable the Department to obtain biological data and verify evidence of legality. Under A.R.S. § 17-211(E), game rangers and wildlife managers may inspect all wildlife taken or transported and seize all wildlife taken or possessed in violation of law, or showing evidence of illegal taking. The rule was adopted to ensure consistent interpretation of and compliance with A.R.S. § 17-211(E) and all applicable laws and rules.

The Commission believes that to have a successful hunt, one does not have to harvest wildlife; whether a person takes a bull elk, a spike deer, a limit of dove, or goes home empty-handed, the Commission believes the times spent in the field with friends and family are some of the best times a person can ever have. The Commission proposes to amend the rule to replace the phrase "successful hunter" with "hunter who harvests" because the Commission believes a harvest is not required in order to have a "successful" hunt.

In addition, the Commission proposes to replace the phrase "produce and display any license, tag, stamp, or permit required for taking or transporting wildlife" with "provide evidence of legality as defined under R12-4-301" to make the rule more concise.

The Commission is aware of electronic methods implemented by other fish and wildlife agencies that allow a person to check-in or check-out electronically, such as an online system or mobile device application. The Commission proposes to amend the rule to allow a person to check-in and check-out electronically, when made available by the Department, to reduce the costs and burdens to persons regulated by the rule. This change is in response to customer comments received by the Department.

#### **R12-4-309. Authorization for Use of Drugs on Wildlife**

The objective of the rule is to establish the restrictions, application, reporting, and exemption from requirements for the authorization for use of drugs on wildlife, including but not limited to, fertility drugs, growth hormones, and tranquilizers. Such drugs are used in research and population management for fertility control, disease prevention or treatment, immobilization, or growth stimulation. The rule was adopted to proactively provide the Department with measures designed to ensure the necessary regulatory measures are in place for the use of drugs on wildlife.

In 2015, the Commission amended Article 4 special license rules to notice license holders that a special license does not exempt the license holder from any municipal, county, state or federal code, ordinance, statute, regulation, or rule or authorize the license holder to engage in any activity using wildlife that is protected by federal regulation. The Commission proposes to amend the rule to state the authorization does not exempt a person from any municipal, county, state or federal code, ordinance, statute, regulation, or rule or authorize a person to engage in any activity using wildlife that is protected by federal regulation to increase consistency between Commission rules.

The Commission proposes to amend the rule to remove the requirement that the applicant include information regarding federal approvals and/or permits because having this language in rule implies the Department verifies that the applicant possesses all of the necessary approvals and/or permits and that those approvals and/or permits are valid. The Commission believes it is the applicant's responsibility to ensure they apply for and obtain all required federal approvals and/or permits.

The Commission proposes to amend the rule to require the written endorsement to be signed by a person who has the authority to sign documents on behalf of a government agency, university, or institution to ensure the applicant has sufficient permission to conduct the activities noted on the application and associated documents.

Statute and rules that require a person to present a license, stamp, permit, or authorization to members of

law enforcement also reference the terms "wildlife manager" and "game ranger." The Commission proposes to amend the rule to reference "wildlife manager" and "game ranger" to increase consistency between Commission rules.

The rule requires a person who is authorized to use drugs on wildlife by the Department to submit an annual and final report; however, the rule does not establish a time-frame for either of these reports. The Commission proposes to establish due dates for the annual and final report to make the rule more concise.

The Commission proposes to amend the rule to require a person applying for authorization to use drugs on wildlife to indemnify the Department against any injury or damage resulting from the use of animal drugs in light of recent law suits taking place at the federal level.

In 2013, the Commission amended R12-4-428 (captivity standards) to remove the annual veterinary inspection requirement for all wildlife from R12-4-428 and reference the inspection requirement only in those rules where an annual veterinary inspection should be required and when wildlife is held for more than one year. Subsection (E) establishes the rule does not prohibit the treatment of wildlife by a licensed veterinarian or holder of a special license; the Commission proposes to amend the rule to replace the reference to R12-4-428 with R12-4-413 and R12-4-420 to make the rule more concise and increase consistency between Commission rules.

#### **R12-4-310. Fishing Permits**

The objective of the rule is to establish requirements for the fishing permit available to governmental agencies and nonprofit organizations that provide rehabilitation and treatment services for persons with disabilities. The Commission recognizes fishing and hunting as a fundamental requirement of wildlife conservation in Arizona and introductory fishing or hunting events actively promote participation in a variety of recreational opportunities. The rule was adopted to permit these agencies to provide outdoor fishing opportunities to persons with physical, developmental, or mental disabilities, without requiring them to obtain a fishing license.

The Commission proposes to amend the rule to remove the requirement that a nonprofit be licensed or contracted with the Department of Economic Security (DES) or Department of Health Services (DHS) to provide physical or mental rehabilitation or training to persons with physical, developmental, or mental disabilities and replace the terms "rehabilitation or training" with "treatment and care." The Department receives approximately 100 fishing permit applications annually. Of those 100 applications, approximately 50% are denied either because the agency, department, or nonprofit is not contracted with DES or DHS or they provide "habilitative care and treatment" instead of "rehabilitative care and treatment." The Fishing Permit was originally established to provide unlicensed fishing opportunities to a segment of the public that has difficulty engaging in this recreational activity. The Commission believes the rule with the proposed amendments will continue to meet the original intent of the rule, while expanding unlicensed fishing opportunities to additional agencies, departments, and nonprofits.

The Commission proposes to amend the rule to specify the permit is valid for any two days within a 30 day period. An agency, department, or nonprofit is required to submit a report no later than 30 days after the end of

the authorized fishing dates; and an agency, department, or nonprofit that fails to submit the report is not eligible for another permit until the reporting requirement has been met. Currently, a Fishing Permit applicant may choose any two days within a within a calendar year; some applicants have chosen dates more than six months apart, which can be problematic when the agency, department, or nonprofit submits a subsequent application before the second date listed on the first permit has passed.

Currently, the Fishing Permit allows up to 20 persons to fish without a license. When an applicant proposed to hold an event for more than 20 persons, the applicant was required to submit an additional application. In these scenarios, the Department also issued and administered additional fishing permits. The Commission proposes to amend the rule to remove the twenty person limit to reduce the burdens and costs to persons regulated by the rule.

The Commission proposes to amend the rule to require a nonprofit to provide a copy of its Articles of Incorporation and a document identifying its mission at the time of application. Because the rule is being amended to remove the requirement that a nonprofit be contracted or licensed by DES or DHS, the Department will use these documents to determine the applicant's eligibility for the fishing permit.

The Commission proposes to amend the rule to replace the reference to "lesson plan" with "curriculum outline" to make the rule more concise. The Department's Education Branch is responsible for the issuance of the fishing permit; their internal documents and outreach information refers to the instructional document as a curriculum outline, rather than a lesson plan: a lesson plan is a detailed description of topics to be covered in a single class (to include what information is provided when); a curriculum outline establishes the key points that must be covered in a single class. The order and manner in which the instruction is provided should be left to the judgment of the instructor as more or less information on a particular key point may be required depending on the individuals receiving the instruction.

#### **R12-4-311. Exemptions from Requirement to Possess an Arizona Fishing License or Hunting License While Taking Wildlife**

The objective of the rule is to establish the circumstances under which a person is not required to possess a fishing or hunting license while taking wildlife. A.R.S. § 17-331 states, "Except as provided by this title, rules prescribed by the Commission or Commission Order, a person shall not take any wildlife in this state without a valid license or a Commission approved proof of purchase." The rule was adopted to identify the circumstances under which a fishing or hunting license is not required due to statutory exemptions or when determined necessary by the Commission. The Commission recognizes fishing or hunting as a fundamental requirement of wildlife conservation in Arizona and introductory fishing or hunting events actively promote participation in a variety of recreational opportunities.

The Commission proposes to amend the rule to reference "trapping license" as one of the licenses that may be revoked by the Commission; provide examples of terrestrial mollusks and crustaceans; and remove the reference to "sport fishing contractor" as the Department no longer contracts this service to make the rule more concise.

The Commission proposes to amend the rule to provide examples of nonnative terrestrial mollusks to

reduce regulatory ambiguity.

A.R.S. § 17-215 states, each employee and volunteer who has contact with children or vulnerable adults as part of their regular duties must have a valid fingerprint clearance card issued pursuant to A.R.S. § 41-1758.07 or provide the Department documentation of the person's application for a fingerprint clearance card. The Commission proposes to amend the rule to allow a person to provide documentation of the person's application for a fingerprint clearance card as prescribed under A.R.S. § 17-215 to reflect statutory requirements.

#### **R12-4-313. Lawful Methods of Taking Aquatic Wildlife**

The objective of the rule is to establish lawful devices and methods a person may use to take aquatic wildlife during seasons established by Commission Order. A.R.S. § 17-301 authorizes the Commission to determine lawful methods for the taking of fish. The rule was adopted to establish additional devices and methods by which a person may lawfully take aquatic wildlife and ensure consistent interpretation of and compliance with A.R.S. § 17-301.

The Commission proposes to combine R12-4-313 and R12-4-317 (Seasons for Lawfully Taking Fish, Mollusks, Crustaceans, Amphibians, and Aquatic Reptiles) to increase consistency between Commission Orders, rules, and Department publications; with this amendment R12-4-317 will be repealed.

The Commission proposes to amend the title of the rule to Lawful Methods of Take and Seasons for Aquatic Wildlife to more accurately reflect the subject matter of the rule as amended.

The Commission recently amended R12-4-609 Commission Orders to authorize the Commission to establish a special season allowing fish to be taken by additional methods on waters where a fish die-off is imminent. This change was made as a result of an incident involving Tempe Town Lake that gave light to the fact that the Commission did not have sufficient authority to issue an Order to allow the take of fish by additional methods on waters where a fish die-off was imminent. The Commission proposes to amend the rule to increase consistency between Commission rules.

Because scientific terms are italicized in other Commission rules, the Commission proposes to italicize scientific terms referenced in this rule to increase consistency in formatting with other Commission rules.

In 2014, the Commission amended its license and stamp rules as a result of legislation that authorized the Commission to simplify its license structure. In an effort to simplify the licensing process and increase value, the Department decided to eliminate the "two-pole" stamp and roll the simultaneous fishing privilege into the fishing license. As a result of eliminating the two-pole stamp, there is some confusion as to how many poles are lawful for one person to use while fishing. The Commission proposes to amend the rule to state a person may not use more than two lines at any one time while fishing to facilitate a consistent interpretation of simultaneous fishing.

The availability of hybrid devices (weapons with components from two or more different devices) is increasing. Depending on the species, some hybrid devices may be used for the take of aquatic wildlife, while others cannot. The Commission proposes to amend the rule to allow the use of a hybrid device for the taking of aquatic wildlife provided all components of the device are authorized for the take of that species. This change is in response to customer comments received by the Department.

In addition, under A.R.S. § 17-211(E)(4), a game ranger may seize all wildlife taken or possessed in violation of law or showing evidence of illegal taking. The Commission proposes to amend the rule to state aquatic wildlife taken in violation of Title 17 or this rule is unlawfully taken.

The Commission proposes to amend the rule to prohibit a person from snagging aquatic wildlife or using a bow and arrow, crossbow, snare, gig, spear or spear gun within 200 yards of a designated swimming area, as indicated by way of posted signs or notices, and fishing pier to protect public health and safety.

#### **R12-4-315. Possession of Live Fish; Unattended Live Boxes and Stringers**

The objective of the rule is to establish requirements necessary for the temporary possession of live fish. All freshwater game fish are listed as restricted live wildlife. Under R12-4-406, a person must possess a valid special license and any required federal authorization or have a lawful exemption in order to lawfully possess restricted live wildlife. The rule was adopted to provide a lawful mechanism by which a person can temporarily hold live freshwater game fish.

The Commission proposes to combine R12-4-315 and R12-4-316 (Possession, Transportation, or Importation of Live Baitfish, Crayfish, or Waterdogs) to increase consistency between Commission Orders, rules, and Department publications; with this amendment the Commission will adopt a new rule, R12-4-314, and both R12-4-315 and R12-4-316 will be repealed.

The Commission proposes to amend the title of the rule to Possession, Transportation, or Importation of Aquatic Wildlife to more accurately reflect the subject matter of the rule as amended.

The Commission proposes to amend the rule to add the following native fish to the list of live baitfish that a person may use for live bait: Longfin Dace (*Agosia chrysogaster*), Sonora Sucker (*Catostomus insignis*), Speckled Dace (*Rhynchithys osculus*), and Desert Sucker (*Catostomus clarki*). As a result of the Department's Statewide Sport Fish Stocking Consultation with the U.S. Fish and Wildlife Service, a conservation measure was developed within the Conservation and Mitigation Program to conduct a statewide live bait use assessment and complete a risk analysis to identify recommendations for live bait management in Arizona. The Live Bait Team evaluated the potential to minimize the risk and threats to native aquatic species, while continuing to maintain live bait use opportunities that have social and economic importance to the angling community. The goal of the live bait management team's recommendations is to prevent the transport and introduction of nonnative live bait and aquatic invasive species, pathogens, and parasites that impinge on the Department's ability to manage the State's aquatic resources. Because the unlawful release or improper use of nonnative live baitfish has resulted in established populations, to better protect native aquatic wildlife and its habitat, the team recommends allowing the use of certain native live baitfish for use in angling.

Both A.R.S. § 17-236(C) and R12-4-307 prohibit a person from disturbing the trap of another unless permitted by the owner. The Commission proposes to amend the rule to prohibit a person from knowingly disturbing the crayfish net, live box, minnow trap, or stringer of another unless authorized to do so by the owner to increase consistency between statute and Commission rules.

With this rulemaking, the Commission proposes to combine R12-4-315 (Possession of Live Fish; Unattended Live Boxes and Stringers) and R12-4-316 to increase consistency between Commission Orders,

rules, and Department publications; and renumber the rule to R12-4-314 and repeal both R12-4-315 and R12-4-316.

**R12-4-316. Possession, Transportation, or Importation of Live Baitfish, Crayfish, or Waterdogs**

The objective of the rule is to establish restrictions designed to control the introduction of undesirable species and to reduce the likelihood that baitfish, crayfish, and waterdogs (larval salamanders) may be released in waters where they could establish populations that compete with existing and native aquatic wildlife. The rule was adopted to protect and preserve native aquatic wildlife and habitat.

With this rulemaking, the Commission proposes to combine R12-4-315 (Possession of Live Fish; Unattended Live Boxes and Stringers) and R12-4-316 to increase consistency between Commission Orders, rules, and Department publications; and renumber the rule to R12-4-314 and repeal both R12-4-315 and R12-4-316.

**R12-4-317. Seasons for Lawfully Taking Fish, Mollusks, Crustaceans,  
Amphibians, and Aquatic Reptiles**

The objective of the rule is to establish special restrictions and requirements for various seasons to allow the Department to achieve management plans and goals for the preservation and harvest of aquatic wildlife, while providing maximum hunt opportunities for the public. A.R.S. § 17-301(D)(2) authorizes the Commission to adopt rules establishing the taking of wildlife with firearms, fishing equipment, archery equipment, or other implements in hand as may be defined. The rule was adopted to ensure consistent interpretation of and compliance with A.R.S. § 17-301(D)(2).

With this rulemaking, the Commission proposes to combine R12-4-313 (Lawful Methods of Taking Aquatic Wildlife) and R12-4-317 to increase consistency between Commission Orders, rules, and Department publications; and repeal this rule.

**R12-4-318. Seasons for Lawfully Taking Wild Mammals, Birds, and Reptiles**

The objective of the rule is to establish special restrictions and requirements for various hunt structures in order to allow the Department to achieve management goals for the preservation and harvest of wildlife, while at the same time providing maximum wildlife-oriented recreational opportunities for the public. Under A.R.S. § 17-301(D)(2), the Commission has the authority to adopt rules establishing the taking of wildlife with firearms, fishing equipment, archery equipment, or other implements in hand as may be defined. The rule was adopted to ensure consistent interpretation of and compliance with A.R.S. § 17-301(D)(2).

The Commission proposes to amend the rule to reference rules where lawful devices are defined to ensure consistent interpretation of terms used within Commission Orders and rules. In the current rule, R12-4-301 is referenced under each season. The Commission proposes to amend the rule to reference R12-4-301 only under subsection (A) to remove redundant language. These changes are made to make the rule more concise.

The availability of hybrid devices (weapons with components from two or more different devices) is increasing. Depending on the species, some hybrid devices may be used for the take of wildlife, while others cannot. The Commission proposes to amend the rule to allow the use of a hybrid device for the taking of wildlife provided all components of the device are authorized for the take of that species. This change is in

response to customer comments received by the Department.

The Commission proposes to amend the rule to provide the devices and methods listed under each season by their range of effectiveness, from greatest range to least range to assist persons regulated by the rule; knowing which devices and methods are most effective may aid a person in choosing a device or method for their hunt.

The Commission proposes to amend the rule to reference "muzzleloading handguns" under subsection (C)(7) to ensure persons regulated by the rule are aware that only a muzzleloading handgun is lawful under that season to remove regulatory ambiguity.

The Commission proposes to amend the rule to allow a person to use a pre-charged pneumatic weapon capable of holding and discharging a single projectile .35 caliber or larger as a lawful method of take during a "handgun, archery, and muzzleloader (HAM)" season to provide persons regulated by the rule additional hunter opportunity.

The Commission proposes to amend the rule to allow a person to use a muzzleloading shotgun as a lawful method of take during a "limited weapon-shotgun" season to provide persons regulated by the rule additional hunter opportunity.

The Commission proposes to amend the rule to allow a person to use a muzzleloading shotgun shooting shot as a lawful method of take during a "limited weapon-shotgun shooting shot" season to provide persons regulated by the rule additional hunter opportunity.

#### **R12-4-319. Use of Aircraft to Take Wildlife**

The objective of the rule is to prohibit the use of aircraft for the purpose of hunting or harassing wildlife to provide for fair chase and pursuit of game animals. A.R.S. § 17-301(B) states, "A person shall not take wildlife, except aquatic wildlife, or discharge a firearm or shoot any other device from a motor vehicle, including an automobile, aircraft, train or powerboat, or from a sailboat, boat under sail, or a floating object towed by powerboat or sailboat except as expressly permitted by the commission." The rule was adopted to ensure consistent interpretation of and compliance with A.R.S. § 17-301(B).

In recent years, the availability and use of drones has increased significantly. The Commission proposes to amend R12-4-319 to clarify drones are considered to be aircraft and are not lawful to use for the purpose of locating or assisting in locating wildlife.

#### **R12-4-320. Harassment of Wildlife**

The objective of the rule is to prohibit the use of vehicles for the purpose of hunting or harassing wildlife to provide for fair chase and pursuit of game animals. A.R.S. § 17-301(B) states, "A person shall not take wildlife, except aquatic wildlife, or discharge a firearm or shoot any other device from a motor vehicle, including an automobile, aircraft, train or powerboat, or from a sailboat, boat under sail, or a floating object towed by powerboat or sailboat except as expressly permitted by the commission." The rule was adopted to ensure consistent interpretation of and compliance with A.R.S. § 17-301(B).

The rule prohibits the use of vehicles for the purpose of hunting or harassing wildlife to provide for fair chase and pursuit of game animals. The Commission proposes to amend the rule to provide further clarity to the

term "aircraft" by referencing drones. The Commission anticipates these changes will result in a rule that is more understandable.

The Commission proposes to amend R12-4-320 to replace the term "individual" with "person" to increase consistency between Commission rules.

#### **R12-4-321. Restrictions for Taking Wildlife in City, County, or Town Parks and Preserves**

The objective of the rule is to establish restrictions for hunting in city, county, or town parks and preserves. The rule was adopted to allow a person to hunt in city, county, or town parks and preserves where possible. The Maricopa County Parks and Recreation Commission and the Arizona Game and Fish Commission entered into an agreement in 1976 with the following stated objective: "To recognize hunting, fishing and trapping as practical methods for harvesting wildlife resources and to limit restrictions on such methods of harvest to recreational facilities and other developments where people are congregated and require safety precautions." The agreement further specifies restrictions necessary to meet the objectives of the agreement. Because the restrictions affect the public and are more restrictive than methods commonly established under R12-4-304, R12-4-313, R12-4-317, and R12-4-318, they are appropriately established within this rule as well as within the agreement. The agreement remains in effect to date without change.

Under R12-4-307(H)(2)(a), a trapper shall not set a trap within one-half mile of certain public use areas. The Commission proposes to amend the rule to incorporate trapping restrictions and increase consistency between Commission rules.

Because some parks have replaced a physical check in station with an online check-in system, the Commission proposes to amend the rule to clarify a hunter shall declare their intent to hunt when the park or preserve has established a check-in process.

The Commission believes the distance restrictions provided in rule are needed to ensure public health and safety. Persons participating in a reptile and amphibian limited weapon hand or hand-held implement season established by Commission Order use their hand or a catch-pole, snake hook, or snake tongs. Because these methods and devices do not use projectiles, they do not pose the same type of hazard; the Commission proposes to amend the rule to exempt persons participating in a reptile and amphibian limited weapon hand or hand-held implement season from the one fourth and one half mile (440 or 880 yards, as applicable) prohibition when hunting in a city, county, or town park or preserve.

#### **R12-4-322. Pickup and Possession of Wildlife Carcasses or Parts**

The objective of the rule is to allow persons to pick up and possess naturally shed antlers, horns, or other wildlife parts that are not fresh without a Department inspection. In addition, the rule prohibits a person from collecting or possessing fresh wildlife parts unless a Department officer has inspected the wildlife parts and determined the animal died from natural causes. The possession of any threatened or endangered species carcass or its parts is prohibited.

The Commission proposes to amend the rule to allow a Department employee or agent to assist in determining whether an inspection by a law enforcement officer is required to reduce the burden on the Department and persons regulated by the rule. In the event a law enforcement officer is not available, a

Department employee or agent who has experience in determining whether an animal died from natural causes may conduct the inspection.

#### **R12-4-401. Live Wildlife Definitions**

The objective of the rule is to establish definitions that assist persons regulated by the rule and members of the public in understanding the unique terms that are used throughout Article 4. The rule was adopted to facilitate consistent interpretation of Article 4 rules and to prevent persons regulated by the rule from misinterpreting the intent of Commission rules.

The Commission proposes to transfer the definition of "cervid" under R12-4-401 to R12-4-101 as the term "cervid" is used in Articles 1 and 3.

The Commission also proposes to remove the definition of "person" as person is defined under R12-4-101.

**7. A reference to any study relevant to the rule that the agency reviewed and proposes to either rely on or 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:**

Angers RC, Seward TS, Napier D, Green M, Hoover E, Spraker T, et al. Chronic Wasting Disease Prions in Elk Antler Velvet. *Emerg Infect Dis.* 2009;15(5):696-703. <https://dx.doi.org/10.3201/eid1505.081458>

**8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rule 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 Commission's intent in proposing the amendments listed above is to address the ethical taking and handling of wildlife, increase hunter opportunity, and encourage hunter recruitment and retention. These areas include the use of tags, lawful and unlawful methods of taking and possessing wildlife and wildlife parts, seasons, check-in/check-out requirements, and reporting requirements. The Commission believes the majority of the rulemaking is intended to benefit persons regulated by the rule and the Department by increasing consistency between Commission Order and rule, reducing regulatory ambiguity, clarifying rule language to ease enforcement, creating consistency among existing Commission rules, providing greater opportunities for hunting and fishing, reducing the burden on persons regulated by the rules where practical, allowing the Department additional oversight to handle advances in hunting and angling technology and protecting the spirit of fair chase. As areas within Arizona become increasingly urbanized, more people are now living isolated from nature and outdoor activities such as hunting. As hunters represent a smaller percentage of the overall population, growing segments of society are questioning the validity of hunting including its benefits, how it is conducted, and if it should continue as a legal activity. Regulated hunting fundamentally supports wildlife conservation efforts in North America. The loss of hunting would equate to a measureable loss in conservation efforts. Hunting and angling are the cornerstones of the North American Model of Wildlife Conservation and continue to be the primary source of funding for conservation efforts in Arizona. Hunters and anglers support 18,220 jobs in Arizona; this especially benefits rural communities. Spending by sportsmen and women in Arizona generated \$132 million in State and local taxes in 2011; enough to support the average salaries of 2,311

police and sheriff's patrol officers. The economic stimulus of hunting and fishing equates to \$3.4 million a day being pumped into Arizona's economy. ~ *Congressional Sportsmen's Foundation: 2013 Sportsman's Economic Report - Arizona*. Fair Chase issues can erode public support of hunting and angling and threaten the funding that drives Arizona's conservation mission and the economic benefit of those activities to our State. In addition, there exists a general expectation that hunting be conducted under appropriate conditions; animals are taken for legitimate purposes such as food, to accomplish wildlife agency management goals, and to mitigate property damage. It is also expected that the hunting is done sustainably and legally, and that hunters show respect for the land and animals they hunt. In the broadest sense, hunters are guided by a conservation ethic, but the most common term used to describe the actual ethical pursuit of an animal is "fair chase." "Fair Chase" means the ethical and lawful pursuit and take of free-range wildlife in a manner that does not give the hunter or angler improper or unfair advantage over such wildlife. The following criteria are used to evaluate whether a new technology or practice violates the Fair Chase ethic; does the technology or practice allow a hunter or angler to: locate or take wildlife without acquiring necessary hunting and angling skills or competency; pursue or take wildlife without being physically present and pursuing wildlife in the field; or almost guarantee the harvest of wildlife when the technology or practice prevents wildlife from eluding take. The Commission anticipates the rulemaking will result in an overall benefit to persons regulated by the rule. The Commission anticipates the rulemaking will result in no significant impact, if any, to political subdivisions of this state, private and public employment in businesses, agencies or political subdivisions, or state revenues. The Commission has determined the rulemaking will not require any new full-time employees. The Commission has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. The Department will incur costs related to the cost of rulemaking, developing an electronic check-in/check-out system, and implementing rule changes (administration, training, forms, etc.); although the Department believes that implementing these changes now will result in resource savings in the future. Therefore, the Commission has determined that the benefits of the rulemaking outweigh any costs.

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

For R12-4-101, the rule language in the definition of "handgun" was changed to clarify a handgun is a firearm that is not intended to be fired from the shoulder.

For R12-4-303(A)(5), the rule language was changed to clarify the prohibition on satellite images does not include mapping systems and programs.

For R12-4-303(A)(8), the rule language was changed to clarify the prohibitions under (A)(4) and (A)(5) do not limit the Department or its agents in the performance of their official duties.

For R12-4-304(A)(3)(a)(vi), the rule language was changed to decrease the feet per second (FPS) requirement from 300 to 250 to increase consistency between big game species FPS requirements.

For R12-4-318(C)(6)(f), the rule language was revised to clarify the pre-charged pneumatic weapon must be capable of holding only a single projectile.

The Commission felt the need to evaluate regulatory measures pertaining to the use of trail cameras as they

related to the 'take of wildlife' and the Fair Chase hunting ethic after receiving multiple comments from the public opposing the use of trail cameras for hunting. In the Notice of Proposed Rulemaking published March 16, 2018, the Commission proposed to amend R12-4-303 (Unlawful Devices, Methods, and Ammunition) to prohibit the use of any trail camera within one-fourth mile of the outer perimeter of a developed water source for the purpose of taking or aiding in the taking of wildlife. However, after receiving significant opposition to the proposed amendment from persons regulated by the rule, the Commission chose to remove this prohibition from the original rulemaking proposals. As a result, the following language was removed from R12-4-303(A)(5), "Within one-fourth mile (440 yards) of the outer perimeter of a developed water source, a person shall not use any trail camera, or images from a trail camera, for the purpose of taking or aiding in the take of wildlife." Because the proposed prohibition is being removed, the definition of "developed water source" was deemed unnecessary and was removed from R12-4-301. See 24 A.A.R. 1936, July 13, 2018

The Commission is aware that confusion exists regarding the use of full-jacketed ammunition. Full-jacketed ammunition is sold by sporting goods stores and is often labeled by the manufacturer for use in target practice, but there are manufacturers who also label the ammunition for use in hunting. Confusion exists because full-jacketed ammunition is readily available in sporting goods stores and the rule prohibits the use of full-jacketed ammunition "designed for military use." The use of full-jacketed ammunition for hunting is prohibited because it does not create a substantial wound for the humane harvest of big game. Ammunition designed to expand creates a wound cavity and slows the bullet down so that it will not continue beyond the target with much force, if at all. In the Notice of Supplemental Proposed Rulemaking, the Commission proposed to amend the rule to replace the phrase "full-jacketed ammunition designed for military use" with "full-jacketed bullets that are not designed to expand upon impact." The Commission received two comments regarding the proposed amendment; both commenters were concerned that the unintended consequence of this change would result in making the common practice of using nonexpanding ammunition for the take of small game, fur bearers, and predators unlawful. Nonexpanding bullets do result in a lethal wound for the humane harvest of smaller animals (as opposed to a bison, deer, elk, or other big game species), and causes less damage to the animals pelt. The Commission proposes to amend the rule to prohibit the use of full-jacketed or total-jacketed bullets that are not designed to expand upon impact for the take of big game to make the rule more concise. This change also allows the continued use of ammunition that does not expand for the take of small game, fur bearers, and predators. See 24 A.A.R. ####, October 19, 2018

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

During the Article 3 review report and rulemaking processes, the Department conducted outreach activities in regards to the proposed amendments with the following organizations: American Archery Association, Arizona Antelope Foundation, Arizona Deer Association, Arizona Desert Bighorn Sheep Society, Arizona Elk Society, Arizona Sportsmen for Wildlife Conversation, Fair Chase Committee, Hunting and Angling Heritage Workgroup, Mogollon Sporting Association, Payson Natural Resources Committee, Vista Outdoors, Yuma Valley Rod and Gun Club, and Archery Headquarters.

The Department issued press releases regarding the proposed changes included in the Notice of Proposed Rulemaking to further encourage public participation in the rulemaking process. In addition, the Department hosted a webinar detailing and explaining the rule changes that were proposed in the Notice of Proposed Rulemaking; three people were in attendance and 101 persons viewed the webinar online.

The Notice of Proposed Rulemaking was published in the *Arizona Administrative Register* on March 16, 2018; the official public comment period began March 16, 2018 and ended on April 16, 2018.

The Notice of Supplemental Proposed Rulemaking was published in the *Arizona Administrative Register* on July 13, 2018; the official public comment period began July 13, 2018 and ended on August 13, 2018.

**THE FOLLOWING COMMENTS WERE RECEIVED IN RESPONSE TO THE NOTICE OF  
PROPOSED RULEMAKING, SEE 24 A.A.R. 529 MARCH 16, 2018:**

*The following comment supports the proposed amendment allowing a Crossbow Permit holder to use a pre-charged pneumatic weapon using bolts or arrows during an archery-only season:*

**Written Comment: March 26, 2018.** As a 23-year, wheelchair-bound, low level quadriplegic, post gunshot wound, I enjoy outdoor recreation, fishing, hunting, and preserving wildlife. The air bow is truly an Americans with Disabilities Act accommodation device for hunting as a workaround for a crossbow or Compound bow. My goal is to make the air bow legal for a Challenged Hunter Access/Mobility Permit (CHAMP) holder hunting from the cab of the vehicle in place of a bow or crossbow. Please look into all the data reported on this new device/hunting rifle. Let me know what the thoughts are and how I may assist in making it a legal apparatus for hunting from the cab of the vehicle for folks with disabilities. It is very important to me to follow all the guidelines and make appropriate kills while putting fresh meat in my freezer for my family. It is equally important to me to support the Department in its goals to keep wildlife preserved in its pristine glory.

**Agency Response:** The Department appreciates your interest in and support of the proposed rule amendment allowing a Crossbow Permit holder to use a pre-charged pneumatic weapon using bolts or arrows during an archery-only season.

*The following comments oppose the proposed amendment allowing a Crossbow Permit holder to use a pre-charged pneumatic weapon using bolts or arrows during an archery-only season:*

**Written Comment: March 18, 2018.** The preamble states that the Commission supports allowing "pre-charged pneumatic weapons, using bolts or arrows, for use during archery-only hunts". The quotations are somewhat paraphrased, but the meaning remains. I do not agree with this position. Archery-only hunts were established to allow recreational hunting by bow and arrow for big game. This type of hunting was thought to allow a method of hunting that was less successful and therefore provide less harvest of big game. Admittedly, archery has

grown in success due to hunter proficiency and vast technology growth in equipment. However, archery hunting still is less successful than general firearms hunts. Adding pneumatic weapons will increase the hunt success and diminish the archer's ability to participate in archery-only hunts due to increased hunt success driving down allocated permit numbers. Currently, crossbows are allowed for those who are physically disabled, which is a reasonable accommodation for persons legitimately in need of that exception. I would support allowing the use of these devices, if necessary, during handgun, archery, and muzzleloader hunts. Currently, crossbows are authorized during these hunts. I would also support allowing these devices during general firearms hunts. I suggest this is the concept the Commission believes acceptable. I am hopeful the wording in the preamble merely indicates some degree of editing is needed, rather than a change to existing rule pertaining to archery hunting.

**Written Comment: March 19, 2018.** Arizona has many options available to disabled hunters. If a disability is due to an injury and temporary where you cannot draw a bow, we can purchase Point Guard. A person can turn in their draw tag and get their bonus points back. I have already seen too many abuses of persons hunting with crossbows during archery season because they have a doctor's note. Two years ago I saw two different women hunting with crossbows and the year before that I saw one. I am afraid this air bow will make it even easier for folks to abuse. Hand drawn, hand held vertically shot equipment should be in the archery season and all shoulder fired equipment should be in the gun season.

**Written Comment: March 20, 2018.** Please take a look at the “disclaimer” on the air bow kit. They are selling it with firearms warnings. Crossbows are just fine for the disabled in archery season. History (crossbow) will confirm the disabled angle is the first step to getting the air bow in archery season. The next model coming will shoot repeating bolts.

**Written Comment: March 21, 2018.** I am deeply concerned about allowing the air bow during archery season for any group of hunters. This weapon is no more than a gun that shoots arrows.

**Written Comment: March 22, 2018.** The Arizona Bowhunters Association (ABA) opposes the amendment that allows the use of a gun during an archery-only season. A pre-charged pneumatic weapon is not a piece of archery equipment, even if it discharges a bolt or arrow. Per Merriam-Webster dictionary, a firearm is defined as a weapon from which a shot is discharged by gunpowder. Archery is defined as 1) the art, practice, or skill of shooting with bow and arrow; 2) an archer's weapons; and 3) a body of archers. A bow is defined as a weapon that is used to propel an arrow and that is made of a strip of flexible material (such as wood) with a cord connecting the two ends and holding the strip bent. Bow hunting is defined as hunting especially of large game animals (such as deer) done with bow and arrow. An air rifle is defined as a rifle whose projectile is propelled by compressed air or carbon dioxide. Archery is the art, practice, and skill of shooting a bow and arrow. A pre-charged pneumatic weapon is not a bow because it does not have a flexible material which places tension on a

string. Since a pre-charged pneumatic weapon is not a bow, it should not be allowed for use in bow hunting. This amendment will provide an advantage over not only traditional recurve and compound archers, but crossbow hunters as well. Bringing an air rifle into an archery hunt not only goes against the concept of an archery season/hunt but disrespects the animal's right to fair chase in that season. The ABA's Mission Statement is, "To foster, perpetuate, and expand bow hunting and bow hunting ethics in Arizona." The use of a high-powered air gun during an archery hunt will give a hunter an improper advantage over such animals during an archery season.

**Written Comment: March 22, 2018.** Please reconsider the proposal to include the air bow as an archery weapon. It is an air rifle in every sense. Just because it fires a bolt instead of a bullet does not make it a bow. The most challenging aspect of archery hunting is drawing your bow immediately before you shoot. This greatly increases your chances of detection by game. Then you must hold the bow under tension until you release the string. The air bow does not require any of these challenges. It might bring a few more people into the sport, but at the cost of what makes archery hunting unique.

**Written Comment: March 26, 2018.** Please understand, the air bow is an air gun. It shoots an arrow like a gun. This is not archery equipment. Please do not allow it in our archery seasons.

**Written Comment: March 28, 2018.** The air bow is not archery tackle; it is an arrow launching device that uses compressed air or nitrogen to launch an arrow. It is a pre-charged pneumatic air rifle that discharges an arrow instead of a pellet. I appreciate that it is limited to disabled hunters; however, the crossbow is already an option for this category of hunters. I envision the next step in this evolution will be developing arrow launchers with shotguns or muzzleloaders. I urge the Commission to not approve the air bow for use in an archery season. If the Department chooses to go down this slippery slope, is it prepared to approve any "Arrow Launching Device" for the archery season, including arrows that are launched with gun powder or black powder?

**Agency Response:** It appears some commenters may have misinterpreted the rule amendment to mean the use of a pre-charged pneumatic weapon using arrows or bolts will be lawful for any hunter to use during an archery-only season. The Commission's intent with this rulemaking is to clarify a pre-charged pneumatic weapon using arrows or bolts is lawful for the general season and to allow a person who holds a valid Crossbow Permit to use a pre-charged pneumatic weapon using arrows or bolts during an archery-only season. The authorized use of this weapon will be equivalent to the authorized uses for the crossbow. It is not intended to be considered for use in a regular archery-only season. The Commission believes a pre-charged pneumatic weapon capable of holding and firing a single arrow or bolt may be easier to manipulate in some senses by our sportsmen and women with a qualifying medical condition. This change will provide more opportunity to those persons who are otherwise limited by the weapons they can safely and effectively manipulate. The crossbow and pre-charged pneumatic weapon capable of holding and firing a single arrow or bolt are similar in performance.

*The following comments oppose the proposed amendment prohibiting the discharge of an arrow or bolt within one-fourth mile of an occupied residence:*

**Written Comment: March 18, 2018.** I understand prohibiting the discharge of firearms close to an occupied residence for safety reasons, but do not believe this restriction should apply to archery. I understand that the noise from a firearm could be disconcerting, but this is not the case with archery equipment. I understand some people complain about hunters being close to their property, but it is not reasonable to outlaw all archery hunting within one-fourth mile of a residence just because some residents have complained. Here in Camp Verde, we have a lot of great hunting along the Verde River; migratory bird hunting, as well as archery hunting, bow fishing, and the opportunity to hunt elk during the depredation seasons. The proposed rule change will effectually end all of that. I would be very disappointed if all of that were to go away just because of the complaints some people have regarding archery hunting near their properties. I understand some of the challenges the Department has in balancing these issues. However, this proposed rule punishes a lot of us.

**Written Comment: March 20, 2018.** As an Arizona bow hunter, I oppose the proposed rule change that would make it illegal to hunt with a bow and arrow within one-fourth mile of an occupied residence. The no hunting within one-fourth mile rule would make hunting in the 11M unit nearly impossible. To my knowledge there has never been an accident in all the years this hunt has been conducted. The people who complain about hunting in this area are opposed to hunting in general. Deer hunts are conducted in suburban areas in many Eastern states that have far higher populations without safety issues. Firearms hunts are conducted in populated areas of Europe that require shooting at a downward angle. This proposed rule is overbearing for those who hunt in the metro units. Complainers are going to complain no matter what. Please do not implement this unreasonable and restrictive rule that would satisfy only those who complain.

**Written Comment: March 23, 2018.** This rule is to detour people shooting at animals near people's homes with archery equipment, which has caused safety concerns, and a stir of viewpoints from urbanized or anti hunter populations. Restrictions are already in place that prohibits all types of hunting within an occupied structure in units as 11M, 25M, 26M, and 38M. The notes are found after each species to hunt, and refer to the notes after archery deer hunting for specific examples. Additional units are specifically called out where you cannot hunt with any method of take within one-fourth mile of an occupied residence. Hunters who are violating these rules can be cited for not adhering to them. Additionally, Sportsmen should follow ethical shooting behaviors near the vicinity of residents, even within a half mile for any method of taking. I want to empathize this should not be a one size fits all for less populated counties throughout the state. There are sparse and less-dense residential areas in counties such as Gila, Coconino, Cochise, Santa Cruz, etc. Limiting the discharge of a bow within 440 yards will limit opportunities for harvesting of wildlife for new and disabled hunters. Additionally, many demographics of hunters have very little time to travel farther distances to lands

farther from homes or with the convenience of having the vehicle or modes of transportation to hunt in remote areas. Lesser dense residential areas provide more opportunity for an already a tight schedule of workforce who may only be able to hunt one or two weekends, thus also meeting goals of introducing more hunters to the field of hunting and meeting the Department's revenue goals. Taking away the opportunity to hunt wildlife in residential, rural county areas other than Maricopa and Pima counties will limit the Departments goals when trying to increase hunter populations. People like convenience in today's world, and making locations harder to hunt, will only divert more people from hunting. Of course, hunters need to continue and stay clear of private and posted properties and practice with due regard. This rule should be rewritten to allow people to discharge an arrow on their own property or public lands in the vicinity of occupied residences with surrounding landowner's permission while taking game. The rule should not say, a person cannot discharge a bow and arrow within one fourth mile of a residence when taking game. This will cause specific areas of the state to efficiently regulate their own areas, meet the Department's goals of recruiting and retaining hunters, and the Department revenue from tag and license sales. I hope there is way to rethink this strategy, to enforce the rules we already have in these problem areas of municipal areas, and to specifically refer to these rules in front of each species to be hunted in a clear and concise manner in the regulation booklet.

**Written Comment: April 11, 2018.** My main concern is with the discharge of archery equipment within one-fourth mile of an occupied cabin, farmhouse or building. The explanation in the preamble indicates there were hunters who could not archery hunt on their own property because the area was closed. I am opposed to the proposed change. The one-fourth mile rule cannot be about safety since firearms can shoot much farther than one-fourth of a mile and you can discharge a firearm with the landowner's permission. So, it must be a noise and courtesy issue. Noise is not a concern when archery hunting. This also allows homeowners to prevent landowners who may want to legally hunt on their land using archery. I understand that it is "courteous" to give homeowners some distance for noise, but this puts and undue burden on hunters who can very easily discharge a firearm or arrow when they have no idea a building is hidden in the woods, like many cabins are. I have been hunting on one side of a hill only to come over the top and find a cabin sitting in the middle of nowhere. I could very easily have broken this rule and been punished. I feel there is no need for the rule change just because a few "homeowners" got upset that hunters are hunting near them. There is a very real push to ban hunting in many states and these anti-hunters who think they alone own the animals need to understand that the animals are a resource for all. Too many hunting areas are already landlocked by landowners who butt up against state and federal lands, post their properties, and then use state and federal lands as their own private playgrounds or grazing ranges. More and more hunting areas are seeing houses and cabins built on the edge of legal hunt areas and the one-fourth mile rule greatly limits where we can legally hunt.

**Agency Response:** Complaints from homeowners about archery hunting on or near their private property and occupied residences have increased significantly over the years. As a result, through Commission Order, all or a part of 11 different game management units are closed to hunting within one-fourth mile of an occupied

building or residence during an archery-only season, with several other units located in or near communities being considered for closure. As a result, private property owners residing in these areas cannot hunt on their own property, or give other hunters permission to hunt on their property, even when there were no other residences nearby. The proposed amendment will enable private property owners to hunt, and allow others to hunt, on their own property while respecting the rights of other property owners who may not want people to hunt on or near their residences. This amendment also simplifies the rule by increasing consistency between other methods used for the take of wildlife.

***The following comment opposes the proposed amendment prohibiting the use of live-action trail cameras for taking or aiding in the take of big game:***

**Written Comment: April 15, 2018.** I object to banning game cameras that transmit a signal over the cell network. Some persons install game cameras in very remote areas and, due to the person's work schedule, they may not be able to exchange the memory cards easily. A remote viewer makes checking the camera easier without disturbing the wildlife in the area. I am in favor of a rule that states you cannot use remote viewing cameras while actively hunting, or during your hunt. Cameras should be able to be used year around, just for their viewing pleasure.

***The following comments support the proposed amendment prohibiting the use of trail cameras within one-fourth mile of a developed water source for taking or aiding in the take of big game:***

**Written Comment: March 18, 2018.** I would like the Department to clear up the definition of trail cameras not allowed at man-made water. As opposed to a trail camera that transmits live-action images. It needs to be very clear.

**Written Comment: March 27, 2018.** Please do not ban trail cameras over waterholes. **Subsequent Written Comment: March 27, 2018.** After receiving more information, I want to change my request from not banning game cameras to vote in favor of banning them at water holes. **Subsequent Written Comment: March 27, 2018.** Please change my opinion from not favoring game cameras on water holes to being in favor of the ban of game cameras on water.

**Written Comment: March 27, 2018.** I believe it is a good idea to restrict trail cameras on developed water.

**Written Comment: March 27, 2018.** I commend the Department on banning trail cameras on water holes. These cameras on watering holes give an unfair advantage to hunters and a strong disadvantage to wildlife. I am a hunter and the word is "hunter," not "shooter." It is time hunters go back and learn to hunt like before trail

cameras were used. Tracks by water holes should help hunters to hunt. Stories in magazines on the strip always center around water holes. Sure everyone wants a monster, but hunt for it. I hope this is passed.

**Written Comment: March 27, 2018.** Please ban trail cameras at all water holes. Or, ban them altogether. I believe trail cameras have no use in hunting in Arizona; cameras over water are especially unfair for many reasons.

**Written Comment: March 27, 2018.** I applaud the Department for looking at this issue. In my mind the “cat is out of the bag,” but, I believe this is important to fair chase. I have seen videos online of huge deer killed on the Kaibab and other units killed at water troughs. Enough is enough; there are cameras, guys shooting 400 plus yards, etc. What ever happened to fair chase: Please ban cameras at water sources.

**Written Comment: March 27, 2018.** I would be in favor of banning trail cameras within 440 yards of water. As you must know, it is a mess out there these days with the cameras and camera thieves.

**Written Comment: March 27, 2018.** I support the ban of trail cameras near water sources.

**Written Comment: March 27, 2018.** Waterhole trail camera ban: I totally agree with such a ban. It is time to get some of this technology out of hunting and really hunt.

**Written Comment: March 27, 2018.** I am in favor of not having trail cameras at water sources, especially during the hunting seasons. If they decide to modify it, not having them for a few weeks prior to the hunt or during the hunting season would be okay in my opinion. Seeing twenty-five cameras on a water hole is a little much.

**Written Comment: March 27, 2018.** As a lifelong hunter, I do not agree with the use of trail cameras. In fact, I do not agree with hunting water holes at all in desert country. Thanks for the opportunity to provide actual hunter input and not bias opinion as a guide.

**Written Comment: March 27, 2018.** I strongly support the ban on trail cameras near water. Trail camera usage has become excessive.

**Written Comment: March 27, 2018.** I support banning trail cameras within 440 yards of water sources. On previous hunts, the amount of cameras around water holes was completely out of control and they infringe on the other hunters.

**Written Comment: March 27, 2018.** I agree with banning cameras on water holes in Arizona. To me it is the same as baiting. There are very few water holes and the animals have to drink. Putting cameras on them makes it too easy to harvest them.

**Written Comment: March 27, 2018.** Yes, please ban the use of trail cameras near water. They greatly disturb wildlife by people putting them around water and then checking them regularly. I have seen up to eight cameras within 30 feet of one water hole and I have heard that there can be many more than that.

**Written Comment: March 27, 2018.** I am all for a ban on cameras within 440 yards of developed water sources, including dirt tanks.

**Written Comment: March 27, 2018.** As a hunter and conservationist it makes sense to ban game cameras on water holes. They should be 400 yards away at a minimum; this will minimize the stress placed on mule deer and level the playing fields between outfitters.

**Written Comment: March 27, 2018.** I am not a resident of Arizona, but I am a hunter who hunts in Arizona. I support the recent proposal that restricts the use of trail cameras at water sources.

**Written Comment: March 28, 2018.** I support the Commissions proposed ban on cameras within a quarter mile of developed waters.

**Written Comment: March 28, 2018.** I am for keeping trail cameras away from water sources. It is ridiculous to be taking a leak and look up at five or six cameras on every water source. Let the outfitters learn to hunt like the rest of us. If you cannot find animals by actually hunting them, then stay at home and clean the kitchen or put some tights on and take up yoga.

**Written Comment: March 29, 2018.** I support the proposal to make it illegal to use trail cameras within 440 yards of any water hole or containment tank. The desert has limited water resources, animals must use the few waterholes available to them. With cameras on every water hole for miles, it makes it much easier to pattern and harvest animals as they come to water. I enjoy harvesting large animals just like everyone else, but letting hunters have cameras around every waterhole all the time this is not fair to the game animals. I counted 19 cameras on one stock tank on the strip last year.

**Written Comment: March 29, 2018.** I support the proposal to ban the use of trail cameras over water sources. I applaud the Commission for doing the right thing and taking the lead on this issue. There should be more to the sport of hunting than using technology to strip the quarry of its natural defenses.

**Written Comment: April 1, 2018.** I am in favor of banning trail cameras near water holes.

**Written Comment: April 4, 2018.** I support the one-fourth mile restriction on trail cameras on developed water. This is something that I believe will help.

**Written Comment: April 4, 2018.** I think the change to restrict trail cameras on waters is a good idea. How many advantages do hunters need? Have you ever watched a buck come to water? It doesn't take much to spook them. I am a cattle rancher who maintains water on public land, when an animal comes in to drink - we do not want to spook them.

**Written Comment: April 9, 2018.** The proposed ban of trail cameras over water is long overdue. In my opinion, the use of trail cameras is bad. I enjoy looking at trail camera pictures just as much as the next hunter/outdoorsman, but they have to be regulated at some point. There is nothing "fair chase" about a deer coming in to water at two a.m. and his picture getting sent to a hunter's phone back at camp. It is ridiculous and unfair to the wildlife. The other issue with trail cameras is the unbelievable overuse of cameras by the guides. When are we going to start regulating and enforcing some rules on them? I am not against guides, but they abuse this technology. I talked with one outfitter on the Strip units who stated they had over 90 cameras set up. I have hunted on the Strip and it is sad to see what that tag and hunt has become. High paying clients show up to camp, pick a deer with a name on it, and shoot it off the last water it was seen at. I know this proposal does not ban the use of cameras altogether, but it is a start in the right direction. Let's get back to fair chase hunting, to putting miles on your boots, and time behind glass. It is unfair and sad to see a bull get killed when he hasn't been able to get a drink or take a leak in the woods for the last nine months without having his picture taken. I hope we take this opportunity to do something about this issue and start to think about what fair chase really means for the animal and the hunter.

**Written Comment: April 15, 2018.** I agree the cell phone cameras need to be outlawed; it is not fair to the game. Prohibiting trail cameras within 440 yards of a water tank makes them worthless. I would like to see the distance changed to 50 to 100 yards instead. Not everyone is a hunter; some people just like seeing the wildlife that comes into a water source and use the pictures to get their kids involved. I work a full-time job; I do not have the money or time to scout my hunting areas every weekend. The cameras allow me to do that, plus having pictures of an animal does not guarantee it will still be around opening morning. Would getting a picture of an animal now and then taking that same animal in November be a crime? Not everyone is trying to cheat the rules of fair game or profit from taking pictures of big game. A rule written to get those people makes better senses. Otherwise, it is really just hurting the guy and his family and turning them away from hunting.

**Agency Response:** The Department appreciates your interest in and support of the proposed rule amendment prohibiting the use of trail cameras within one-fourth mile of a developed water source for taking or aiding in

the take of big game.

*The following comments oppose the proposed amendment prohibiting the use of trail cameras within one-fourth mile of a developed water source for taking or aiding in the take of big game (R12-4-303 was amended to remove this restriction through the Notice of Supplemental Proposed Rulemaking, 24 A.A.R. 1936 July 13, 2018):*

**Written Comment: This same comment was submitted 9 times by other persons - March 16 (7), March 17 (1), March 26 (1), and April 5, 2018.** There is no scientific proof that the use of "non-real-time" or "non-live-action communicating" trail cameras has an adverse effect on wildlife movement, access, or use of water sources. Nor does the use of trail cameras interfere with the spirit of "fair chase." There is no merit to banning the use of non-live-action trail cameras on a water source and we request the Commission edit their proposed change to R12-4-303(A)(5) by removing the verbiage "A person shall not use any trail camera, or images from a trail camera, for the purpose of taking or aiding in the take of wildlife within one-fourth mile (440 yards) of the outer perimeter of a developed water source." **Additional commentary supplied with form letter comment: March 16, 2018.** The Department is discriminating against hunters by not allowing the use of use trail cameras when non-hunters can. There is no way to enforce this and it will cause more issues for your enforcement officers. I enjoy getting out year-round to check cameras and place cameras. It keeps me in shape and gets me in the outdoors. The proposed rule change would take that away from me. I use trail cameras in a number units. I love getting the pictures of wildlife; this has very little to do with hunting. What about the pictures a hunter takes of animals that the Department has an interest in (i.e., wolves, jaguar, etc.)? This horrible proposal will have greater impacts then what it fixes. It is an unenforceable law that takes away a person's ability to view wildlife. Please consider all aspects before the Department makes a harsh decision that solves nothing. **Additional commentary supplied with form letter comment: April 5, 2018.** I am not aware of any data, surveys, studies, or other professional and competent research that proves the use of "non-real-time" or "non-live-action communicating" trail cameras has an adverse effect on wildlife movement or access and use of a water source. I disagree that trail camera use interferes with the spirit of "fair chase." Hunters and outdoorsman use trail cameras to better understand the quantity and quality of game in a particular area. A trail camera is merely a tool to provide information about the animal species inhabiting that region. Trail cameras do not guarantee hunter success. They only give a hunter a snapshot of game movement to that water source. Wildlife movement is random and cannot be patterned or predicted. The use of game cameras is far less obtrusive and disruptive to animal patterns than the physical presence of humans. A camera alone will not prevent an animal from drinking from a preferred water source but human traffic through the forest can. In short, game cameras are a non-invasive means to observe wildlife and their use is a freedom that should be preserved for all outdoor enthusiasts.

**Written Comment: This same comment was submitted 8 times by other persons - March 20 (3), March 21**

**(3), March 22 (1), March 30 (1), 2018.** I do not support the proposed rule change to R12-4-303(A)(5). For the purpose of understanding, whenever I refer to “trail camera” I am referring to trail cameras that do not transmit images to another device. 1) There is no proof that use of a trail camera impedes or alters wildlife movement. There are thousands of pictures showing the animals do get alarmed or even look at a camera. All a trail camera does is show what was there some time ago. 2) There is no proof the use of a trail camera guarantees a successful harvest of an animal. All a trail camera does is confirm or deny suspicion of the animals at a particular water site. 3) Trail cameras help pattern wildlife movement to and from water, but they are not fool proof. There are too many variables that determine and throw off a pattern of wildlife movement to water; such as lunar cycles, barometric pressure, cloud cover, temperatures, wind movement, current estrous cycles of the animals, hunter pressure in the area, outdoor enthusiasts other than hunters in the area, predator movement, wildfires, smoke from controlled burns, and others. Not to mention a hunter’s presence alone is enough to change their pattern. Although this information is valuable to a hunter, a trail camera cannot predict animal movement in the future. 4) There are too many factors that make a hunter successful; a hunter must be stealthy, silent, scent-free or have a favorable wind, be still to be undetected, take careful aim, and execute a good shot. Please inform me how a trail camera helps any of this. 5) Banning the use of cameras as a scouting tool is discriminatory to hunters. After all, for wildlife watchers it will not be illegal to place cameras on water as they will not be pursuing nor attempting to aid in the take of wild game. Therefore, only non-hunters will be able to see animals at water sources. Hunters are the main source of revenue for Wildlife Conservation agencies and this restriction is a direct strike on their enjoyment of the outdoors. Photographers do not contribute by buying licenses and tags. Nor do bird watchers, hikers, horseback riders, dirt bike riders, off-road vehicle drivers, environmentalists, or anti-hunting activists. Yet all these people, who have huge impact on the environment, would be allowed to put a trail camera on a water source. Is that fair? 6) This affects all hunters. 7) This will make it more difficult for junior and CHAMP hunters to focus their efforts. Both groups of hunters will be hindered by not being able to scout most effectively. 8) The potential environmental impact is great, I visualize upwards of a half dozen or more “salt sites” with a camera at 441 yards away from the water source. The salt sites will get dug up and turned into salt pits, which will degrade the natural environment and certainly surround nearly every water source in the state. Instead of having a few cameras concentrated directly on a water tank, there is the potential to have a dozen or more surrounding the tank. Checking cameras at 441 yards all the way around the water source will definitely have a negative impact on natural movement. A hunter popping in for five minutes once every two weeks to check a memory card is far less impactful then walking a fourth mile circle around a water source for 30 to 45 minutes checking several cameras. 9) I theorize this will actually do more to inhibit Fair Chase than placing the camera directly on the water source. If I know game is frequenting a water source and I place seven cameras around it at 441 yards, then I will learn everything I need to know: their approach trails, their departure trails, when they show up, when they leave, and how many animals approach but never come to the water. This information will let me know where to place a stand or blind to best suit the wind, maximum travel corridors, etc. Whereas currently, I only see a small portion of the water hole and never really know what direction anything comes from. 10) I believe a trail camera on a water source is the least impactful

way to scout for game; walk in, swap memory cards, and walk out in a few minutes. Physically sitting at the site and having that human presence is detrimental to animal movement and behavior patterns. 11) Trail cameras give the average city hunter a chance to scout, have a normal life, and a busy work schedule. Not everyone who draws a tag can hire a professional guide. Guides not only know the areas animals are in, but can stay in the field monitoring their movements for days, if not weeks or months. Eliminating the way in which a recreational hunter can easily scout water sources, makes it much harder to compete against the guides and professional outfitters who have the ability, time, and freedom to scout behind glass and on foot 200 times more than the recreational hunter. Guides and outfitters will have an advantage over the average do-it-yourself hunter. Being able to use trail cameras on water sources levels the playing field, giving the amateur a chance to harvest an animal. Putting more outfitters and guides in the field will disrupt natural movement of animals. The guides and outfitters will have high success rates and the common man will be reduced to scrambling about the country because we cannot devote the same time and manpower guides can. 12) Trail cameras are the best tool to manage mature older aged animals. Isn't the goal to harvest mature animals so younger animals have a chance to grow and mature? Trail cameras monitor animal movement and growth around the entire world. They allow a hunter to be selective in the spots they hunt; they can pass up spots without mature animals and move on to spots that have older age class animals. The best place to do this is at water sources in Arizona. There are just too many different trail and approach options for animals to be able to see everything that gets water. The best way to ensure mature animals are harvested is to let hunters pick and choose what they want to take with the best scouting tool out there. 13) This prohibition is virtually unenforceable. The Department barely has enough game rangers to enforce the laws already in place. How is a game ranger going to enforce this new rule? Is the game ranger supposed to confiscate the camera? What if camera is being used by someone collecting pictures of wildlife? How much time will a game ranger waste trying to cut cables, locks, bolts, or screws while confiscating a camera? The entire concept of enforcing this rule is a waste of finite resources. Game rangers should manage wildlife and find law breaking poachers. I understand wildlife belongs to the State, but how will the Department enforce a law on someone who has a water source on their own property? 14) The rules of Fair Chase as set forth by organizations such as Pope and Young, Boone and Crockett, Buckmasters, Safari Club International, Dallas Safari Club, and others do not consider the use of trail cameras is an impingement of Fair Chase. 15) The rumor mill is that a major contributing factor to this proposed ban are the complaints from guides fighting with other guides in some of the better known trophy units of the state. I am friends with many of the guides and outfitters who specialize in those hunt units. After many conversations, I find these allegations and rumors to be completely false. If complaints of numerous cameras on a location are coming from do it yourself hunters who feel like they are being bullied out of an area, then their intentions should have no weight on the subject. A camera on a water hole, or even 20 cameras on a water hole, does hold or guarantee a spot for anyone. I woke up early every day for 13 days straight in Unit 9 last year to be first to a spot. I had many interactions with other hunters and guides, and they always yielded to my first position. Additionally, if complaints are coming from out-of-state hunters and outfitters, then there is too much weight being placed on the input of nonresidents. If the majority of the complaints are about water hole over use and crowding in units

13A and 13B, then why impact the entire state. This is a case of letting a couple bad apples ruin the whole crop. Perhaps pinpointed management in those units with posted signage at water sources or allowing multiple steel sign stakes to be permanently planted in concrete for camera use would be more appropriate to help clear the jumbled mess that currently exists. 16) The rule is vague. By letter of the rule, if I use a camera to scout in the effort of hunting within 440 yards of a water source I could be cited, but placing a camera at 441 yards would be legal. The Commission would have to ban hunting within one-fourth mile of that water source in order to not cite everyone. This leads to the question of, where do we draw the line? If the Department wants to redefine Fair Chase, then what else is on the table? 17) Finally, it appears success rates are higher these days. But, I would not credit that to a trail camera. It is the world we live in now. Hunting is a public passion. People share their success on social media platform. That success is talked about. Ideas are shared. New hunters read and practice what others have preached. We hunters are evolving and learning from one another. Perhaps we are getting better at what we do. If the success rates are too high, reduce tag numbers to make it harder. Of course, the risk involved in this is less revenue for the Department. I will not dismiss this as insignificant. Perhaps it is time to increase the application fees from \$13 to \$25; that would be a large windfall of revenue. Perhaps it is time to raise tag prices. If there really are too many animals being killed, perhaps it is time to cut tag numbers in half and then double the price of the tags for a couple years to ensure the revenue streams remain and wildlife populations get a chance to recover. If hunters are being too successful, do as other Commissions have done and reduce the number of tags.

**Written Comment: March 16, 2018.** I think the proposal to ban non-real time cameras is a bad idea. Either get rid of all cameras or let them be. If the Department changes the rule on this, there will be more traffic all around the water and not just at the water. This will not solve a thing; it will make the problem worse. The cameras on the water are not the problem.

**Written Comment: March 16, 2018 and March 29, 2018.** I recently became aware of a new rule change being considered for the use of trail cameras and have concern over the restrictions of such devices. I can understand a restriction on the use of a remote wireless camera, as this would lend itself to unfair chase of game by providing instantaneous information. But I can see no benefit to the restriction of a non wireless camera being placed on any developed water source. These are simply a tool, much like a pair of binoculars that aid in the scouting of an area. As with most hunters now days, we have very limited time to spend in the field for scouting and hunting. A trail camera can provide vital information as to whether or not to hunt a certain area. I have had this conversation with many other outdoorsmen in Arizona, and their feelings are mutual. It is my opinion that this unfairly restricts outdoorsman in Arizona and I am firmly opposed to such restrictions.

**Written Comment: March 16, 2018.** The proposed rule prohibiting the use of trail cameras on water sources is wrong. I have yet to see scientific information that claims their use is bad for wildlife. I would argue that the cameras benefit wildlife because hunters are able to survey the herd in the areas they are hunting and

concentrate on taking the older age class animals, thus benefitting wildlife. There are other benefits I could add like keeping young hunters interested in hunting by allowing them to use cameras in the off seasons, but I do not want to make this long winded. I am against this potential rule change. Do not take away a useful tool that has little or no impact on the outdoors and only opens the door to more unneeded regulation.

**Written Comment: March 17, 2018.** Does the proposed rule on banning trail cameras at developed water sources include stock tanks or just the Department's water catchments? I am not for this restriction as it severely limits scouting. I live in Mesa, far away from the areas I hunt and this proposed change just favors the locals.

**Written Comment: March 17, 2018.** I oppose banning the use of trail cameras within a quarter mile of water sources. As defined, this would ban the use of cameras on almost all water sources since Arizona's lakes and reservoirs are man-made, and most wildlife water sources are man-made stock tanks. The use of these cameras are for scouting purposes and do not create an unfair chase situation as it only provides a brief snap shot of their behavior.

**Written Comment: March 19, 2018.** I oppose prohibiting non-real-time/non live-action communicating trail cameras. I use trail cameras to ensure I am targeting mature animals to ensure the overall quality of wildlife improves. A camera does not ensure success; I have thousands of animals on camera, but have yet to take an animal that I have been targeting. All the while, I still spent money on my license and tags that the Department benefits from. I have not had an issue with trail cameras in the units I hunt. None of the explanations I have been given make any sense as I have never experienced a stolen camera or heard people complaining about them. There is no scientific proof that the use of trail cameras has an adverse effect on wildlife movement, access, or use of water sources. So, I am at a loss as to why we would lose this valuable scouting tool. The result from this ban will be people trampling the habitat surrounding a water source to remove their cameras and there will be a ridiculous amount of salt piles 441 yards in every direction of a water source. I request the Commission remove the prohibition on trail cameras near a developed water source.

**Written Comment: March 21, 2018.** I am against making it illegal to use a trail camera at watering areas. My camera does not define my hunt, only my hard work will. All it does it give me a good start to know what is in the area.

**Written Comment: March 21, 2018 and March 28, 2018.** I believe the use of game cameras (without wireless capabilities) in the vicinity (less than one-fourth mile) of water sources does not violate the spirit of fair chase because the hunter still must possess the necessary hunting skills or competency in order to take the animal in question. Images obtained from a camera do not provide any guarantee that any animal will be present or harvested during the actual hunt. I request that this over reaching regulation be removed from the proposed rules.

**Written Comment: March 21, 2018.** I oppose the ban on any trail camera within one-fourth mile of a developed water source. I feel this is too restrictive. Trail cameras are not intrusive. Also, some people have private property that is within one-fourth mile of a developed water source and it is their right to have a trail camera on their own property. If this is a fair chase issue, then ban actual hunting within this boundary (ground blinds, tree blinds). I think it is a bigger issue when someone has a ground blind 15 feet from the water inside a catchment.

**Written Comment: March 27, 2018.** We should let hunters have trail camera on water. If not, I feel like there will be more people watching water and it will make it harder for the deer. What would be more beneficial for the deer? Five people sitting on the water trying to see what comes in or five trail cameras? I do not think it gives much of an advantage to the hunter either. It lets them know what deer are in the area, but still - to kill them is a whole other matter. Just out of curiosity, I would really like to hear what the pros of banning trail cameras near water would be? And how it would be enforced?

**Written Comment: March 27, 2018.** Please define developed water source? Banning game cameras at water would be a bad idea. Being a nonresident and paying big money for a tag, this would put my chances at slim to none at being successful during my short time to scout and hunt.

**Written Comment: March 27, 2018.** The language as written is extremely vague; one could argue intentionally vague so as to entrap an unknowing party. Having hunted in Arizona, I know there are "developed" water sources that have not been touched in years; would they still be considered developed? Should this change go into effect, I suggest the Department provide the names, locations, unit number (with GPS coordinates) of the water sources they deem to be "developed" in the hunt regulations. One-fourth mile seems to be an excessive, I suggest the regulation be modified to one-eighth mile (220) yards. **Subsequent**

**Written Comment: March 30, 2018.** I listened to the webcast and heard the term "totality of circumstances" referenced continually in regards to enforcement of the proposed rule change. It appears there are so many gray areas that even the Department is not sure what to do. There should not be any gray areas or "totality of circumstances" involved; it is unfair to allow an officer to cite someone who will be forced to pay a fine or incur the expense of fighting a violation. Can the Department document an increase in harvest that directly relates to the aid of a trail cameras? Will there be a statute of limitations on the time-frame between having a trail camera on water and the aid in taking violation? For example: a trail camera placed on the water in June and July captures images and is removed in early August. Will the hunter face a violation during an early archery hunt held at the end of August? It was stated that the Commission has no authority over the recreational use of trail cameras, given the speakers comments and established knowledge that wildlife is dependent on the water tanks, could not an argument be made that the recreational use constitutes worrying/harassing wildlife which is within the scope of the Commission's authority? The speaker made reference to an unfair advantage of having the trail

camera and removing them would have the effect of leveling the playing field or tipping it in favor of wildlife. If this is the case, can we expect to see an increase in tag opportunity?

**Written Comment: March 27, 2018.** I do not see a difference between putting trail cameras on water than on food sources or heavy trails. Though I do not use trail cameras, I can see their benefit for having less of a human footprint in the wild. A human scout would definitely have a larger human footprint on an area where animals are found. I may purchase a trail camera this year. Let the use of cameras stay as is.

**Written Comment: March 28, 2018.** Trappers use trail cameras to monitor trap lines and access points for areas they trap in for security purposes. The one-fourth mile rule from developed water source is restrictive. Hunters may place a trail camera to survey their vehicle for security purpose; i.e. Salt River lakes and areas around man-made reservoirs. In some areas, it is difficult to get one-fourth mile from a developed water source. The proposed camera regulation will be difficult to enforce. If there are no citations litigated in the first year, the camera regulation should be repealed. This is a bad regulation based on the behavior of a few bad apples in a few trophy units, that will affect thousands of hunters who have never caused a problem. This is a knee jerk reaction to an issue that could be solved by the game rangers in the trophy units. The Department has stayed out of the trail camera issue for many years, now after a few conflicts in the trophy areas the Department wants to make regulations that negatively affect others. What ever happened to ethics?

**Written Comment: March 29, 2018.** In regards to the proposed rule making changes, I feel the use of trail cameras on a water source are an important tool used in scouting an area prior to hunting. It is nice to know what is in the area prior to a hunt; there are no fair chase issues when cameras are used for scouting. If using a game camera during a hunt is an issue, then spell out when it is allowed similar to overflights - you cannot do it during your active hunt. I spent a lot of money on my game cameras. I set them up about a month prior to my hunts and take them down before my hunt; I use the information to determine where I am going to hunt and what animal I am looking for to harvest. I believe in fair chase hunting ethics. I do not feel that using game cameras on developed water prior to a hunt has anything to do with fair chase. I understand using trail cameras capable of sending a wireless remote signal to another electronic device during a hunt could provide an unfair advantage. If that is the real issue here, then address that specific issue and do not punish all of us who use our cameras responsibly.

**Written Comment: March 30, 2018.** As a busy, full-time business man and father, it is rare that I get time to visit the woods prior to an upcoming hunt. Using game cameras is a valuable tool that assists me and my two junior hunters in scouting. I understand that the use of trail cameras is often abused by guides. These guides have hired hands checking their game cameras daily. I can see how this may be abused and possibly used unfairly, especially when used in conjunction with wireless image transmission. But these are businesses and are using cameras for profit, they have resources far beyond that of the average hunter with limited time, trying

to scout for his kids to possibly see and have an opportunity to take. For the average hunter, this scouting tool is widely accepted across the country and does not violate fair chase. Placing a game camera near water or anywhere else does not guarantee that game will be present during a hunt. Many factors influence and dissuade game from coming into water or into any area for that matter. A hunter must use skill to anticipate the wind, setup, shooting distances, cover, scent, movement, solar and lunar factors, weather, and a multitude of other conditions all that work against the hunter. When it rains, game does not come into water anyway because the can drink from potholes in the forest. If my camera is near one of these potholes or natural depression does this make it unfair chase? Cameras do not give an unfair advantage to the average hunter because they cannot assist in the locating of wildlife; they take stationary images of game at a moment in time, at a fixed location. If the Department's argument is that placing a camera near a developed water source is unfair chase; how is it fair chase to place a camera more than one-fourth mile away? Cameras are either unfair or fair chase regardless of where they are placed. The prohibition on the use of wireless transmission cameras is fine with me. I believe the wireless transmission of images from cameras is not fair chase as they provide real-time information and do not require you to be at the site to know whether game is there at the present moment. How will the Department enforce the prohibition? If someone else places a camera where I am hunting, how will the Department be able to prove who the camera belongs to? How can the Department stop nonhunters from placing cameras for use of wildlife viewing? Will the presence of a camera prevent me from sitting a particular water hole even if it is not my camera? Will game wardens be driving into water holes during the middle of my hunt to check for cameras - further foiling my efforts? Will mere possession of a camera at a water hole in my pack be grounds for a citation? How long before a hunt can this be enforced? What if I place the camera before I am drawn and remove it after the draw? What if I do not have a tag and I place the camera for someone else? Guides will find the loophole to abuse this. Maybe rather than banning game cameras near water for hunters, the Department should prohibit their use by hunt guide businesses? Guide services should be banned altogether. They create unfair advantage over the average hunter who cannot afford their prices and unfair practices. Real sportsmen hunt for themselves. Guides have turned hunting into a business rather than a sport. They often use unethical practices like placing people at water holes to reserve the spot for their client, intentionally driving through someone else's hunt to foil their chances, driving around to push wildlife into an area where their client is hunting, bullying other hunters, staking claim to a location by placing multiple stands and blinds that do not belong to the actual hunter, shooting during prime morning and evening hunt times to foil or scare game from hunters, etc. Has the Department even surveyed successful hunters to see what percentage of animals were taken using cameras? Has the Department surveyed guides to see how many of them use cameras as compared to the average hunter? For the last twenty years, I have followed the hunt success odds; I have not seen an increase in hunt success since the advent of game cameras. There are a lot of unanswered questions related to the proposed rule change. This proposed rule change is poorly written and nearly unenforceable. It does not represent the best interests of the average hunter and is ambiguous with regard to fair chase doctrine and use of cameras away from water sources. Before this is implemented, the Department should do more research, survey the hunting public, and more clearly define how this will be enforced.

**Written Comment: March 31, 2018.** I get tons of wildlife photos on and off of water and I have yet to kill any of them. All cameras do is give you an idea what caliber the animals are in the area. None of the bucks below were harvested or harmed. **Subsequent Witten Comment: March 31, 2018.** I get tons of wildlife photos on and off of water and I have yet to kill any of them. All cameras do is give you an idea what caliber the animals are in the area. Getting the photos is the easy part, none of the bucks in my trail camera pictures have been taken by me or any other hunter I know.

**Written Comment: April 3, 2018.** I oppose the ban on cameras on water sources; where else would you put them? It is Arizona. The cameras make me feel like I have a better chance; what is the harm of cameras anyways? If someone is abusing the current system find a way to correct that problem without affecting the regular guy. I have a few cameras in remote areas that I check every three months. It is fun, it keeps me active, and I have yet to find a big deer or elk when I have a tag.

**Written Comment: April 4, 2018.** In regards to the proposed change to prohibit the use of any trail camera within one-fourth mile of a developed water source, enforcement will be impossible. I believe people will realize this and continue to use cameras. I believe investigations will be time consuming and challenging to wildlife officers. The perceived benefit to "fair chase" is not worth the cost to the Department. Time and money should be spent performing activities that actually benefit the wildlife, not punishing photographers. I do not believe the use of trail cameras is a fair chase issue. A hunter must have necessary skills to understand what water source to place the camera on. In many hunting units there are hundreds of developed water sources. The selection of the location to place the camera is done by the hunter. I have never taken an animal within 10 miles of where I placed a trail camera, nor have I killed an animal I had a trail camera picture of. Having a camera on a water source does not guarantee anything. As for the inability for wildlife to elude detection, trail cameras have a finite detection range. I guarantee that on many of the locations where I placed trail cameras, wildlife are able to water on the other side of a dirt tank, where my camera isn't pointing. Even if a photograph is taken, they may not have eluded the camera, but they still have the ability to elude the human after the picture was taken. A well-accepted technology for anglers is a fish finder. A fish finder tells the angler there are fish directly under the sensor. Anglers know there are fish in their immediate vicinity, but the angler still needs to possess the angling skill to catch the fish. In comparison, a non-live-action trail camera tells the hunter where the animal was when the picture was taken. The picture could have been taken months before. These images do not guarantee a hunter can harvest an animal. The hunter still needs to possess the necessary skills to harvest the wildlife. The presenter stated there were many negative comments submitted to the Department regarding the use of trail cameras over the last 5 years. I urge the Commission to table this proposal and consider all of the public comments received. A 30-day comment period is not enough time to consider all of the comments and perspectives from the hunting public who want to defend a privilege that is about to be taken away. Consider that some people may have intentionally applied in the mid-winter elk draw for units where trail cameras on

water sources are an effective scouting method due to distance from their homes or thickness of country. Some folks may have used their bonus points to hunt in one of these areas and planned to use cameras as a key scouting method. If this proposal is approved, consider a delayed effective date for the tags the draw has already issued.

**Written Comment: April 13, 2018.** It is not fair to have such a large distance from a water source; 100 to 200 feet is reasonable, but a quarter mile makes no sense. It is almost impossible to know if water is within one-fourth mile in forest and wooded areas. Hunting near water sources is the always the best hunting in the dry Arizona area. Trail cameras must be viewed to know if game is in the area; this will result in giving the game a fair chase. Reject this law.

**Written Comment: April 13, 2018.** Trail cameras are a problem in units 12A, 12B, 13A, 13B, and 9. I do not understand why the Department is taking a shotgun approach to this issue when the problem only exists in a few units with large mule deer and elk. Outfitters and their employees check their cameras daily during the hunting seasons in these units and when they see large animals on their cameras they do everything, including blocking roads, to keep everyone but their clients from accessing the area. These are the units the Department should target for the proposed rule change. I have several cameras in units 37A and 28. The cameras are on waters used by desert sheep and valuable information regarding lamb survival, class of rams, etc. is given to the Department. My use of these cameras is passive, but my concern is that other hunters may see my cameras and destroy them. I change the SD cards in Spring and early Fall; the information they contain would not be helpful to anyone with a sheep tag because the sheep would not be near the water in December.

***The following comments support the proposed amendments prohibiting the use of trail cameras for taking or aiding in the take of big game:***

**Written Comment: March 20, 2018.** Restricting the use of trail cameras and adding a one-fourth mile restriction to archery hunter is knee jerk reaction to policy without proper consideration of users. These types of restrictions create solutions to non-existent problems and frankly we do not need more laws regulating what a person can do in the forest.

**Written Comment: March 20, 2018.** I think Subsections (A)(4)(a) and (A)(4)(b) are concise and easily understood. To me, it says you cannot use a live-action trail camera for hunting or scouting. However, Subsection (A)(5) is confusing and could be misconstrued. Is it the trail camera that cannot be within one-fourth mile of the water source or is it the taking of the wildlife that was photographed? Also, it is unclear to me if using a camera for pre-season scouting (locating) is prohibited. To me, putting a camera up before the season for scouting (locating) is not covered by the of the language "aiding in the take of wildlife." If the Department wants to prohibit the use of trail cameras around water sources, I suggest that Subsection (A)(5) be rewritten,

"A person shall not use any trail camera within one forth mile (440 yards) of the outer perimeter of a developed water source, or images from that trail camera, for the purpose of: . . ."

**Written Comment: March 20, 2018.** I have used trail cameras, but I am completely okay with the Department taking them away or limiting their use. It has turned mediocre success to way above par success for bow hunters. It has taken a lot of the fun, search, and chase out of the hands of the hunter and has caused many issues between hunters in the field. We do not have the deer numbers like they do in the Midwest and back east to justify this advantage here. I am strictly a bow hunter and would be completely fine with this change.

**Written Comment: March 26, 2018.** I have been a deer hunter for 45 years and a guide for 25 years. I concentrate on those units north of the Grand Canyon. I am adamantly opposed to the use of trail cameras on developed water sources. There are guides who have up to 200 cameras in each unit, 13A and 13B; there are no large bucks that are not well known because of it. When it comes to technology, we have: side-by-sides and four wheelers to get around quickly and efficiently in very rugged country; GPS to show us the way to anyplace we want to go without knowledge of the area; myriads of optics that are effective; rifles effective out to 1,000 yards or more; and two-way radios that we can give to each "spotter" on every high hill or knob. Together with their trail camera knowledge and their highly effective optics, they will almost always find the trophy animal and radio this information to the hunter who may have just flown in for the day so he can shoot it. Not to mention the ultralight aircraft that are used by almost every guide in the state to find trophy animals if they disappear from the water holes for a while. I understand there are only certain times these can be used, but every guide uses them when they can. The technology has gotten to the point that it is not fair to the animals, especially the trophy animals that are so highly sought after. In recent years, the quest for these trophy animals has become what I consider a corporate business issue. The normal hunters are almost completely shut out of areas where the guides inundate the area where a trophy animal lives because they have been monitoring him for months with trail cameras. Then they hunt him with spotters. They are parked on every pullout, or road, and are at the top of every high spot around. It has been very effective. These trophy animals deserve more of a fighting chance to disappear and hide out. With all of the technology available, the trail cameras on these limited water sources is by far the most effective means of killing them. Do not get me wrong, I love to hunt these trophy animals also, but the use of these cameras and this practice has gotten totally out of control. Please stop this practice and make it unlawful to use trail cameras on water sources.

**Written Comment: March 27, 2018.** I am in favor of a ban on the use of trail cameras altogether on public land. I love hunting and am in favor of a wildlife officials using technology to improve science, but feel we need to impose restrictions on new technologies that are taking the sport out of hunting. I own trail cameras and would gladly give them up.

**Written Comment: March 27, 2018.** Make the proposed trail camera ban a permanent rule change. Some of us

prefer to actually hunt wildlife, rather than shop via a satellite or cell phone uploaded photo. Just make sure the wording is crystal clear as to type of equipment being banned and distances involved (i.e. "all image producing devices not in the physical possession of the photographer" vs "trail cameras", and "440 yards measured in straight line from center of waterhole or tank" vs "440 yards from water" - which could be interpreted as measured via the contours of the land, or adjusted for the edges of water during seasonal dry spells). The proposed law is less stringent than I would prefer, but is a move in the right direction.

**Written Comment: March 27, 2018.** Please ban trail cameras, it is getting out of control.

**Written Comment: March 27, 2018.** Banning trail cameras is great idea.

**Written Comment: March 27, 2018.** Great idea. Please ban the trail cameras.

**Written Comment: March 27, 2018.** I support the trail camera ban.

**Written Comment: March 27, 2018.** This is something that needs to be enforced; wildlife is so overmatched by human technology. The playing field is not fair. I am a hunter, not a cheater and this is cheating.

**Written Comment: March 28, 2018.** I support a total ban on cameras similar to the aircraft scouting ban. It is ridiculous to see more cameras on a water source than on a sales display. I have counted over a dozen on some of the water tanks in units 9, 12A and B, and 13A and B. This is an insult to fair chase. The reason many of us pursue recreation in the outdoors is because we enjoy the solitude, wilderness, and some reasonable sense of privacy. To see the degree of monitoring, tracking, and inventorying the guides do with our wildlife is a disgrace. It has become way too commercialized. Either put an end to it or place some restrictions on this corruption of hunting and fair chase.

**Written Comment: March 28, 2018.** I support the ban on cameras. It has become ridiculous, and is contrary to fair chase principles.

**Written Comment: March 28, 2018.** Great idea to ban trail cameras near water sources in Arizona. It is simply getting too crowded around these sites.

**Written Comment: March 28, 2018.** I fully support these measures. It is shameful that animals are being monitored like this and have no place to hide, even at night. It is grossly unfair. If you are a hunter: hunt.

**Written Comment: March 28, 2018.** I reviewed the proposed rule change pertaining to the use of game cameras. I support this change as the use of cameras has become an issue and has a negative effect on the

hunting experience. I feel this will help put the average hunter on a level playing field with the professional guides who often employ scores of cameras around numerous water sources. Once the new rule is adopted, I hope to see an effort to advertise the new rule change and a discussion about how the rule will be enforced.

**Written Comment: March 29, 2018.** I support camera elimination. At a bare minimum, get rid of cameras that send electronic photos via the internet [instant imaging]. I have owned more than 30 cameras over the years and understand the uses for a camera, but the bad outweighs the good.

**Written Comment: March 29, 2018.** I contacted the Department three years ago, presenting the reasonable idea of initiating some sort of regulations on the use of trail cameras in pursuit of wildlife for hunting purposes. Over the course of 30 years, the Arizona Strip has been my sole concentration, likely due to its remoteness and diversity of wildlife and habitat types. In 2006, I began researching mule deer herds and mountain lion densities on the Strip. This was when I was introduced to motion sensor trail cameras. I bought a few cameras and found it incredible what you could end up with on "film." I started to notice other trail cameras that were placed or set up by hunting outfitters and guides. At present, there are several trail cameras on virtually every water source that exists on the Strip. One outfitter utilizes over 600 cameras on 13B alone; I acquired from that outfitter's social media account - the outfitter was bragging about the number of cameras in use. Due to the popularity of the Strip's deer herds, there are a dozen or more outfitters competing amongst each other, the more cameras the outfitter uses - the better they are. There is also a problem with entitlement: if there is a big mule deer buck that uses a specific water source, there is a sense of entitlement to that buck, from each individual who has pictures of it. This has resulted in assaults and threats, outfitters and hunters blocking roads, etc. Someone is apt to drive their steel T-post through the water gravity line that feeds into the trough, creating leaks, sometimes to the point it drains the water storage tanks. Not to mention the expenses to repair it. Regulating or banning trail cameras for hunting purposes will help sustain the biological diversity to the mule deer herds. Using three to six hundred trail cameras in one unit has given hunters an edge by knowing where virtually every mule deer buck is located. The outfitters bring in a dozen helpers, sets them up on different vantage points while others walk through draws and thick wooded areas driving the deer out. They kill one buck, then it is off to the next one. There are many who set up trail cameras and then do not step foot onto the field again until a few days before the hunt. They do not even put the footwork in anymore; that is not hunting. One consequence I have seen as a result of the over use of trail cameras is the mule deer bucks are not able to reach maturity. The outfitters, guides, and hunters gather together and go after the bigger bucks. Once the biggest buck is killed, they go after the next biggest buck, and so on. In order to sustain a biologically diverse population of bucks, they must reach maturity so they can pass their genes on to the next generation. At the Department's webinar, some of the individuals who were present voiced their questions or concerns; they are upset because trail cameras are something they have taken for granted. Trail cameras have made it easier to harvest wildlife. Trail camera use can provide specific patterns of individual animals; I use them regularly for just that purpose. I suggest adding that each camera should have some form of personal identification on them. If the rule change is implemented, I hope

strict fines or punishment will be used for anyone found violating them. I received a message from the biggest outfitter in Arizona. They already have plans to pay individuals to set up cameras and relay any information to them. They said, "We will show the Department that we will not be controlled." Hence, the reason I am suggesting that all cameras have some form of personal identification on them - in plain view.

**Written Comment: April 3, 2018.** Game cameras have changed hunting in Arizona. It is no longer fair chase using this technology. Aircraft are not allowed for the same reason. Some trick tanks in unit 9 had 12 cameras on it. We need to return to actual scouting by being in the woods and glassing for game. I have used cameras, but never felt they were the right way to look for game. You can now sit at your computer and watch for the game you plan to hunt. That is an edge that is not fair to game or to those hunters who cannot afford this device.

**Written Comment: April 3, 2018.** The Department is right on in regards to trail cameras and fair chase. The conservation model was never intended to incorporate technology. We, as hunters, are already toeing the line with fair chase by using rangefinders, high-powered optics, etc. I support the Department's rule change 100%. I believe it will be a work in progress, as time goes by, because salt licks and integrity issues with hunters will make it difficult for officers to sort out.

**Written Comment: April 4, 2018.** The guides have trail cameras on every well used trail and every water hole in every unit in Arizona. They watch and record every respectable bull and buck. Just before the opening of hunting season, they place someone on a watering hole to ensure no one else can bag the bucks and bulls they have been watching on their cameras. They call the rich client sitting behind a desk and tell them they have his bull for him. He pushes himself away from the desk, gets on the airplane, is picked up by the guide who has a great name for being such an awesome hunter, takes the rich client out opening morning, he kills the bull or buck, and they high five each other over such a great hunt. The client gets back on the airplane and thinks to himself what a great hunt. The client has the head mounted and the guide goes on to the next client, and this is called fair chase?

**Written Comment: April 4, 2018.** I support the proposed changes pertaining to restrictions on the use of trail cameras on public lands. I believe the use of this technology eliminates fair chase of game animals, and diminishes the overall outdoor experience for hunting and non-hunting users of our cherished public lands.

**Agency Response:** The Department appreciates your interest in and support of the proposed rule amendment prohibiting the use of live-action trail cameras and trail cameras within one-fourth mile of a developed water source for taking or aiding in the take of big game.

***The following comments oppose the proposed amendments prohibiting the use of trail cameras for taking or aiding in the take of big game:***

**Written Comment: March 16, 2018.** I am a disabled hunter and I believe the Department is taking away my chances of seeing when mature animals are using an area as I have limited on time in field. Trail cameras do not guarantee a target animal will show up. This prohibition will take away an activity that I enjoy doing with my children: running a few cameras to see and learn about wildlife we would never get the chance to in person. This prohibition will dramatically affect special license tags sales, which will affect wildlife projects and management activities funded by those tags. Some of us wait upwards of 20 years for what I would call once-in-a-lifetime tag to try and want to make the most of it. If the Commission is concerned about Fair Chase, I urge the Department to work with such groups as Pope and Young, Boone and Crockett, and Safari Club International and follow their Fair Chase rules. Do not pass judgment onto me or my children. This will cause a disaster on the edges of water sources with more cameras than before and wildlife being disturbed by more foot traffic in the area. The only ones who will lose here is the wildlife. It is our responsibility as sportsman and women to work together and manage them to the best of our ability. Do not take this tool away. If this passes, the Department will lose those individuals who do not have the time to scout due to work and family. I know this will cause me to reconsider whether I want to continue to hunt or not.

**Written Comment: March 16, 2018.** Trail cameras do not kill anything. We do not need any more rules for the overworked wildlife management to enforce. The way the rule is written it is wide open for tons of issues. Everyone can still run them on water sources and the Department will have to prove whether the camera aided that person in the take. Moving cameras a quarter of a mile away will add 100 more cameras around water and 100 times the human activity around the water sources. Plus, look at what was lost in lost funds because the auction tags sold for 30% less than normal and if this rule changes it will get worse. Trail cameras cause older age class animals to be harvested. Bottom line, manage wildlife with the tools the Department has in place: tag numbers. Arizona needs to follow Utah; they have tons of animals, tons of money, tons of opportunity.

**Written Comment: March 16, 2018.** The proposed regulation on trail camera use is absurd, with absolutely no evidence of how they may or may not affect wildlife habits, this is just another useless unwarranted regulation. Please reconsider leaving them as is or adjust your definitions to restrict use during the hunt if the Department actually thinks cameras are increasing the harvest.

**Written Comment: March 17, 2018.** I do not support the direction the Department is taking in their rulemaking. There are two proposed rules that are bad for outdoor enthusiasts (specifically the do it yourself hunter and archery hunter). Prohibiting the discharge of archery equipment within one-fourth mile of a residence will hurt the sport and recruitment from a practice standpoint alone. Why would the Department prohibit their only method of affecting the urban herds of elk and javelina that decimate property? The large numbers of animals that live between homes need some form of management. More thought and research needs to be put into any rule that would change this. A rule that affects cameras is a direct attack on personal freedoms

to enjoy the outdoors as one would choose; I should not be precluded from enjoying the hobby of trail cameras in any capacity that I may wish because I am a hunter. Checking cameras is great and a wonderful way to foster recruitment in the younger, tech savvy generation. When you limit the success of any of these hobbies, you impact hunter recruitment because they want to see the animals. As a licensed hunting guide, I believe fewer trail cameras will help us professionals, but will hurt the do it yourself hunter who has less time or money to scout. The Department is heading in the wrong direction by trying to legislate how hunters, who support the Department with our dollars, enjoy the woods. There is no scientific proof trail cameras have any negative impact on the wildlife. Having any animal on a trail camera does not increase the chance of harvesting it. You still have to get out there, work hard, and get a bit lucky to get that opportunity. Even then, a harvest may not happen. In closing, I believe the Department needs to nurture good management tools like bow hunters and trail cameras, rather than infringe upon them. We need to enforce more of the current laws and create fewer new laws.

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**Written Comment: March 17, 2018.** I oppose the proposed change that prohibits the placement of a trail camera within 440 yards of a man-made water source. I own over 80 trail cameras and use approximately 50 in the field, with less than half of them on water holes. I have never ever taken an animal that I have pictures of. Over the last five years, a number of my cameras with lock boxes and cables were stolen; all of them had my name and telephone number inscribed on them. What happens if one of my stolen cameras is used at a water

hole? How do I to prove that I did not place the camera? I reported my stolen cameras because I wanted a record of it, knowing nothing could be done. How will this rule be enforced fairly? If I do not have a tag, can I monitor a water hole just for the fun of it? That should be legal. What if someone places a camera on a water hole and inscribes someone else's name on them. Can I put a camera on a spring, a wash, or where rain pools? I have spent a lot of money on cameras, lock boxes, cards, lanyards, and gas and wear and tear on my vehicles. I have heard it is cheating to put cameras in the field, but the fact is, I have never killed anything I have seen on my cameras to date. I do not want to use Department funds for lawyer fees or for trying to enforce something that cannot be enforced.

**Written Comment: March 19, 2018.** I personally own several trail cameras. I use them to capture unique photos as a hobby and for hunting. I have never been able to harvest an animal from the use of any of mine or anyone else's trail camera. I keep cameras up year around just to capture all phases of animal activity. Some of the most enjoyable views on my cameras are in the spring when I get to see the young animals and observe their activity, see the different color phases of the bears, learn how many cubs a sow might give birth too, and the general life cycle of some of the cubs that are born. If the Commission decides to make this change, it will take away several freedoms that I enjoy. In my experience, there is not as much success related to the cameras as some might believe. When I finally drew a tag to hunt the Strip, I checked my cameras and found the bigger deer are mostly on the camera at night. I could not find any of the animals in the field that were on my cameras. I have been using cameras for 12 or more years and have had several stolen over the years. All were marked with my name, phone number, and address. What if someone steals one of my cameras and installs it where it is prohibited? How many court cases will the Department waste its money and time fighting to prove who placed those? I have a lot of money invested in cameras, lock boxes, SD cards, locks, and mounting hardware. I did not invest in these cameras overnight. It has taken years to accumulate my equipment. Just because a few small groups think it would be a great idea to do away with trail cameras, does not mean they have all the facts. When I report a stolen camera to the Department field officer, the response is "There isn't really anything we can do about it since it happened on public land and you left left in the woods." If someone stole something out of my tent, they would take a report. Trail cameras are private property and theft is theft. If the Department does not want to be involved in stolen cameras, why get involved with regulating cameras? I am asking the Commission to reconsider the proposed prohibition on the use of trail cameras. In my opinion, it is no different than regulating how far a person can legally shoot at a game animal, how many 'glassers' a person can have with them on a hunt, what power of optics a hunter can use, or even where a tree stand can be installed.

**Written Comment: March 19, 2018.** I find the amendment restricting the use of game cameras at developed water sources to be ridiculous.

**Written Comment: March 20, 2018.** I am concerned about the proposed prohibition regarding trail cameras within one-fourth mile of a water source. My family and I look forward to placing and also checking cameras

occasionally. We make it a family outing and get excited about seeing the animal that show up on camera. There is no evidence that a trail camera negatively effects wildlife. Please reconsider this proposed rule.

**Written Comment: March 20, 2018.** I cannot find the justification for this change and am opposed to it. Many of the areas I hunt are within one-fourth mile of a waterhole simply because of the density of waterholes in the area. Limiting the use of game cameras within one-fourth mile area is too restrictive. I have not seen any evidence that limiting use of game cameras benefits conservation in any way. The Department should present that evidence before making the rule change. It makes no sense that using game cameras to locate game animals prior to the hunt significantly changes the number of game animals taken. I request that Department provide the hunting community with the study details used to justify such changes and show the definitive benefits that these changes will bring to Arizona prior to enacting any changes. Specifically, the Department should show proof of how it will conserve, enhance, or restore our resources and habitat. **Subsequent comment: March 20, 2018.** For the record, I still have questions and concerns regarding the proposed rule change. First, the response does not address the concern raised with regard to areas that hold a high density of water holes. The restriction limits the use of cameras in large chunks of hunting areas; what will happen as more and more watering holes are built to support game and livestock? This will make enforcement more challenging. Second, the Fair Chase document is addressing a “public perception”. With all due respect, what public perceptions is the Commission speaking of? Has this perception been documented to indicate to the Commission drastic measures are necessary? What about the perception of the hunting population who pays for and supports the conservation that is central to the Department's responsibilities? I believe the Commission is affecting changes in response to an opinion that “may” come from a small percentage of the population. Furthermore, there is no scientific evidence to justify these changes. If the Commission is going to impact rules based solely on some undefined perception, what’s next? There is a perception among some of our population that all hunting is unfair. Does the Commission intend to implement rules to address that “perception” as well? How will this be enforced? I think the use of game cameras affects a hunter's ability to locate game; but does not impact the hunter's ability to take game in a sportsman-like manner. I would like to better understand the basis for these proposed changes. How can I go about voicing my opinion and concerns directly to the Commission?

**Written Comment: March 24, 2018.** I believe trail cameras are an excellent tool for both managing and harvesting game and should not be banned. In all my years of game management and hunting land consulting, I have never witnessed any adverse effects on the deer herd.

**Written Comment: March 24, 2018.** The use of a game camera on a waterhole does not give me an advantage. It is a tool, just like my binoculars. It does not affect the animals in any way. This is not in the best interest of the game we hunt or the hunters to change the use of cameras for the few who complain. I If the Department gives into the few who do not like how some of us are using game cameras, then it should change the rules on hunting elk with a rifle because they can shoot from far distances and bow hunters are limited on the range they

can shoot from. Archery hunters and muzzleloaders have only one shot, so maybe rifle hunters should have only one shot. I think that more elk tags should be given to archery hunters and muzzleloader hunters, since I am one of the "few." I know that will not happen, but what is being proposed is no different from what I just proposed. I set my cameras up on water, but I still go up to the mountains and scout. It is just another tool a hunter can use. I do not see anything wrong with putting game cameras at water sources.

**Written Comment: March 26, 2018.** The trail camera is a vital tool to Arizona hunters. Placing such rigid restrictions on the use and placement of these devices can and will hurt our local hunters. These tools are used for monitoring, aging, ruling areas out, scouting, and helping hunters utilize their time afield to the best of their capabilities.

**Written Comment: March 27, 2018.** I oppose a state-wide ban on trail cameras. The real issues are the Strip and Unit 9. I know there are issues in other units, but these are relatively minor. Trail cameras increase participation and utilization of our public lands outside of hunting season and can be an enjoyable family activity. Do not penalize everyone for the few who abuse the privilege.

**Written Comment: March 27, 2018.** There is no logic to the proposed rule. Pictures are pictures; they help cut down on the amount of traffic in the area by hunters.

**Written Comment: March 31, 2018.** Prohibiting trail cameras is senseless. I do not see why this is viewed as a good idea. If an animal needs water, it is going to get water, whether or not someone has a camera there or is sitting on the water. I think this is a stepping stone to completely ruining any opportunities that I may come across to harvest any animal. What will this idea do to the conservation effort that all hunters dump money into on a yearly basis? If I cannot hunt or scout in a way that works for my busy schedule, then why would I put money into a tag that I will not be able to fill? The biggest industry this would affect is guides and outfitters, who also bring a lot of money into the state for tags and licenses that contribute to conservation efforts. Without conservation, we would have nothing to hunt.

**Written Comment: April 3, 2018.** Please allow the use of trail cameras. I live 1,200 miles away from the unit I hunt and it makes scouting there much easier at 80 years of age.

**Written Comment: April 4, 2018.** I oppose the new rule on trail cameras. I understand the Strip has a problem with too many cameras at waterholes but, there should be another answer to this problem because 90% of the state does not have this issue.

**Written Comment: April 4, 2018.** There are a lot of people who enjoy watching wildlife and a water source is a good spot to place a trail camera. Creating more rules to enforce only creates more problems. When law

abiding hunters and the Department create petty laws, they give fuel to the anti-hunting groups in their pursuit to outlaw hunting. It takes a lot of time, effort, and hard work to use trail cameras correctly and the folks who are complaining do not want to put forth the effort to get all they can out of their scouting. Try restricting cameras at the water holes on the Strip for three years and see if it helps.

**Written Comment: April 5, 2018.** I use trail cameras and enjoy the pictures I get, including many photos of nongame species. I have never harvested a deer or javelina because of trail cameras, but I admit they help narrow down my choices for where to focus my hunt. I assume the reason for the proposal is the Department thinks too many animals are being killed. If the Department does a good job with research, surveys, seasons, and bag limits, then why does it matter whether an animal is killed because of a trail camera? They are ethical tools that help the hunter harvest an animal. Seasons and bag limits should be used to control harvest. I realize this is not a logical argument because there are regulations that control methods and devices (spotlighting, electronic calls, etc.), but I do not think trail cameras fit in that context. There was an article featuring a winter visitor who leaves their trail cameras out all year. When he returns in the fall, he has several thousand photos to review. He does this for the fun of it, he is not a hunter. These types of activities can benefit and provide valuable information to the Department (confirmed sightings of jaguar, ocelot, rare birds, masked bobwhites, etc.). Would this proposal ban the use of trail cameras by Border Patrol or the Department?

**Written Comment: April 12, 2018.** I am a full-time guide; I use cameras for hunting and hobby purposes, but the use of those cameras do not guarantee I will kill the biggest buck in the woods. Now, ten years later I see how the use of trail cameras is affecting wildlife on a larger scale. Anyone who has ever hunted unit 9 knows they will see more than one camera hanging on a tank or drinker. In some places, in the weeks prior to the early hunts you will see a drastic increase in the number of cameras hanging on tanks and drinkers. Trail cameras are intended to aid a person knowing what is in the area at the time of their absence. They are simply just a tool in the pocket of the sportsman; just like scent cover spray or binoculars. The proposed ban specifically focuses on cameras located at or within a certain range of any developed water source. It is common sense; wildlife needs food and water to survive. With food being everywhere and water available in select locations it makes sense that you would place a camera where the odds are in your favor. Water is a centralized place where animals congregate therefore maximizing your efforts. Another concept where cameras are commonly used is on salt licks or salt holes. Over time these locations grow in size and depth due to natural elements and wildlife disturbing the earth. I've seen salt holes you can lose an off-highway vehicle in; that causes more disturbance to nature than hanging cameras on a man-made water source. Over time, trail cameras have changed the way we've hunted as sportsman and their use has benefited the age class within certain game animals. When I check my cameras and see a large concentration of 340" bulls, but in other areas I have a few 360" bulls. I am going to pass the 340" bulls in pursuit of the older more mature bulls. Without the use of cameras, I am more likely to insist my client take the best bull I have seen firsthand which may be a younger bull. By passing smaller bulls we are creating a better age class for future generations and that is what you call a true sportsman. I read the

newsletters and attended the meetings state-wide concerning the proposed ban on cameras. I am not convinced the Department understands the long term benefits cameras will have. That is why I took the time to drive to the meetings and type these emails. I love the outdoors and the wild life within it and would do anything to see it prosper for our future generations; that is why I devote so much time to it. Guides really are the Department's eyes and ears; we are the best assets to have on your team. Do not take this letter lightly; I am one of many who feel the proposed law is encroaching on our rights as fellow Americans and Sportsmen.

**Written Comment: April 14, 2018.** I oppose the statewide banning of trail cameras and believe that if it is approved, it should be limited to the areas directly impacted; specifically the Strip, Kaibab and unit 9 with guides and trophy hunting. This is not a statewide issue and should not be enacted statewide. Everyone should not suffer for the actions of a few. I suggest the rule specific to the take of cervids as they are the primary species impacted. The words “aiding in the take” are proposed in several places. “Take,” by definition is very broad for good reason. Defined, it means pursuing, shooting, hunting, fishing, trapping, killing, capturing, snaring, or netting wildlife or the placing or using of any net or other device or trap in a manner that may result in the capturing or killing of wildlife. “Aid” as defined in various online dictionaries means to give assistance, help or support to. Adding “aiding in the take” to the rule, is subjective and gray. What exactly is “aiding in the take” and how far can one go to prove this. This adds confusion to the law. “Take,” by definition includes the word “pursue” which is somewhat of a coverall; thus, adding “aiding in the take” is redundant and adds subjectivity to the rule, which should be relatively clear to our constituents. Recruiting and retaining young hunters is and will continue to be a problem in today’s busy, time limited society. School, sports, and managing dual income households will continue to absorb our youth’s valuable time. Time, which historically was spent outdoors connecting with the environment. Today, we need tools to invigorate this interest and passion and kindle the fire for wildlife and the outdoors. Placing trail cameras is one such wildlife viewing tool that gets kids outside and generates interest in wildlife and their habitats. It is exciting for my children to see photos of a variety of wildlife, particularly young wildlife and rarely observed species. Limitations placed on this activity will have a negative impact on recruitment and retention efforts. I believe any trail camera rule change will lead to an increase in theft and vandalism of lawfully placed trail cameras and I suggest modifying rule language to make this activity clearly unlawful and enforceable.

**Written Comment: April 15, 2018.** I believe the proposed rule changes are not only unnecessary, but will significantly bow hunters. I believe it is necessary now and in the future to keep things in check from a technological aspect to ensure that “hunting” is still “hunting” and does not become controlled harvest and I understand and share some concern around trail cameras with Bluetooth and email capability that could result in someone harvesting an animal within minutes of being alerted to its location by a mechanical device. However, this is unlikely and I have yet to hear of it happening. When it comes to regular trail cameras that require a person to pull memory cards and check photos, I do not believe they compromise fair chase. As a former hunting guide, we did not have trail cameras. In order to locate animals for our clients we flew, drove, and hiked

many miles and I still do today. Trail cameras help me eliminate the less productive areas. I believe trail cameras allowed me to learn about the game I pursue. Although there is no doubt that trail cameras can cause conflict and some less than desirable behavior amongst hunters in certain areas, I believe these are outliers. Many hard working hunters use trail cameras to scout for upcoming hunts as well as for recreation. My family is involved in running trail cameras; we love to view the pictures. My children enjoy this form of recreation. As far as scouting goes, pulling up to a water source and pulling a memory card to view pictures is much less of a disturbance to wildlife than hiking through their bedding and feeding areas. Trail cameras allow us to observe animals in their natural state with minimal disturbance. I do not believe a trail camera has ever been the reason for me harvesting a specific animal. At the most, they allow a hunter to focus on where higher populations of animals are and allow for some good recreation. Obviously cameras can be used at other locations besides water. However, there is no doubt that water is the best place to get a solid idea of what animals and the numbers of animals in a specific area.

**Agency Response:** The Commission recognizes there is some opposition to the rule change on the use of trail cameras but hope persons regulated by the rule will understand this was brought up as a Fair Chase issue by sportsmen and women. Due to the advancement and availability of technology, the use of trail cameras to pursue and take wildlife has risen to such a level that it demanded the attention of the Fair Chase Committee. The committee has a responsibility to address these issues as they begin to push the boundaries of what is accepted as Fair Chase. All perspectives considered, this is the recommendation that came as a result of the committee's work and is a reasonable compromise that still allows hunters to use trail cameras, but not to the degree where it puts our wildlife at an unfair disadvantage.

The definition of "live-action trail camera" is meant to address what current technology can and does do and what future technology may be capable of doing. The objective is to stay in front of technology by being proactive rather than reactive. The objective is also simplicity; to make Commission rules easier for our constituents to understand and follow.

For clarification, only those cameras that are capable of transmitting images to an electronic device are prohibited when used for locating and/or taking wildlife. Cameras that use a Secure Digital (SD) card will still be allowed, provided they are not placed within one-fourth mile of a developed water source. "Developed water source" means any developed, placed, or man-made structure that collects or stores water with the primary purpose of providing water to wildlife or livestock. It does not include wallows, creeks, seeps, or springs.

"Fair Chase" means the ethical and lawful pursuit and take of free-range wildlife in a manner that does not give the hunter improper or unfair advantage over such wildlife. The following criteria were used to evaluate whether a new technology or practice violates the Fair Chase ethic; does the technology or practice allow a hunter or angler to: locate or take wildlife without acquiring necessary hunting and angling skills or

competency; pursue or take wildlife without being physically present and pursuing wildlife in the field; or almost guarantee the harvest of wildlife when the technology or practice prevents wildlife from eluding take.

The Article 3 Rulemaking and Fair Chase teams benchmarked with other states, spoke with members of industry, considered multiple options for regulating the use of trail cameras, and ultimately recommended the Commission prohibit the use of trail cameras capable of sending wireless remote signals to another electronic device and the use of any trail camera within one-fourth mile of a developed water source for the take or aiding in the take of wildlife. However, at the June 2018 Commission Meeting, the Commission directed The Commission felt the need to evaluate regulatory measures pertaining to the use of trail cameras as they related to the 'take of wildlife' and the Fair Chase hunting ethic after receiving multiple comments from the public opposing the use of trail cameras for hunting. In the Notice of Proposed Rulemaking published March 16, 2018, the Commission proposed to amend R12-4-303 (Unlawful Devices, Methods, and Ammunition) to prohibit the use of any trail camera within one-fourth mile of the outer perimeter of a developed water source for the purpose of taking or aiding in the taking of wildlife. However, after receiving significant opposition to the proposed amendment from persons regulated by the rule, the Commission chose to remove this prohibition from the original rulemaking proposal. As a result, the following language was removed from R12-4-303(A)(5), "Within one-fourth mile (440 yards) of the outer perimeter of a developed water source, a person shall not use any trail camera, or images from a trail camera, for the purpose of taking or aiding in the take of wildlife." Because the proposed prohibition is being removed, the definition of "developed water source" was deemed unnecessary and was removed from R12-4-301.

Part of the rulemaking process is ensuring that any new rule is enforceable. The enforcement of this rule may not be as clear-cut as other rules, but the Department is confident that wildlife managers will use good judgment and discretion in how this rule is enforced. There is no doubt that the Department and Commission will also count heavily on voluntary compliance by the sportsmen and women whom we have counted on to follow the rules and have a great track record at doing so. A thorough investigation will be conducted by a Department officer prior to issuing a citation. The officer in the field is responsible for conducting an investigation, collecting evidence, and, when determined valid, issuing a citation. The officer is part of the judicial process, but does not usurp the court's final authority. A major focus of the investigation will be to identify who placed the trail camera. Every time a citation is written by any officer, it is their interpretation of the law and the situation at hand that causes the issuance of the citation.

All perspectives and comments were considered; this recommendation is a result of the teams' evaluation and is a reasonable approach that will allow hunters to use trail cameras, but not to the degree where it puts wildlife at an unfair disadvantage when avoiding detection.

The Department does not see any reason for hunters to shy away from hunting water or be concerned about increased theft or receiving a criminal citation by association. Most hunters hunted for years and years successfully before trail cameras were available for use.

*The following comments propose the Department regulate the use of trail cameras for taking or aiding in the take of big game:*

**Written Comment: March 13, 2018.** The response states, "The final rules could become effective as early as September 8, 2018 but, the Department may select a later effective date such as January 1, 2019 to coincide with setting the next elk and pronghorn seasons." The reason for doing this is absolutely clear to me, it allows those who spent many years trying to draw their coveted tags with maximum points, hunt under the same rules and guidelines as they expected when they decided to "burn" their points. It seems on a rule of this magnitude, the Department would choose to announce the prohibition a year in advance to allow planning for those who have spent millions of dollars in support of the Department. Wouldn't it be appropriate to consider the few who have supported Arizona wildlife by donating their hard earned money? A legal battle will likely be the outcome if the Department chooses to discriminate against the auction tag holders because the elk and deer draw hunts are all effectively over by December 31, 2018. The auction hunts are not over until later and they should be given the same courtesy as those who waited in line. I want to be legal and will in no way break the law. However, I bought a tag under the presumption that I would be able to conduct my hunt the way I always have. This is not a rebuttal of the law; it is about the timing and the implementation of such law.

**Written Comment: March 20, 2018.** The use of trail cameras is a contentious issue. I am familiar with trail camera usage in the areas around Seligman and Williams. I have heard mostly negative comments about trail camera usage north of the Colorado River and in Unit 9. I am not aware of trail camera issues anywhere else in the state of Arizona. Is there a biological reason to regulate trail cameras? That question should be answered before any regulation should be considered. Please consider that almost all water sources in the Seligman/Williams area are man-made. A regulation prohibiting use around man-made water sources would basically outlaw trail cameras in this vicinity. I use trail cameras and find the practice enjoyable. I place them around water sources as this is the most likely location to photograph wildlife. I use them as a scouting aid and for fun in the off season. I would like the Commission to consider whether a "one size fits all" set of regulations is necessary to regulate trail camera usage. First, is any regulation necessary? Second, is regulation necessary statewide? Is the placement of trail cameras around water sources a real issue or not? Would regulation cause additional problems for wildlife or enforcement? Based on much field experience over many years, I believe any regulation of trail cameras usage be localized in "problem" areas and very sparingly if at all anywhere else.

**Written Comment: March 21, 2018.** As a licensed Arizona guide, I commend the Department on the rule and urge you to stand firm on it. I would like to see even more done on cameras. I believe all cameras must have the

owner's name and phone number on it and a limit of ten cameras per individual and further limited to placing no more than four cameras in any single unit. I also believe that outfitters should be limited to the same number of cameras as individuals. Some of the larger outfitters brag that they use over 1,000 cameras in a given unit. I feel the current proposal prohibiting the use of cameras within one-fourth mile from water will result in all incoming game trails being flooded with that outfitter's cameras.

**Written Comment: March 27, 2018.** I think it is a great idea. Maybe allow them up to two weeks before hunting season and then after the hunt. Allowing their use before the season to find out what animals are in the area up until one to two weeks before give the deer, elk, or whatever a little better chance.

**Written Comment: April 2, 2018.** I am opposed to the proposed trail camera ban. To say that it is unethical or breeches some type of fair chase guideline is ridiculous. This ban does not hurt anybody but the average hunter, the guy who works 50 hours a week. I understand there is a problem in some units caused by the outfitters or guides, but why must we continue to broad-stroke these issues and eliminate the cameras. I do not see anybody trying to outlaw the thousand-yard guns or the 500 yard muzzleloaders. I have yet to meet anybody who voted for the opportunity hunt vs. a quality hunt. This type of management seems to breach the fair chase guidelines more than a trail camera. I wish the Department would consider an alternative or consider not implementing the trail camera ban. Instead, put a limit on the amount of cameras an outfitter or guide can have or an individual for that matter. Even a time frame that cameras can be used would be better than a complete ban.

**Written Comment: April 3, 2018.** Target the problem areas. I have hunted in unit 13A and agree that area, including surrounding units, has a serious problem with the abuse of trail cameras. Some guides have in excess of 300 cameras running before, during, and after the hunts. It goes against the concept of fair chase. However, taking away the ability of someone in a southern unit who can only afford 3-4 cameras and only has limited time to scout is wrong. Make it legal during specific times. Only allow the use of cameras in January through July. How is this going to be enforceable? There are tens, perhaps hundreds, of thousands of water holes in this state and very few game officers. Is it just an assumption now that anyone hunting in the area of an alleged "illegal" water camera is breaking the law? Seems like an unenforceable plan that will lead to increased hunter-hunter conflict.

**Written Comment: April 3, 2018.** I am glad the Department took a position on the issue of trail cameras. I consider them to be a violation of my private interaction with nature. They are litter that gives an unfair advantage to the user over the animals they seek. I am old school; I scout for signs prior to my hunts and have done so for years. One cannot approach a water source any more without finding at least one camera taking unwanted pictures of all who pass by. I would take it one step further, if they are going to be allowed in the forest, persons should be required to remove them during any active hunting season.

**Written Comment: April 3, 2018.** A camera does not ensure a hunter will harvest the game he sees on that camera. Fair chase would ensure that cameras were not used during the hunting season, but could be used for scouting prior to any hunting season. I agree that remote cameras that do not require a hunter to be in the field to check them violate Fair Chase rules and should be illegal. I have multiple cameras and enjoy looking at the pictures of wildlife throughout the year. This far outweighs the ten days that may be allotted to me by the Department to hunt a species I drew a tag for. I suggest the Department revisit this rule; from the questions online and from the people who showed up to the webinar it seems clear to me that the Commission is making a rule the public does not agree with.

**Written Comment: April 3, 2018.** I am concerned about the proposed rule regarding the use of trail cameras that do not transmit information wirelessly. It is unclear to me which kind of trail camera the Department is referring to when discussing this proposed rule change. I use trail cameras that do not transmit information wirelessly. This allows me to be aware of animals that are in the area without being there to disturb them. I check the cameras when I know I will not interrupt their routines. While I understand that overuse of trail cameras may be a problem, perhaps only designating the number of trail cameras each hunter may use is more appropriate. Requiring the owner to place their name and hunting license number on each camera might be a good approach. I do not want to penalize those who have been waiting years for a tag. I do not want to be pushed out of an area or hunt just because I am honest. If there is a specific problem with an individual or a specific behavior by an outfitter that is causing a problem, please address that and do not make a blanket rule that leaves the rest of us out in the cold.

**Written Comment: April 3, 2018.** I understand and agree with restricting use of live-action cameras for taking wildlife. I agree with developing some form of reasonable restriction on regular trail camera usage. However, under the current proposal, the individuals who are abusing the practice will continue to do so by ringing waterholes within the limits of the law. The individual with more limited means and less financial interest in gathering complete information will be priced out of the practice. Whatever advantage that might come from using trail cameras will be in the hands of those willing to pay for it. That seems less fair to me. I advocate for a time-frame ban, we all understand time-frames. I think that trail camera usage is more analogous to the use of aviation, which is far more effective than trail camera information. If a time-frame restriction on aviation is effective, then it should be effective with trail cameras. I have enjoyed using trail cameras for years and they have not led me to harvest any particular animal, but they have increased my practical knowledge of a wide range of wildlife and that has helped me to be a better hunter and has increased my admiration for the game I chase.

**Written Comment: April 4, 2018.** I support the inclusion of drones to complement the existing rules regarding take or harassment of wildlife. The same is said for trail cameras that transmit data or images/video wirelessly to other devices, these should be prohibited. As far as prohibition of non-transmitting cameras, I do not agree

with the one-fourth mile proposal; I feel this would open those areas to increased baiting or use of attractants. I suggest establishing a "season" on cameras where they could be used at waters between April 1 and July 31st and should be identified by the owner or business name and contact information. In addition, there should not be any installation of support items for the cameras, such as T-posts, to minimize the potential for damage to water lines or other infrastructure. Cameras found present outside the "season" should be seized by appropriate land or wildlife management agency personnel.

**Written Comment: April 6, 2018.** I am in favor of the proposed ban of trail cameras within one-fourth mile of developed water sources. I think this is a step in the right direction. I believe technological advances have, in some instances, taken away the actual hunting experience. Not only do I support this proposed legislation, I would love to see rules requiring all cameras be removed from the field within 48 hours of any big game hunt.

**Written Comment: April 9, 2018.** So much conversation has taken place about the "few" that establish multiple cameras on developed water. And yet it seems that these "few" use their position to bully other hunters during a big game hunt. I have been threatened by these professionals during big game hunts. So instead of limiting the common sportsman, I suggest the Commission consider a five-year moratorium of licensed guides and outfitters. Trail cameras have been used for so much more than photographing big game animals. To rob the majority due to the select few is just wrong. I know that the Department wants the public to enjoy the outdoor experience. The trail camera has provided that experience to so many and now the Department wants to eliminate that portion of the new experience?

**Written Comment: April 13, 2018.** I agree with the definition of "live-action trail camera" and agree that the use of these devices is contrary to "fair chase" and should be prohibited. I disagree with the proposed statewide prohibition on the use of trail cameras in proximity to developed waters associated with the taking of wildlife. Because these devices require a physical visit to access stored data, any advantage they may give to a hunter in the pursuit of game is delayed to the point where it is not contrary to the principles of "fair chase." I believe once enough individuals place trail cameras at developed water, the increased disturbance will likely deter some species that depend on these waters for survival. In my experience, only certain units have waters where enough cameras are placed to have this deleterious biological effect. Rather than enacting a statewide prohibition on the use of trail cameras at developed waters, I would propose cameras only be prohibited in the units where it is a problem (2A, 12B, 13A, 13B, and 9). In the future, if the Department determines other units (or specific developed waters) qualify - they could be added to the list where the use of trail cameras near developed waters is prohibited when associated with the take of wildlife. I recommend that the Department implement a statewide prohibition on the use of trail cameras equipped with visible flash. Although these are used much less often than in the past, my experience leads me to believe that visible flash trail cameras can have a particularly acute deterrent effect on many species attempting to use a developed water during the night.

**Written Comment: April 15, 2018.** The proposed restrictions are much broader than what is needed to address the problem of trail camera abuses for elk and deer (cervid) hunts in the northern part of the State. From what I have observed and understand, these abuses only exist in the high demand and extremely competitive premium elk and deer (cervid) hunt areas in units 9, 10, 12A, 12B, 13A, and 13B. These problems do not exist elsewhere in the State and in particular do not exist for the monitoring, observing, and hunting of bighorn sheep, buffalo, antelope, turkey, bear, or mountain lion. The use of trail cameras, both standard and live-action, are being used responsibly for monitoring, observing, and hunting these other species throughout the majority of the State. The use of standard trail cameras is very valuable for responsibly taking buffalo in unit 12A and the use of live-action trail cameras is effective in selectively taking mountain lions that are threatening bighorn sheep populations. Trail cameras have proven to be very valuable in monitoring bighorn sheep populations and focusing harvest on older age class rams. As currently written, these shared Department objectives and priorities would be negatively impacted with the proposed rule and restrictions. I suggest any of the proposed trail camera restrictions (standard, live-action, and GPS) only apply to cervid wildlife in the northern part of the State. It makes little sense to have a wholesale restriction on the use of trail cameras when a more precise remedy is available. The much broader restrictions will negatively impact sportsmen across the state and create an ongoing enforcement and interpretation issue.

**Written Comment: April 15, 2018.** The proposed restrictions are an over-reaction to trail camera abuses for elk and deer hunts in the northern part of the State. These abuses tend to exist in the high demand and extremely competitive premium elk and deer hunt areas in units 9, 10, 12A, 12B, 13A, and 13B. There does not appear to be any scientific data that supports trail camera use on developed waters negatively affects wildlife. There is no data that supports camera use away from waters negatively affects wildlife. The Department underestimates the recruitment value of trail cameras for today's youth. My kids love to use trail cameras and using them around water is effective for capturing images. My kids and I like to use trail cameras in units 6A and 21 throughout the summer. I have been applying for a family of youth hunters in unit 6A for three years. They finally drew tags this year. If the proposed rule were in place, I would be forced to choose between using the cameras to educate my kids and being able to assist on a youth hunt. Both actions are very important to hunter recruitment. If a Wildlife Manager is using trail cameras on waters for a research project, they would not be allowed to hunt the units they are researching in. This seems a bit unfair to them. Who will ensure the Department is enforcing this rule on them? I support the Department's action on trail cameras as I have seen the abuses first hand. I offer a couple of alternative ideas to the current rule as written. Establish a trail camera season. Montana has a similar rule. Perhaps allow persons to use trail cameras from February 1 to July 31. Then, from August 1 to January 31 licensed hunters or guides are prohibited from using trail cameras on developed waters. Most persons want to use trail cameras in the summer months when the need for developed water is highest. The frequency of checking cameras occurs less in the summer than during the hunting seasons. Trail camera restrictions (standard, live-action, and GPS) should only apply to cervid wildlife in the northern part of the State. It makes little sense to have a wholesale restriction on the use of trail cameras. We need all the tools available to manage

predators and keep our game herds vibrant.

**Agency Response:** The Department considered establishing seasons or time-frames for when trail cameras could be used, limiting the number of trail cameras a person (or guide) may use in any given location or state-wide, requiring a person to mark their camera, prohibiting trail cameras in certain locations, piloting "no- trail camera" zones, and restricting the use of trail cameras by outfitters and guides, only. The Article 3 team determined implementing the other options considered were either too beyond the Commission's authority, too difficult for the Department to administer or enforce, or would require additional full-time employees. For these reasons the Commission chose to move forward with the current rule proposals instead of regulating the use of cameras as suggested above.

*The following comment opposes the proposed amendment prohibiting the use of satellite images for taking or aiding in the take of big game:*

**Written Comment: March 18, 2018.** My only concern with the rulemaking is the prohibition on the use of satellites images. Does this change mean it will be illegal to utilize mapping programs that have this capability? If so, this would take away our ability to prove you are on public land in some places where it is checker boarded with private land. These programs help a person get into areas; they do not help a person find animals. The provide information to keep you out of places, not a taking wildlife situation. The images on those programs are not real-time, so they will not help a person take or aid in the take of wildlife. I recently contacted the Arizona State Land Department regarding state trust lands public access; they confirmed that it is legal to "corner jump" parcels for access where the properties were checkerboard with private lands. This is an example of where a mapping program on your smartphone or GPS would be useful for access. It utilizes satellite imagery.

**Agency Response:** The Commission's intent in prohibiting the use of satellite images was to proactively address concerns about the use of satellite imagery. When developing the rule language addressing the use of satellite images, the Commission did not intend to prohibit the use of images of landscapes from mapping systems or programs to be prohibited. The Commission has clarified the rule language to clearly communicate that only images of wildlife produced or transmitted from a satellite or other device that orbits the earth is prohibited for the purpose of take or aiding in the take of wildlife and the use of mapping systems or programs is lawful.

*The following comments address multiple amendments proposed rulemaking:*

**Written Comment: March 16, 2018.** I oppose the change that would prohibit the use of trail cameras within one-fourth mile of an established water source. As a bow hunter, the use of trail cameras to effectively scout for

game is paramount to the successful harvest of an animal. Given that hunting over water sources remains legal, and that trail cameras are often “low profile” and noninvasive, it is difficult to understand the reasoning behind this proposed change and how it will support “fair chase and ethical” hunting any more than the current rules do. It would be helpful to get some clarification on the proposed change to prohibit the use of satellite imagery to aid in the taking of wildlife. As stated it appears to ban hunters from using online mapping sites to scout terrain ahead of time, or in the field, to identify possible habitat, water sources, etc. I am assuming this is not the intent of the Commission. However, clarity would be appreciated.

**Agency Response:** The Department appreciates your interest in and support of the proposed rule. As a response to the use of trail cameras, please see the Agency Response on page 54. As a response to the use of satellite imagery comment, please see the Agency Response on page 61.

**Written Comment: March 16, 2018.** The latest rulemaking is clearly aimed primarily at hunters, fur trappers, and fishermen. However, because the ambiguous use of the word "take," it could apply to wildlife nuisance trappers. Some of the comments below are crafted to reflect how the proposed changes might need further clarification or confirmation they do not apply to nuisance wildlife trappers who, in the course of business, trap and relocate animals. When a nuisance animal trapper sets a humane large trap with a pan triggered drop door, it is unreasonable and impractical to be present to monitor a trap in order to physically pull a drop door to close the trap. The use of a pole mounted camera, connected to a device that triggers the trap door and monitored remotely via internet is a preferred method of trap monitoring to ensure capture occurs in the shortest amount of time. The proposed rule is sound, but applying it to nuisance animal trappers is impractical when dealing with animals which may not come back to a particular section of their range for a few days, a week, or more. With remote monitoring, when the trap is sprung a signal is sent to the trapper so the captured animal can be attended to expeditiously. When trapping javelina, the tried and true method of enticing a javelina to enter the trap to allow for relocation, is the use of vegetables, over ripe fruit, etc. Again, the rules being considered for amendment, in all probability apply to hunters and fur trappers. However, when dealing with javelina for humane live trapping, the current regulation would not allow the use of vegetables or fruit. It would be helpful to consider some additional wording or including something like nuisance wildlife trappers of javelina are excluded. Again, note the term "taking," I consider ambiguous and currently applied too broadly.

**Agency Response:** The Commission does not intend to prohibit or restrict the use of live-action (cellular) trail cameras when used by a trapper who is monitoring a live trap. Under A.R.S. § 17-101, "take" means pursuing, shooting, hunting, fishing, trapping, killing, capturing, snaring or netting wildlife or the placing or using of any net or other device or trap in a manner that may result in the capturing or killing of wildlife. The specific activity of taking legal wildlife using live traps is the use of the trap itself, while the use of a live-action trail camera would be to monitor the trap. When trapping, a live-action trail camera would show the activity within the trap. This information would aid the trapper in responding to the wildlife being trapped, which may reduce

the period of time in which the trapped wildlife would be confined. However, the use of a live-action trail camera does not satisfy the requirement to check individual traps daily. Under A.R.S. § 17-361(B), all traps in use shall be inspected daily. Electronic devices are prone to failure and relying on any electronic device to determine whether target, or non-target, wildlife within any trap is not a sufficient method to meet the statutory mandate. In 2013, the Commission amended R12-4-303 to prohibit the use of edible or ingestible substances to attract big game for the purposes of hunting to proactively address concerns that baiting may facilitate the transmission of diseases among wildlife and placing substances in the wild that contain toxic contaminants and may also result in unnatural concentrations of wildlife. For these reasons the Commission is not inclined to allow the use of edible or ingestible substances (food bait) to trap wildlife.

**Written Comment: March 16, 2018.** I agree with and support the following proposed amendments: creating a definition for bow, crossbow, edible portions of game meat, live-action trail camera, and smart device; clarifying that a person shall not allow wildlife killed by that person to be tagged with another person's tag; prohibiting a person from using a smart device, self-guided projectile, any projectile that uses a secondary propellant, and the use of a site or range finder that projects a visible light onto an animal; clarifying a drone is an aircraft; prohibiting the use of a live-action trail camera for the purpose of taking or aiding in the take of wildlife; prohibiting the use of any trail camera within one-fourth mile of a developed water source; prohibiting the use of a satellite or other device that orbits the earth for the purpose of taking or aiding in the take of wildlife, however, the Department should provide clarification that images provided by mapping systems or programs are acceptable for scouting and hunting purposes. Regarding the trail camera prohibition on developed water sources; does a dam or berm style catchment pond fall under "developed?" I do not think it should. I oppose the following proposed amendments: allowing the use of a pneumatic weapon discharging a single projectile .25 caliber or smaller during a "limited weapon" season, pneumatic weapons are guns and should only be allowed in gun seasons accordingly muzzleloader, rimfire, shotgun, and shotgun shooting shot, but not the HAM hunt because they are not a handgun; and allowing the use of a pre-charged pneumatic weapon using arrows or bolts under a crossbow permit. This type of weapon has nothing in common with a bow or crossbow except that it shoots an arrow. The line must be drawn, it is a gun. If this is included, then why not allow a gunpowder propelled arrow gun? I am against it because it is not a bow; it has no limbs or string to propel an arrow. The air bow is not a bow of any kind; stated in the owner's manual - it is a "high powered air gun that shoots arrows." The "arrow gun" is not legal archery equipment for big game in any state. Additionally, I am concerned that people who have never hunted with a bow will pick up this weapon and think it is going to drop an animal like a rifle. It may also make road hunting and spotlighting easier for outlaws. Arguments that it may encourage youth hunter recruitment are counter to the air bow manual which states it is recommended for adult use only.

**Agency Response:** The Department appreciates your interest in and support of the proposed amendments. As a response to the use of trail cameras, please see the Agency Response on page 54. As a response to the use of satellite imagery comment, please see the Agency Response on page 61.

**Written Comment: March 20, 2018.** I commend the Commission for taking steps to limit the use of trail cameras for the purpose of taking, or aiding in the take of wildlife. I own a number of trail cameras and believe it is the right thing to do. While the advancement of technology can never truly be stopped, certain checks and balances must exist in order to preserve the concept of fair chase. This is a step in the right direction. In today's world the goal of the Commission, and hunters in general, should be the preservation of the ability to hunt at all. Once we as a community drift further away from what a reasonable person would consider fair chase, it will become difficult to do. Now, the next step is to limit the number of paid guides a tag holder can have in the field, at any given time, assisting in the taking of wildlife.

**Agency Response:** The Department appreciates your interest in and support of the proposed rule amendment prohibiting the use of trail cameras. The Commission is unable to adopt a rule limiting the number of paid assistants a tag holder may have in the field, at any given time, assisting in the taking of wildlife. Under A.R.S. § 41-1038, an agency may not adopt any new rule that would increase existing regulatory restraints or burdens on the freedom to engage in an otherwise lawful business or occupation unless the rule is either a component of a comprehensive effort to reduce regulatory restraints or burdens, or is necessary to implement statutes or required by a final court order or decision.

**Written Comment: March 20, 2018.** I have read the proposed rule changes and I did not see any mention of the water hole camping restriction. I believe if the wording "from the only reasonably available water" was removed, it would be much easier to enforce. As it stands, I could camp on a water source if another was "reasonably available." Then, if everyone else did too, who is in violation or who has to move? Just simply make it illegal to camp within one-fourth mile of any water period. Lastly, the arrow shooting air rifle does not belong anywhere near an archery season. If a CHAMP hunter needs one, let it be used in a CHAMP hunt where restrictions have already been loosened so they can participate in this great activity.

**Agency Response:** The prohibition on camping within one-fourth mile of a natural or man-made watering facility is governed by statute; A.R.S. § 17-308. A legislative amendment is required in order to remove "from the only reasonably available water." As a response to allowing a Crossbow Permit holder to use a pre-charged pneumatic weapon using arrows or bolts during an archery-only hunt comment, please see the Agency Response on page 26.

**Written Comment: March 23, 2018.** I would like to share with you my reasons to control the use of trail cameras based on my experiences and use of cameras and how they affect mule deer on or near water holes. I

have personally guided two of the Super Raffle tag holders, so again I am knowledgeable of the use of trail cameras to locate huge bucks. I know of huge trophy bucks that only visit watering facilities during night time; hours that would not be exposed to a hunter's knowledge if it were not for trail cameras. I have witnessed wildlife move from one water hole to another and then to another in circular or triangular patterns making them easier to locate. I have witnessed prospective tag holders bring trail cameras to the strip as early as four months before the season opener to install cameras and then return one or two weeks prior to their hunt. These hunters also leave their cameras setup during the season so they can check them each morning to see if the larger bucks visited during the night. This may be considered unfair chase considering this routine gives the hunter an unfair advantage of knowing the animal may only be minutes away from the watering hole by making them more vulnerable to being easily located. In areas where cameras detect huge trophies, a regiment of guides, hunters, outfitters and glassing personnel are trampling on each other in pursuit of a camera exposed trophy animal. Is this fair? Arizona's regular season starts during the fall rut. Giant trophies are extremely vulnerable during this time and can be harvested by even the most unskilled hunters. With perfected hunting weapons, high powered binoculars, teams of spotters, side-by-side vehicles, better communication devices, an increase in the mountain lion population, and trail cameras each are compounding the problem when considering an increase in deer numbers could provide more opportunity to more hunters to harvest a mature animal. There are currently guides and outfitters on the strip who are operating as many as 250 cameras on units 13A and 13B. On March 1, 2018, I observed five trails cameras on one reservoir and metal trough combination left there by a guide/outfitter early spring of 2017. This practice causes animosity with ranchers. Is this an intrusion on their privacy? Any new rules or regulations should require land owners or lease holders to post a sign, "No cameras allowed on this water" if they object to having them there. Some stock tanks are wide open and only have water for a short period of time during the year, if at all; these should not be included on the list if possible to segregate the differences. Guides use pictures from trail cameras to entice prospective hunters to hire them. The more cameras set, the more pictures acquired, therefore the greater the opportunity to book clients. Others are selling scouting package information to hunters with pictures of deer acquired by the use of trail cameras. To suggest that trail cameras have no impact on the taking of wildlife is absurd. I feel trail cameras should be placed on trails. I do not agree with any verbiage relating to "edible substances." If edible substances are at or near watering areas, then I agree it needs to be included. Any rule adopted should state for the taking or harvest of wildlife by using "edible substances" near a blind, tree stand, or other device or means used to conceal a hunter.

**Agency Response:** The Department appreciates your interest in and support of the proposed amendments. As a response to the use of edible substances comment, please see the Agency Response on page 68.

**Written Comment: March 27, 2018.** I urge the Commission to not approve air bows for use. The weapon is not an archery device; it is a firearms launch platform. If approved, it will start the slippery slope ending up with requests to allow an arrow launched by black powder or modern propellants. Do not approve this change. The crossbow is an advanced method for use by disabled hunters. **Subsequent Written Comment: April 2, 2018.** I

recommend the use of an air bow not be allowed for anyone hunting big game. The air bow bears no relationship to archery except that it uses a specially designed arrow. It is a propellant that discharges the arrow, not a string as in all other true archery equipment. Approval of this weapon would open a Pandora's Box where the next weapon request will be for an arrow to be fired off a firearms platform that uses black powder or modern propellants. This is a slippery slope that the Commission should not go down. An example is the progression of muzzleloaders. The current inline muzzleloaders do not resemble the 'primitive weapon' they are grouped with. They are equal to modern firearms in almost all characteristics. The crossbow is an advanced archery weapon that already gives a handicapped shooter an advantage. **Subsequent Written Comment: April 2, 2018.** I just went through the proposed changes on the Department's website. As I read it the proposal is to allow for the use of the air bow, the pre-charged pneumatic device to be used in archery hunts for several big game species. This is not fair chase if considered a legal weapon for an archery season. I do not support the proposed restriction of trail cameras within one-fourth mile of developed water. What is the definition of developed water? The trail camera allows a hunter to see what was there at a given time. It does not guarantee that the hunter can take that animal. This is true in well-watered areas such as much of our elk country. The only thing a trail camera tells is that the water is within the animal's home range and that it possibly could come back again. This is an unnecessary restriction. Many folks put out trail cameras to get pictures of animals that they will never hunt. I support the proposed restriction on the use of drones. I base my comments on my 30 years of field experience and commitment to fair chase. **Subsequent Written Comment: April 3, 2018.** I support the Department's proposal to restrict the use of drones in R12-4-319. I do not support the one-fourth mile restriction on the use of trail cameras near "developed waters." Does that include dirt tanks as well as wildlife waters? What difference does it make? I do not support the inclusion of "pre-charged pneumatic weapons" in archery seasons proposed in R12-4-216 and under crossbows in R12-4-304. This does not follow with hunter ethics and will increase harvest, thus reducing permits available for hunters using traditional archery equipment and the more modern compounds.

**Agency Response:** The Department appreciates your interest in and support of the proposed amendments. As a response to allowing a Crossbow Permit holder to use a pre-charged pneumatic weapon using arrows or bolts during an archery-only hunt comment, please see the Agency Response on page 26. As a response to the use of trail cameras, please see the Agency Response on page 54.

**Written Comment: March 27, 2018.** The use of trail cameras has become an enjoyable sport. Many people enjoy looking at photos of wildlife when preparing for an upcoming hunt. Each time we download the photos, it feels like Christmas. I would much rather see their use specifically prohibited during the actual season, and possibly a little before the season, much like the use of aircraft rules. Allow their use on water during the "off" seasons. It encourages us to enjoy wildlife and spend time in the outdoors, which in turn stimulates the economy. This was addressed with a rule for hunts in urban units. That change addressed the vast majority of the concerns and conflicts. I own 40 acres of land, which I bought it in part so that I could hunt with a bow on

my own property. My right to enjoy my land will be taken away from me, without permission of my neighbors. When will the abuse of archery seasons stop? With the advent of PointGuard, I see no reason to continue to allow disabled people to use weapons that appear to be guns. If the Department wants to allow crossbows and air bows to be used in archery seasons, it should be for permanently disabled people, only. There are far too many people getting notes from doctors to “temporarily” use these weapons during archery seasons. Those people should be using PointGuard. If they have a temporary injury in a year they draw an archery hunt, they can turn-in their tag and get their points restored. They are not archery equipment; it is a rifle that shoots an arrow or bolt. I have heard by some persons who obtained a “temporary” crossbow permit that it did not expire and they continue to use the crossbow years after their injury healed. I understand “air bows” are exempt from paying the sporting excise taxes that other guns and bows are charged; they are shorting sportsmen and wildlife of needed funds. The object of allowing disabled people to use other weapons in archery-only seasons is not supposed to make it easier for them to kill the game than it is for non-disabled archers. This will increase archery hunter success and lower our allocated permits. While Pope and Young make an exception to the "holding/shooting with hands" requirement for disabled persons, their definition of bows and the exemptions they allow for disabled hunters shows that the largest bow hunting organization is opposed to the use of crossbows and air bows during archery seasons.

**Agency Response:** The Department appreciates your interest in and support of the proposed amendments. As a response to the use of trail cameras, please see the Agency Response on page 54. As a response to allowing a Crossbow Permit holder to use a pre-charged pneumatic weapon using arrows or bolts during an archery-only hunt comment, please see the Agency Response on page 26.

**Written Comment: March 27, 2018.** Do it. I hunted the Kaibab two years ago; it was a joke how many cameras were on the water sources. Great idea. What about persons flying aircraft to look for deer and elk. I had to listen to a little fixed wing aircraft going up and down the drainages. These things ruin it for the normal guy who is out there not just to harvest an animal, but for the hunt. There is no doubt that we can out-technologize the animals. The Department is the one that must control these ethics. More power to you; the real hunters are with you.

**Agency Response:** The Department appreciates your interest in and support of the proposed amendments. The use of aircraft for the purpose of scouting is addressed under R12-4-319 Use of Aircraft to Take Wildlife. A.R.S. § 17-301(B) states, “A person shall not take wildlife, except aquatic wildlife, or discharge a firearm or shoot any other device from a motor vehicle, including an automobile, aircraft, train or powerboat, or from a sailboat, boat under sail, or a floating object towed by powerboat or sailboat except as expressly permitted by the commission.” The rule was adopted to ensure consistent interpretation of and compliance with A.R.S. § 17-301(B).

**Written Comment: March 27, 2018.** As a new hunter and archer, I love hunting. Legal weapons during archery hunts and archery seasons should remain the way they are right now. I disagree with the proposed legalization of air guns during archery hunts as I feel that some small part of the “challenge” of the archery hunt would be sacrificed. Do not give in to the media and people who have no real education on mountain lion hunting. Let wildlife managers and biologists make recommendations on mountain lion hunts. If numbers are dwindling, then there should be limited lion hunts. But to limit these hunts to please a few people will intrude on the management of the lions and take away opportunities to exercise our legal right to hunt lions.

**Agency Response:** As a response to allowing a Crossbow Permit holder to use a pre-charged pneumatic weapon using arrows or bolts during an archery-only hunt comment, please see the Agency Response on page 26. The comment regarding mountain lion hunts has been forwarded to the Wildlife Management Division for consideration during the next Hunt Guidelines review cycle.

**Written Comment: March 28, 2018.** I go back to the day when it was possible for somebody to harvest a giant buck that no one knew about. The advent of cameras has taken that away. Go to any water source in almost every area where large deer or elk are found and it is likely to be surrounded by cameras. Typically, these cameras are owned by a relatively small percentage of hunters or people hired by outfitters to provide information to their clientele who have made a national pastime all about money. I agree that activity around waterholes should be reduced in general. Camping should be prohibited within one-half mile instead of one mile. Tree stands should be prohibited from being left in place overnight. I am tired of outfitters acting like they own waterholes and placing stands over every water source in an area for only one or two clients. It is time for the Department to give back the sport of hunting to dedicated sportsmen and women. Reduce the amount of unnecessary harassment of wild game near water sources. Eliminate game camera use entirely on public lands. This measure to ban cameras near water sources is a good beginning. I fully support this measure and applaud the Department's efforts to make hunting more of a national pastime and less of a money grab for outfitters and the super-rich. **Subsequent Written Comment: March 30, 2018.** Please correct my letter where I mention camping near water holes? It should read “instead of one-fourth mile” at the end of the sentence. Currently the law prohibits camping within one-fourth mile. I would like to see this increased to one-half mile. At this time, there is no biological reason to prohibit hunting over water.

**Agency Response:** The Department appreciates your interest in and support of the proposed amendments. The Department does not regulate the use of tree stands because they are not typically used to deter wildlife from using a water source. The prohibition on camping within one-fourth mile of a natural or man-made watering facility is governed by statute; A.R.S. § 17-308. A legislative amendment is required in order to change the distance requirement from one-fourth mile to one-half mile.

**Written Comment: March 28, 2018.** I am against the proposed rule change that restricts game cameras within

one-fourth mile of water. The rule is poorly written and is not enforceable. It singles out hunters who may have an interest to pursue game, but allows everyone else to use game cameras at man-made water sources. It will create confusion and increase theft as persons will assume all game cameras are illegal within a water source. The wildlife officer will have to assume everyone hunting over water is guilty if a camera is there. This will result in tickets being issued to hunters who are not guilty. **Subsequent Written Comment March 29, 2018.** I ask the Department to postpone the rulemaking. It was just stated the Department has collected five years of data by stating there should be more restrictive rules with regard to one-fourth mile prohibition on game cameras. The data should be shown as it is a public record; it should show the percentage and total numbers of those comments that are for and those against. What were the percentages over the last five years? **Subsequent Written Comment: April 3, 2018.** Thank you for the detailed response and laying the foundation of the reasons for the potential game camera ban. I agree that a majority of our sportsmen and women will follow compliance. My concern is the ban is only for individuals who place them for a specific animal and pursue them. Everyone else is legal to place cameras at man-made water sources without restrictions. I spend a lot of time setting up, following back up, and viewing all wildlife encounters through these images with my family. Since we are not pursuing an animal and only doing so as a family outing we are considered legal to do so. If in the future, one of our family members draws an elk tag, that water source would be off limits as we did view cow elk on our game camera. Now we are guilty as we are hunting a man-made water source and have used a game camera and collected historic images of an intended big game animal. This is compounded when other game cameras are placed by others on the water and within 440 yards, now I am guilty by association if I am sitting on it and am questioned by a wildlife officer. I have encountered wildlife officers many times while in the field. Every time they are professional, and friendly but they are trained to first assume we are guilty of a violation and their questions are intended to collect information. I have used a camera on a water source and have seen cow elk on the images. So, I would be issued a ticket and lose my hunting rights. For me this reality is scary. I believe most issues are with guides. Since the Department manages and collects fees from guides, ban cameras year round for them. They are profiting off the state through their clients; the fair chase concerns is real as they singling out trophy big game animals and attack them with force with many individuals until killed. I agree wholeheartedly that all electronic cameras that send an image should be outlawed. Allow game cameras to be used on man-made waters up to a specific date; such as outlined within the flying restrictions to keep consistency with the written language. I was successful without cameras and will continue to do so. I hope the Department will see the potential shortfall as the rule is written with grey areas of enforcement that could potentially cause harm to law abiding hunters.

**Agency Response:** The Department appreciates your interest in and support of the proposed amendments. As a response to the prohibition on trail cameras and enforcement of the rule please see the Agency Response on page 54. Over the last five years, the Department has only received comments requesting the Department prohibit or regulate the use of trail cameras. The comment regarding mountain lion hunts has been forwarded to the Wildlife Management Division for consideration during the next Hunt Guidelines review cycle.

**Written Comment: March 28, 2018.** The Commission proposes to amend R12-4-319 to clarify drones are considered to be aircraft and are not lawful to use for the purpose of locating or assisting in locating wildlife. I agree with the analysis and the recommendation made above. The Commission recognized the need to evaluate regulatory measures pertaining to the use of trail cameras, as they relate to the 'take of wildlife' and the Fair Chase hunting ethic, and directed the Department to evaluate current rule language as it pertains to trail cameras. The team bench marked with other states and spoke with members of industry and made recommendations to prohibit the use of trail cameras capable of sending a wireless remote signal to another electronic device and the use of any trail camera within one-fourth mile of a developed water source. Enacting the recommendation above on trail cameras is the right thing to do. The epidemic of game cameras around developed water sources is out of control.

**Agency Response:** The Department appreciates your interest in and support of the proposed amendments.

**Written Comment: March 28, 2018.** I believe Fair Chase hunting ethics are violated with the use of trail cameras that send a wireless remote signal. I support this rule amendment because of the unfair advantage a user has over the average hunter if his trail cameras are sending wireless remote signals and photos. I do not believe Fair Chase hunting ethics are violated by the use of trail cameras placed near developed water sources. I oppose this rule amendment for a few reasons: A trail camera placed over a developed water source does not capture, hold, or hinder game from using the water source. Trail cameras do not have serial numbers, certificates of ownership, or other markings which would allow for violators to be prosecuted. Trail cameras are abandoned property, usually left in the field, attached to a post or tree, and may or may not be visited again. Enforcement of this rule would be difficult. If a violator is caught placing or retrieving a camera, it would be near impossible to prove beyond a reasonable doubt that the individual was indeed the owner of the camera. The statute of limitation would be near impossible to enforce. Nonprofit organizations that provide new developed water sources should be unhindered in the act of placing trail cameras over water sources to prove the viability of the resource and should not be targeted for a rule violation if they intend to hunt the same area at a future date. I assume the Department would still use trail cameras in their research studies and it would be impossible for a sportsmen to know if they should report a trail camera violation. If there must be a ban on trail camera use, the Department must ban all trail camera usage statewide, for all hunters. I see this as an "all or nothing" rule amendment. Merely banning trail camera usage within one-fourth mile of water sources leaves too much room for obscurity and is not in the best interest of sportsmen or the Commission.

**Agency Response:** The Department appreciates your interest in and support of the proposed amendments. As a response to the prohibition on trail cameras and enforcement of the rule comments, please see the Agency Response on page 54.

**Written Comment: March 29, 2018.** The concept of "Fair Chase" is thrown around throughout the document, almost like it is a punch-line. As much as I hate new regulations, I cannot help but side with the Department on the regulation of "live-action trail cameras." I feel that including a passive camera in any discussion about "Fair Chase" is a real stretch. Images from such a device can only show that an animal was there at a particular date and time. It does not hold an animal captive and it does not almost guarantee the harvest of wildlife. Anyone who subscribes to this belief has never spent days and days checking their trail cameras. If the Department wants to regulate fair chase, look at high power rifle scopes with turrets, long range specific rifles, laser rangefinders, scent elimination sprays, audio amplifying ear pieces, etc. If the Department does not want to embrace technology, then we should all hunt with recurve bows and flintlocks. The Department's own Fair Chase ethic states, "without acquiring necessary hunting and angling skills or competency." With this in mind, I have seen 12 to 16 year-old hunters shoot game at ranges of 600 to 1,200 yards because a parent or mentor finds the game, ranges it, completes the needed ballistic solution, dials the turrets on the scope, and then gives the young hunter the rifle in a prone position and coaches them through the shot. Where is the skill obtained in this? There are even scopes with Bluetooth technology that allow the mentor to see the same image on his phone that the shooter sees through their scope. The mentor can tell the shooter when to pull the trigger; a smart device via "dad." We are allowing a very skilled veteran hunter to do everything except pull the trigger. Where is the Fair Chase in this? The recent proliferation of long range shooting has caused the demise of more big game animals in Arizona than trail cameras could ever hope to, yet the Department does not address this topic. If discovering a dozen trail cameras around a stock tank has prompted complaints from the public, deal with that in a different manner and do not create the illusion that it has anything to do with Fair Chase. The majority of trail cameras belong to outfitters who are competing for hunters. The Department should address this by regulating guides or create regulations for outfitters. By restricting trail cameras, the Department will eliminate them. Does the Department really believe this will "result in no impact to private and public businesses and state revenues?" Checking cameras is a labor of love, expensive and time consuming. I cannot tell you how many hundreds of dollars I spend on fuel, groceries, and restaurants in the course of checking cameras; multiply this by the thousand or so people who have placed cameras in the forests. The Department should be more concerned with tree stands. It is a common occurrence to find a tree stand chained to the best vantage point, year after year, never taken down. Cameras do not inhibit your ability to hunt a water hole. Someone chaining their tree stand so that you cannot use yours does. Deal with real problems and do not make rule changes that are going to be nearly impossible to prosecute. Under the proposed rule change cameras could be used within the one-fourth mile of a developed water source legally as long as they are not used in the take or aid of take of wildlife. Anyone with a camera would be able to deny using it to aid in the take of wildlife. This rule change will create a nightmare for game wardens and will certainly result in lawsuits and court challenges. As a career law enforcement officer, I can see myriad problems with trying to enforce this rule.

**Agency Response:** The Department appreciates your interest in and support of the proposed amendments. As a response to the prohibition on trail cameras comment, please see the Agency Response on page 54.

**Written Comment: April 1, 2018.** Prohibiting drones, smart weapons, trail cameras: I totally agree with the proposed changes. I am sick and tired of seeing every water tank literally covered with trail cameras.

**Agency Response:** The Department appreciates your interest in and support of the proposed amendments.

**Written Comment: April 1, 2018.** I am in favor of the change. Having hunted the Strip last year; it was chaos with guides stealing cameras. The numbers of big bucks wiped out recently are directly related to the camera epidemic. Another alternatives to consider is allowing cameras in the field until a certain time before the hunts. My main concern is definitely the number of predators on the strip Arizona has to do a better job with predator control. I did not see even one fawn in the ten days of hunting and found one large buck that had been killed by a lion. It is time to protect our deer herds for future generations.

**Agency Response:** The Department appreciates your interest in and support of the proposed amendments. As a response to the prohibition on trail cameras and enforcement of the rule please see the Agency Response on page 54. The comment regarding predator control has been forwarded to the Wildlife Management Division for consideration during the next Hunt Guidelines review cycle.

**Written Comment: April 3, 2018.** I support the proposed changes made to: R12-4-101 Edible Portions of Game Meat; R12-4-301 Definition of Aircraft; R12-4-310 Define Live-action Trail Camera; and R12-4-303 Placement of Live-action Trail Cameras: This is out of control and I question the ethical use. This practice on water is disruptive to wildlife. It presents conflicts with the general public and other hunters. Hunters should hunt. I oppose: R12-4-216 –Crossbow Permit – Pneumatic Weapon: A pneumatic weapon is not a bow. Bows should have some element of being “primitive. These hunts are meant to be more difficult by virtue of the weapon type. This weapon has an extended range and can easily be shot from a vehicle.

**Agency Response:** The Department appreciates your interest in and support of the proposed amendments. As a response to allowing a Crossbow Permit holder to use a pre-charged pneumatic weapon using arrows or bolts during an archery-only hunt comment, please see the Agency Response on page 26.

**Written Comment: April 3, 2018.** As technology has progressed, the prey has become more and more scarce or nocturnal. I do not like change, but in this case I believe some things have to return to its basic element. The use of game cameras is out of control. I counted 15 cameras on one drinker alone. They should be banned at least one-fourth mile from the drinker or water. I personally stopped putting cameras on drinkers because it was not fair to all hunters. The use of drones should be banned. No cameras. No drones.

**Agency Response:** The Department appreciates your interest in and support of the proposed amendments.

**Written Comment: April 3, 2018.** The proposed definition for “handgun” is confusing and misleading. Specifically “a firearm designed and intended to be held, gripped, and fired by one or more hands . . .” Any long gun that can be held with a single hand could meet this definition. If a person is only capable of manipulating a long gun with a single arm, does it become a handgun? Why not cite and use the relevant definition from elsewhere in federal or state law by reference? Surely the Bureau of Alcohol, Tobacco, and Firearms and/or Department of Public Safety have adequate definitions. The proposed definition for “live-action trail camera” seems inappropriate, specifically the part that restricts the transmitting of data wirelessly. Many modern devices use near-field, close proximity data transmission merely to get captured images from the device to a portable or transportable device. Examples include a Bluetooth link that permits access to the photos when within 10 meters or so. The intent appears to be restriction on a user from ‘hiding’ and monitoring a live video feed, then emerging and taking game. The mere transmittal of data wirelessly does not provide this capability, it is the application that is important. Perhaps limiting the ability to transmit over longer ranges? The concept of “live-action” is appropriate. A prohibited possessor with a deadly weapon or prohibited weapon is already committing a felony and additional charges do nothing but provide prosecutors the ability to pile on charges to intimidate defendants. I could care less about the prohibited possessors, who by definition are committing a crime. The addition of “including drones” throughout R12-4-319 and R12-4-320 is redundant and unnecessary since the definition of an aircraft includes drones.

**Agency Response:** The Department appreciates your interest in and support of the proposed amendments. The Department used a combination of the state and federal definitions to create the proposed definition. The Department agrees and has revised the definition to clarify a handgun is a firearm that is not intended to be fired from the shoulder. As a response to the use of trail cameras comment, please see the Agency Response on page 54. The Department is often asked whether a person who is a prohibited possessor may hunt using archery equipment or a muzzleloader; these are common misconceptions. The Commission is amending the rule clarify how the Department, as well as other law enforcement agencies, interpret A.R.S. §§ 13-3101 and 13-3102 as they apply to prohibited possessors.

**Written Comment: April 3, 2018.** I disagree with the trail camera regulations minus the transmission of images. How can a person with a tag fly in an area before a hunt, isn't that the same use of technology to scout a hunt? Also, I do not believe Department employees should be able to use cameras if hunters cannot; would employees be able to hunt in areas where they have placed cameras after they have seen the images on the camera? Cameras are useful tools that guarantee nothing; they give a hunter a better idea of where the game is. Cameras extend the life of my hunt by giving my husband and I more time out in the outdoors, enjoying nature. Fair chase has become the Commissioner's opinions, not scientific evidence. How do they really affect the taking of game? What is the scientific proof the Department is using? I use cameras and they have never tracked the game for me or made the shot.

**Agency Response:** As a response to the use of trail cameras comment, please see the Agency Response on page 54. The Department will continue to use cameras for the purpose of managing wildlife; however, Department employees are expected to comply with Article 3 rules when hunting.

**Written Comment: April 3, 2018.** We have lost our way and need to make hunting great again. Drones should not be available to a hunter at any time while in the field or used to scout for game. Game cameras have a negative impact on many fronts and have helped to ruin the hunting experience. They have also corrupted the outfitting industry and minimal effort is required to scout anymore, taking away from the real skill of finding game. Game cameras should only be utilized by authorized government officials. Electronics should not be allowed on any firearm or bow outside of a lighted reticle or red dot. Smart guns and scopes take away from the challenge and are not consistent with fair chase. I do not know enough about the latest air guns to comment.

**Agency Response:** The Department appreciates your interest in and support of the proposed amendments. The Department will continue to monitor and evaluate emerging and evolving technologies and practices and make recommendations to the Commission for statute or rule changes to preserve Fair Chase standards for the taking of wildlife in Arizona.

**Written Comment: April 5, 2018.** I can understand prohibiting live-action trail cameras that broadcast a photo to someone because they take the work out of hunting. Prohibiting trail cameras within one-fourth mile of a water source does not make sense to me from a biological standpoint. The person still has to remove the SD card to see what has been visiting the location and when. If there is a problem with people taking too much game then reduce the number of tags. What is next, not allowing trail cameras on game trails or fence crossings? The change allowing an air bow to be used by CHAMP hunters is a ridiculous idea. Most everyone can find a doctor who will sign a note saying they are unable to draw and shoot a bow. There is no "bow" in the air bow. I thought the intent of the archery season is to allow more people the opportunity to hunt and the primitive weapon would lower the success rates; therefore, allowing more hunter opportunity. Bow hunting is already getting too sophisticated with the new laser bow sights, bows shooting 340 plus feet per second, etc. Take a stand and limit archery seasons to bows with no electronic devices attached to the bow.

**Agency Response:** As a response to the use of trail cameras comment, please see the Agency Response on page 54. As a response to allowing a Crossbow Permit holder to use a pre-charged pneumatic weapon using arrows or bolts during an archery-only hunt comment, please see the Agency Response on page 26. The Department will continue to monitor and evaluate emerging and evolving technologies and practices and make recommendations to the Commission for statute or rule changes to preserve Fair Chase standards for the taking of wildlife in Arizona.

**Written Comment: April 5, 2018.** I may be old school but smart guns and drones should be illegal. People need to learn how to hunt and read signs; spend time scouting for themselves. Guides charge a lot of money and put out 60 to 80 cameras and some do not have to go check them physically because the camera sends images to their phone. People have become too lazy to scout for themselves.

**Agency Response:** The Department appreciates your interest in and support of the proposed amendments.

**Written Comment: April 6, 2018.** I do not support the change that prohibits the use of a trail camera within one-fourth mile of water. There are grey areas in the language that allow people to get around this rule. I have only seen one other trail camera while hunting on a developed water source in the last 15 years. This rule would negatively impact hunt areas where issues of trail camera use is not present. This might negatively affect future recruitment; my daughters love to check cameras with me and look at the photos. If this ban is approved and pictures of wildlife are harder to come by, I know my young daughters will be less likely to come with me to run cameras. I like to run trail cameras year-round, a rule like this would negatively impact hunters like myself who have never had an issue with trail cameras. I would rather see the Department outlaw all trail cameras during certain dates (i.e., start of hunting season) or segregate the units where trail cameras are an issue (e.g. unit 9 or the Strip). What if I hunt a water hole and do not know there is a camera there. How will this law be enforced? How will they know it is my camera? I would like to see the data and studies on how trail cameras have negative implications on the wildlife, otherwise, I think the Department should conduct a pilot only in those areas where there are social conflicts. As far as pneumatic weapons, I support the idea. I think this could help attract more people to hunting and for the archery and provide the potential of more ethical harvests when used within the hunters effective range. Other comments somewhat outside this scope, I would like to be able to hunt with a spear for certain species such as javelina or rabbits and blow guns for small game. I would like to use live baitfish such as minnows or shiners for fishing in Apache and Coconino counties. In regards to baitfish, I have fished many lakes and states where there are essentially no restrictions on using typical live baitfish (i.e., minnows or shad), which made me wonder why it is banned for only certain locations in Arizona.

**Agency Response:** As a response to the use of trail cameras comment, please see the Agency Response on page 54. As a response to allowing a Crossbow Permit holder to use a pre-charged pneumatic weapon using arrows or bolts during an archery-only hunt comment, please see the Agency Response on page 26. The Department will continue to monitor and evaluate emerging and evolving technologies and practices and make recommendations to the Commission for statute or rule changes to preserve Fair Chase standards for the taking of wildlife in Arizona. The use of live bait in any water body is determined by the type of fish available in Arizona waters and the current fish management objectives. A.R.S. § 17-301(D)(2) authorizes the Commission to adopt rules establishing the taking of wildlife with firearms, archery equipment, or other implements in hand as may be defined. Given the multitude of devices that are available to the sporting and hunting public, it is necessary for the Commission to establish lethal and humane methods and devices for the take of wildlife to

reduce wounding loss and ensure harvest rates do not impact hunter opportunity and the spirit of fair chase is not compromised. The Department has considered this comment and disagrees with allowing spear or atlatl as a method of take. The Department is concerned that an individual who is untrained in these methods will use them ineffectively and wound rather than kill an animal.

**Written Comment: April 9, 2018.** We support the proposed restrictions on trail cameras around water. We also support the ban on trail cameras that transmit photos. The fact is, we would like to see all cameras banned completely. We understand that the authority to do so is not currently in the law, but perhaps that is for future legislative action. Let them sit at the water hole with a manually operated camera if they want pictures. We have seen waters with no less than 10 cameras on them in 13B. The proponents argue that the cameras do not guarantee the harvest of an animal. They certainly give the user an advantage. We feel that advantage is not part of the “fair chase” doctrine; they lead to an increased harvest of the resource. A few years ago, the Commission did studies and placed emphasis on increased hunter opportunity. Things like cameras provide an unfair advantage lead to increase harvest percentages and hence to a reduction in tags issued and hence less hunter opportunity. What are the regulations in other Western states? We believe the enforcement will be difficult, but that it is very important to strictly enforce the bans. We hope the Department will remove suspected cameras whenever they are found. On the topic of full-jacketed ammunition, we remember when the ban was on all FMJ bullets. It was later changed to be less restrictive. A return to the complete ban is in order. We really wish the Commission would return to the allowance of rifles for the take of fall turkey. Finally, we support the ban on the use of the “smart” rifles. This is another example of an unfair advantage that gives the animals little chance of escape once seen.

**Agency Response:** The Department appreciates your interest in and support of the proposed amendments; as a response to the use of trail cameras comment, please see the Agency Response on page 54. The Commission is amending the rule to specify that ammunition that is not designed to expand is unlawful for the take of wildlife. This is because confusion exists because full-jacketed ammunition is readily available in sporting goods stores and the rule prohibits the use of full-jacketed ammunition "designed for military use." A person could assume the ammunition sold by a sporting goods store may be used for hunting purposes because it is readily available to the public for purchase. In 2013, the Commission amended R12-4-304 to provide only those devices and methods that have been authorized by Commission Order for the take of turkey to make the rule more concise. Prior to 2013, the rule authorized a number of devices and methods to take turkey, but, historically, the Commission by Order only permitted the take of turkey with bow and arrow, crossbow, and shotgun shooting shot due to hunter safety concerns. Crossbows are a legal method of take for deer during a general or muzzleloader season; during an archery-only season, deer may be taken with a crossbow provided the person has a valid crossbow permit.

**Written Comment: April 9, 2018.** I commend the Department and others for the work to make the entire

Article more concise and easy to understand. I support all the recommended changes. I commend the Department and others for the restrictions proposed for the use of trail cameras. I support all such restrictions and urge the Department to stay the course with this revision. If some compromise is indicated, I suggest the definition of a "season" when cameras can be deployed such as April 1-July 31. I urge the Department not to compromise on the prohibition of wireless cameras capable of sending images, etc. If a compromise occurs, I urge the Department not to allow cameras to be placed on or inside fences around waters and if a fence does not exist not within 150 feet of a drinker. As I am sure the Department is aware, implementation of this rule will require a comprehensive discussion on enforcement procedure. I strongly support the prohibition on the use of scents for angling. This problem dates back to the implementation of artificial flies only at Lee's Ferry. I am pleased to see drones have been "defined." I wonder what technology will bring next and if an abstract definition of a flying contrivance or something designed to provide visibility from above the surface of the earth should be added to the rule.

**Agency Response:** The Department appreciates your interest in and support of the proposed amendments. As a response to the use of trail cameras comment, please see the Agency Response on page 54. The Department will continue to monitor and evaluate emerging and evolving technologies and practices and make recommendations to the Commission for statute or rule changes to preserve Fair Chase standards for the taking of wildlife in Arizona.

**Written Comment: April 12, 2018.** I think electronic game cameras that send data to the user should not be allowed. I do not think it hurts anything allowing a regular game camera to be placed on water or a trail, the person has to retrieve the photos or video from those cameras. This is a hobby for some people. The Department uses cameras at waters to check for activity in areas. Leave game cameras alone.

**Agency Response:** The Department appreciates your interest in and support of the proposed amendments. As a response to the use of trail cameras comment, please see the Agency Response on page 54.

**Written Comment: April 12, 2018.** We the Board of Directors for Christian Hunters of America (CHA) oppose and support the Article 3 rulemaking as follows: Oppose: The rule is very ambiguous and unenforceable, "A person shall not use any trail camera, or images from a trail camera, for the purpose of taking or aiding in the take of wildlife within one-fourth mile (440 yards) of the outer perimeter of a developed water source." Support: "A person shall not use a live-action trail camera, or images from a live-action trail camera, for the purpose of taking or aiding in the take of wildlife, or locating wildlife for the purpose of taking or aiding in the take of wildlife." and "A person shall not use a satellite or other device that orbits the earth, or images from a satellite or other device that orbits the earth, and is equipped to produce and transmit images for the purpose of taking or aiding in the take of wildlife, or locating wildlife for the purpose of taking or aiding in the take of wildlife."

**Agency Response:** The Department appreciates your interest in and support of the proposed amendments. As a response to allowing a Crossbow Permit holder to use a pre-charged pneumatic weapon using arrows or bolts during an archery-only hunt comment, please see the Agency Response on page 26.

**Written Comment: Submitted by the same person on April 12 and 13, 2018.** Allowing pre-charged pneumatic weapons using bolts or arrows in general big game seasons and during archery seasons does not meet the standards of fair chase. These devices increase accuracy with little practice and allows a hunter who possess very little competency or skill to take an animal. If the Department decides to allow such weapons, they should be authorized during general seasons only, not archery seasons, even under special circumstances. The use of these and crossbows during an archery season gives the user an unfair advantage over archers who practice archery on a yearly basis to improve their skill level and spend countless hours learning about the wildlife they pursue. The Pope and Young club makes these types of weapons illegal for record book entry since they go against fair chase standards. By allowing such weapons during an archery season will increase questions from the public on the validity of hunting, due to the ease in harvesting animals without the need for skill or knowledge. Prohibiting the discharge of an arrow or bolt within one-quarter mile of an occupied residence without written permission is not addressing the root issue voiced by the Commission. The major issue concerns trespass onto private property without prior permission. The posting and signing of property is clearly articulated in Titles 13 and 17. The laws require landowners to lawfully post their private property. Many landowners do not adhere to the law and complain of trespass. Laws also clearly articulate trespass and what constitutes a violation. Additionally, if the property is not legally posted and the hunter is told by the landowner that they are on private property and refuse to leave, they are in violation of trespass. Over the years, proper signing within and around residential areas by the Department has eliminated many issues, along with law enforcement patrol and citations. By restricting archery hunters from pursuing legally available wildlife on public or state lands because of private property concerns will not improve hunting interest or participation as promoted by the Commission. It must be the responsibility of the landowner to properly post their property. On a yearly basis, the Department authorizes archery hunts for nuisance bears and other wildlife species. In many instances these nuisance animals are near occupied residences, but can only be hunted on public lands that border private property. Many times, wildlife is found on private inholdings due to food availability placed by the landowner. Eliminating the opportunity for archery hunters to pursue nuisance wildlife near homes will eliminate the opportunity to remove the offending animal. In these instances, the legal archer is assisting the Department in wildlife management issues caused by landowners who habituated the animal. Now the Department is tying the hands of the hunting group they are hoping will assist them and greatly reduce the need for Department personnel response. The development of the spring archery bear hunt to assist the Department with having to euthanize bears primarily due to landowners being irresponsible with food management is an example. This hunt has been very successful in limiting the number of bears that need to be trapped, removed, or destroyed, and the overall hunt has become very popular with archery hunters throughout the state. The

development of such a restrictive rule will place an unfair burden on archery hunters throughout Arizona legally pursuing big game species. Pronghorn antelope is a perfect example. Most antelope populations are in close proximity to residential areas. Preventing the discharge of an arrow within one-fourth mile will greatly reduce the area where archery hunters can legally take antelope. Arizona land status is broken up into checker boards of private, public, and state lands. Many of these are located near or within developed areas. There are tens of thousands of such areas that are relatively small parcels bounded by occupied residences, either on a yearly basis or seasonally. In many instances, the only hunting opportunity is with archery equipment, due to the minimal public safety risk and because firearms cannot be utilized because of the existing one-fourth mile law. When the Department approves Habitat Partnership Committees proposals through Big Game Special Tag Funds, one of the ranking criteria is access. If archery falls under the one-fourth mile law, many of these areas will be eliminated from hunting, therefore, greatly reducing hunter opportunity and increasing the need for law enforcement. This rule proposal places a large burden on archery hunters, does not have any effect on public safety, will most likely reduce interest and participation, reduce opportunity, reduce fair chase, and ignores the core issue of existing statutes that define legally posting private property. I support the elimination of live-action cameras for hunting purposes. They are a direct threat to fair chase, give an improper and unfair advantage in the take of wildlife, increase the questions regarding validity of hunting, and allow the user to hunt from the comfort of their home or electronic device without having to pursue wildlife through field effort. This proposed ban on the use of trail cameras around waters will have a huge impact on wildlife viewing and hunter interest on a yearly basis. The Department is making it illegal to utilize cameras at any time. Any photo taken around a water hole and then hunted at a later date can be construed to fall within the proposed definition. Many of these photos and locations are found on social media or sent out to other hunters, making this rule very difficult to enforce. Identifying wildlife on trail cameras does not mean that animal, or any other animal, will appear at the camera site when hunted. The hunting of wildlife takes a lot of skill and knowledge of animal behavior and relies heavily on atmospheric conditions. The photo of an animal does not equate to killing the animal. What it does do is give a hunter insight into what species are traveling to the site, the sex of the species, age, size, general time (day or night) and if it is legal to hunt. These are criteria that can greatly improve the management of the species. By knowing that a bear is coming to water with cubs greatly reduces the chance that the hunter will harvest a sow with cubs. It also allows the hunter the opportunity to identify and take mature males rather than breeding females. Many hunters utilize the knowledge gained through trail photos to identify specific individuals and target mature animals. Many set up trail cameras for the enjoyment of seeing wildlife. They may hunt, or become interested in hunting because of the photos they capture. Water holes allow for a large variety of wildlife to be photographed. They may not even have a camera set up at the water during their hunt, but they acquired information regarding the wildlife through previous photos. Again, this law would cause an otherwise legal hunter to be possibly cited for a game violation because of prior knowledge gained through trail cameras. If enacted, this rule will also place a burden on law enforcement since it will require many man hours of investigation and surveillance to prove in court who the owner of the camera is, and if they were using the camera or images for the purpose of taking or aiding another in the take of wildlife. The Commission should

develop rules that enhance wildlife management and does not affect fair chase or place a burden on the hunting public. The use of trail cameras is a tool that can assist in the management of wildlife and does not affect fair chase. The hunter must be knowledgeable and skilled, and make the effort to locate and place cameras in ideal locations. Yes, it is a tool that can be abused by some. That is the job of law enforcement. Locate the abusers, not make all hunters potential violators. I feel these rule changes are being considered due to complaints by a small segment of the non-hunting public, or from hunters that do not agree with their use. The Department is spending considerable effort, funds, and time in developing new hunters, retaining current hunters, and reinitiating those who quit hunting back into the sport. Burdening this process and restricting sportsmen from going afield and enjoying wildlife and limiting where wildlife can be pursued will only reduce hunter and fishermen numbers, thus revenue and support. As a 30-year retired Wildlife Manager, I have seen the role of the Wildlife Manager go from a full-time field presence to an administrator who spends most of their time in meetings, on the computer, and filling out reports. Their time in the field has been greatly reduced. Thus, the interaction between field presence and sportsmen is nearly nonexistent. Speaking with hunters and landowners, I continually hear frustration that they do not see officers in the field and do not have contact with them. The addition of rules and laws do not serve any purpose if law enforcement patrols and personnel are not in the field. The cost to the Department only increases and the funds received through sportsmen dollars decreases. Hunter opportunity is compromised, which is opposite of what the Department is trying to promote. Developing rules that restrict hunting yet ignore laws such as trespass or access will continue to erode the faith that sportsmen have for the Department.

**Agency Response:** As a response to allowing a Crossbow Permit holder to use a pre-charged pneumatic weapon using arrows or bolts during an archery-only hunt comment, please see the Agency Response on page 26. As a response to the use of trail cameras comment, please see the Agency Response on page 54.

**Written Comment: April 14, 2018.** The Arizona Chapter of Backcountry Hunters and Anglers (AZBHA) has the following comments: The popularity of drones brought quick action by the Department to discourage the use of drones for hunting and/or scouting activities. More recently the focus has been on the use of trail cameras and air bows. The proposal to ban the use of “live-action” trail cameras is a welcome addition to the regulations in the eyes of AZBHA. The additional proposal that would ban the use of any trail cameras within one-fourth mile of a developed water source is well intentioned, but may cause issues with enforcement. We understand the importance of water to wildlife in our climate and that limiting the use of trail cameras at these locations could give the animals more opportunity to move freely. The problem with this proposal is in enforcement. An officer would have to find a trail camera in a restricted area, find the owner, and then proceed to prove that an animal harvested was shown on the trail camera previously. This proposed change also seems to only address “developed waters.” If trail cameras are allowed at natural water sources, it seems to defeat the original purpose of this proposal and opens the door for ambiguity and possible undue hardship on behalf of the Department and/or the trail camera user. Emerging technologies like air bows present unique challenges to state wildlife

management agencies. It is AZBHA's position that air bows should not be classified as archery equipment regardless of the user's physical abilities. Air bows lack a system of limbs and strings consistent with standard archery features and are propelled by means that give the operator a distance advantage over all other archery equipment. We are concerned that air bows do not fall under the federal excise tax parameters set by the Pittman-Robertson Act of 1937, which provides a critical stream of revenue to state fish and wildlife management agencies generated from the sales of firearms, ammunition and archery equipment. The Wildlife Restoration Program, managed by the U.S. Fish and Wildlife Service, uses these critical conservation resources to provide grants to every state in the country to restore, conserve, manage, and enhance wild birds and mammals and their habitat. As an organization, AZBHA has consistently advocated for the ethical taking of fish and game, the principles of fair chase, the Public Trust Doctrine and the North American Model of Wildlife Conservation. We have a collective obligation to promote our sporting heritage and protect the future of our hunting traditions by engaging in thoughtful conversations that consider new technologies like air bows to ensure they are regulated appropriately by states and insular management agencies responsible for setting hunting regulations, including method of take. AZBHA maintains hunting should involve an element of skill, woodsmanship, and challenge. We must ensure the ethical pursuit of fish and game is upheld and regarded as dearly as the wild backcountry landscapes that support their habitat.

**Agency Response:** As a response to allowing a Crossbow Permit holder to use a pre-charged pneumatic weapon using arrows or bolts during an archery-only hunt comment, please see the Agency Response on page 26. As a response to the use of trail cameras comment, please see the Agency Response on page 54.

**Written Comment: April 15, 2018.** I oppose the use of wireless game cameras because they remove the fair chase from Arizona hunting and will hurt Arizona hunting in the long run. They remove the need for an individual to be present and have proven to be extremely effective for bear and lion hunts with dogs. They promote an unequal balance of hunting success regarding how deep a hunters' pockets are. Do not allow these kinds of cameras to be used in Arizona. However, trail cameras on or near water holes are important and valuable to hunters, especially for bear hunters who choose to target specific boars and avoid killing sows with cubs. As a person who utilizes multiple trail cameras, I believe there is a "sport" aspect to managing, checking, and traveling game cameras. I oppose the use of "air guns" in place of crossbows during the archery hunt. If approved, this will detract from the challenge and fair chase of Arizona archery seasons. It will complicate law enforcement efforts during archery season.

**Agency Response:** The Department appreciates your interest in and support of the proposed amendments. As a response to the use of trail cameras comment, please see the Agency Response on page 54.

*The following comments provide a comment that does not relate to specific amendments contained within the proposed rulemaking or pose any actual questions, thus the agency relies on the justification provided under*

*item 6 of the preamble to suffice for the agency response:*

**Written Comment: March 16, 2018.** I really wish the Department would come up with successful plans based on factual research to improve our wildlife management. I hate to see the Department waste taxpayer's money on a law as trivial as this. I would love to see the Department focus on things that benefit wildlife and leave politics out of it. The Department employs many wildlife biologists, why not put in the work to gather factual data before making rash decisions. I would love to see factual data that supports this change, but I do not believe it exists. I ask that the Department make decisions based on facts not intuition or politics.

**Written Comment: March 27, 2018.** It is ridiculous to think a camera will give an advantage to a hunter who is going to hunt a water hole regardless of what pictures were taken on it. I guess cameras at water holes might keep game from drinking. Hunting technology has led us to the management of the hunter and in the end is actually what game management is - isn't it?

**Written Comment: March 27, 2018.** The use of drones for hunting and scouting does not seem right. It violates the idea of fair chase in my opinion. Now, when you go elk hunting you have got a crowd of people on side-by-sides, quads, and four-by-fours driving on every forest trail road to go hunting.

**Written Comment: March 27, 2018.** I feel strongly that the trail cameras with a card that require a person to come and check it in person should be allowed. I understand and feel the cameras which send notices and pictures to a phone or computer may violate fair chase. Manually checking a camera is less invasive and less disturbing to wildlife than having hunters and guides sitting at water or other locations that wildlife frequent. Hunters using cameras for personal use should absolutely be allowed. I feel drones should have the same rules as aircraft scouting.

**Written Comment: March 28, 2018.** To add regulations to something only a few have abused is absurd. I have used trail cameras for 15 years with no incidents. I caught vandals on a watering hole with my cameras and turned the photos in. I use my cameras not only to see what game is around, but to build a photo album. Cameras give hunters a good idea of what is around and give them hopes for the hunt. I have not been lucky enough to bag what I was hunting for from that area to date. This is public land paid by our state and federal taxes; so, what is next? Remember your jobs depend on us, we purchase Department licenses. If we go to other states to hunt, the Department will surely be out of a job in a matter of time.

**Written Comment: March 28, 2018.** I see no reason to implement such a rule. I believe the use of trail cameras is of no detriment to wildlife and is merely a tool to monitor wildlife. I ask the Department to defer from any such additional rules that burden hunters who are the true conservationist.

**Written Comment: March 29, 2018.** This is a fairly childish proposal.

**Written Comment: March 30, 2018.** The Department has 100% of my support in making this responsible ruling.

**Written Comment: April 4, 2018.** What is the definition of a “live-action” trail camera?

*The following comments pose a unique question:*

**Written Comment: March 18, 2018.** I read the whole document and believe the Department has come up with necessary and common sense changes. My only questions is for trappers; the Department maintains that trappers must continue to check their traps daily, yet the rulemaking wants to allow the use of trail cameras that transmit pictures for the purpose of monitoring traps. Two things, not all can afford such cameras and this gives hunters an advantage over the game. We know that going into an area where you have installed a camera will be affected just by your presence. This can give a false sense of security for game animals in those areas vs the areas that the hunter has to go into to check cameras. Does this tilt the fair Chase scale in those hunters favor?

**Agency Response:** The Commission does not intend to prohibit or restrict the use of live-action (cellular) trail cameras when used by a trapper who is monitoring a live trap. The specific activity of taking legal wildlife using live traps is the use of the trap itself, while the use of a live-action trail camera would be to monitor the trap. When trapping, a live-action trail camera would show the activity within the trap. This information would aid the trapper in responding to the wildlife being trapped, which may reduce the period of time in which the trapped wildlife would be confined. However, the use of a live-action trail camera does not satisfy the requirement to check individual traps daily. Under A.R.S. § 17-361(B), all traps in use shall be inspected daily. Electronic devices are prone to failure and relying on any electronic device to determine whether target, or non-target, wildlife within any trap is not a sufficient method to meet the statutory mandate.

**Written Comment: March 28, 2018.** I support a change that would limit drones and feeding of wildlife. Drones can crash and cause a wildfire. Feeding wildlife harms them. Elk will not move out of the community and are starving because they are not foraging and are turning their noses up to their regular food. The yearlings are tiny and look unhealthy; they are not thriving and growing. I believe it is due to inorganic foods that were introduced to their diet and changed their DNA. Pregnancy cycles are off; they are fawning earlier and later in the year. This has to be connected to what they are eating. I see they are suffering and something needs to be done. The new yearlings do not leave because the cows are conditioned to stay and now the offspring is learning unhealthy habits and are not eating a proper diet. The herd is thin.

**Written Comment: March 28, 2018.** The proposed definitions for "rifle" and "handgun" use the phrase

"energy from an explosive." This is not accurate because smokeless powder is not an "explosive." The definition of "explosive" under A.R.S. § 13-3101 explicitly excludes "smokeless powder." The Department could adopt a more accurate definition by using the same terms already found in the definition of "firearm," which uses the phrase "explosion caused by the burning of smokeless powder, black powder, or black powder substitute." The Department's proposed definition of "handgun" should be more precise. The federal definition includes "a firearm which has a short stock and is designed to be held and fired by the use of a single hand;" 18 U.S.C. § 921(a)(29)(A). The proposed definition would apply to firearms "designed and intended to be held, gripped, and fired by one or more hands," and contains no reference to the size of the stock. Under this definition, any firearm would qualify as a "handgun" because all traditional hunting rifles are "held, gripped, and fired by one or more hands." Conversely, the Department's proposed definition of "rifle" includes a requirement that it be "intended to be fired from the shoulder." The Department should use the language in this definition when defining "handgun." The Department should define the term "handgun," as follows: "A firearm designed and intended to be held, gripped, and fired by one or both hands, and not intended to be fired from the shoulder, and that uses the energy from an explosion caused by the burning of smokeless powder, black powder, or black powder substitute in a fixed cartridge to fire a single projectile through a barrel for each single pull of the trigger." This definition is broader than the federal definition because it allows the use of heavy, contender-style or silhouette target pistols that could arguably never be held with one hand, but it would clarify that hunts allowing handguns are intended to permit the use of firearms that are not shouldered like traditional rifles.

**Written Comment: April 3, 2018.** I read the whole document and believe the Department has come up with necessary and common sense changes. My only questions relates to trappers: the Department maintains trappers must check their traps daily, yet the Department proposes to allow trail cameras that transmit pictures for monitoring traps. Two things, not all trappers can afford such cameras and this gives hunters an advantage over the game. We know that going into an area where you have installed a camera will be affected just by your presence. This can give a false sense of security for game animals in that area vs the areas that the hunter must go into to check cameras. Does this tilt the fair chase scale in those hunter's favor?

**Agency Response:** The Commission does not intend to prohibit or restrict the use of live-action (cellular) trail cameras when used by a trapper who is monitoring a live trap. The specific activity of taking legal wildlife using live traps is the use of the trap itself, while the use of a live-action trail camera would be to monitor the trap. When trapping, a live-action trail camera would show the activity within the trap. This information would aid the trapper in responding to the wildlife being trapped, which may reduce the period of time in which the trapped wildlife would be confined. However, the use of a live-action trail camera does not satisfy the requirement to check individual traps daily. Under A.R.S. § 17-361(B), all traps in use shall be inspected daily. Electronic devices are prone to failure and relying on any electronic device to determine whether target, or non-target, wildlife within any trap is not a sufficient method to meet the statutory mandate.

**Written Comment: April 6, 2018.** Over the last couple years I have been getting into the larger, high-pressure pre-charged pneumatic air rifles (.25 and larger). Currently, the rules allow for the harvest of most game animals including: deer, antelope, bear, javelina, bighorn sheep, mountain lion, and many other game animals. I would like the Commission to consider allowing elk hunting with the same rifles.

**Agency Response:** The Department agrees with the commenter and is amending R12-4-303 to allow the use of pre-charged pneumatic weapons for bison and elk. In 2013, the Commission amended the rule to allow the use of pre-charged pneumatic weapons for the take of all wildlife, except bison, elk, and turkey due to concerns that pre-charged pneumatic weapons would not create a substantial wound for the humane harvest of a bison or elk and public safety concerns when hunting turkey. Persons in the pre-charged pneumatic weapon industry indicate requiring a specific caliber of the bullet will allow the Commission to establish a lethal standard for the take of bison and elk using a pre-charged pneumatic weapon.

**Written Comment: April 9, 2018.** It pleases me to see the direction in which Department has moved with the definition of fair chase and the proposed restriction to trail camera use. The spirit of hunting is about the journey and the chase, not the end result. The abuse of trail cameras and the use of social media have diluted this spirit. While the one-fourth mile ban is a step in the right direction, I prefer a more complete ban or "blackout" period. In the event a camera is intentionally damaged or goes missing on public land, can the person who damaged or removed the camera be cited for violating any law?

*The following comments are outside the scope of this rulemaking and have been placed in the rule record for consideration by the next rule review or rulemaking team, whichever occurs first:*

**Written Comment: March 27, 2018.** For trail cameras; there are far more things that hinder game coming to water - like the roads and guys driving right up to them. The Department should make a one-mile no driving zone. My other concern is the late muzzleloader hunt in units 39, 40, 41, 42, and all other late muzzleloader or rifle hunts. The archery hunt starts in January. My brother and I used our bonus points to draw a tag only to run into bow hunters at every spot that we wanted hunt. I understand bow hunters think muzzleloaders take their kill, but at one spot near Dateland, there were 47 hunters, 41 of which were bow hunters. Maybe the Department could open the archery hunt two weeks early or something then close it for the muzzleloader hunt, and then open it back up for archery. Or, make the muzzleloader hunt an "any deer" hunt. That way, I might be able to take something home. Hunting is hunting and that is how it goes; I truly believe the Department is the best in the West Coast when it comes to hunting seasons. I just think this hunt needs a review.

**Written Comment: March 27, 2018.** Tent blinds and metal tree stands should also be temporary, removed after each use, and not left for more than one day.

**Written Comment: March 28, 2018.** The Department would be better off limiting the number of permits. I drew a tag in 1997 and again in 2015, but the hunting pressure was a lot more in 2015 and the quality was down with all of the new long range rifles and the burnt units. I think the Department would be better off limiting rifle tags in the burnt units where elk are a lot more visible and the hunt is more like a carnival shoot than a hunt. I personally do not use cameras over water holes, but after waiting 10 to 15 years to draw a tag it would be nice to be able to use every legal tool possible to have a successful hunt.

**Written Comment: March 28, 2018.** The Department should consider a "harvest year." Furbearers, cottontail rabbits, and other species have a July 1 to June 30 season. Why not have all species fall under the same year-long hunt? Then, if you harvest a deer in January, you are still eligible to hunt in the fall; if you harvest one in December, you cannot harvest another in January. I advocate for mandatory reporting of deer and javelina harvests. We have mandatory reporting for bear and mountain lion. I believe too many take advantage of being able to harvest a deer during the archery hunt, then harvest another during a general hunt. If they process the deer themselves, the Department has no clue how many deer were taken.

**Written Comment: April 3, 2018.** The computer draw is not fair because it does not allow the issuance of a tag to all persons in a group when there are not enough tags left in the draw. For example: a hunt has 100 hundred permits allotted and the draw system has already issued 99 permits. The next application to be drawn has a group of four hunters, so the application is bypassed because the draw system has already issued 99 of the 100 permits available. The draw system should be able to go over the maximum number of tags so everyone in a group application receives a tag. The current muzzleloaders in the field are not primitive weapons. They have rifled barrels and scopes and can hit an animal at 200 plus yards. I believe muzzleloaders should have to use a flint lock. They claim they only have one shot, but when I hunt with my firearm I typically use only one shot. My understanding is they are developing a quick loading device for muzzleloaders. If a hunter wants to use a muzzleloader, they should use it for the general hunt. Archery is the only weapon that comes close to being primitive. The compound and cross bow are in the gray area but have a maximum of 100 yards if your real good.

**Care2 Petition April 14, 2018:** The proposed banning of trail camera use within one-fourth mile (440) yards of a developed water source has no scientific merit to it. The Commission cannot prove that use of "non-real-time" or "non-live-action communicating" trail cameras has an adverse effect on wildlife movement, access, or use of water sources. The use of trail cameras does not interfere with the spirit of fair chase. Hunters and outdoorsman have used trail cameras for years in the effort of understanding the quantity and quality of game visiting a specific spot and the opportunity to analyze hunting prospects at that spot. A trail camera is merely a tool to provide some intelligence. Trail cameras do not guarantee success. They give a hunter a snapshot of game movement at a water source. Game movement can never be 100% patterned. A trail camera can show animal movement several days in a row. Then a hunter can sit a water site for the following day and never see a legal

animal to harvest. Wildlife movement is random. There is no merit to banning the use of non-live-action trail cameras on a water source and we request the Commission edit their proposed change to Arizona Revised Statute R12-4-303(A)(5) by removing the verbiage "A person shall not use any trail camera, or images from a trail camera, for the purpose of taking or aiding in the take of wildlife within one-fourth mile (440 yards) of the outer perimeter of a developed water source."

**Agency Response:** Please see the Agency Response on page 54.

**THE FOLLOWING COMMENTS WERE RECEIVED IN RESPONSE TO THE NOTICE OF  
SUPPLEMENTAL PROPOSED RULEMAKING, SEE 24 A.A.R. 1936 JULY 13, 2018:**

*The following comment addresses the proposed definitions for handgun, shotgun, rifle, and muzzleloader:*

**Written Comment: August 6, 2018.** This proposed rule change by the Department is a veiled attempt to dissuade sportsmen from hunting with the modern sporting pistol or any handgun equipped with an arm brace. It appears the Department believes the modern sporting pistol, with or without an arm brace (and federally legal for civilians to own, shoulder, and fire), should not be allowed in the field. The proposed rule change to define handgun is an administrative overreach and strays from the mission statement into gun control. One only needs to read the proposed definition preceding the current one to understand what is afoot. The previous proposed definition of handgun included, "not designed or intended to be shouldered" or something very close to that (I no longer have the copy to refer to). My son and I were stopped by a wildlife manager while hunting with modern sporting pistols and was informed that I would be cited for a short barrel rifle. Fortunately, I had written the Department asking if the modern sporting pistol would be legal to hunt in the Handgun, Archery, and Muzzleloader (HAM) hunt and the reply letter stated that if the firearm was lawful under federal law the Department would treat it as such. I showed the letter to the wildlife manager who made a few phone calls and decided not to cite me. Thank goodness I carried a written copy of it to provide to law enforcement. The wildlife manager asked us to both demonstrate how we held our pistols in an attempt to get my son and me to shoulder our modern sporting pistols. I felt we were being set up and did not appreciate the sneaky tactics, but of course I said nothing. I am a law abiding gun owner who took my son hunting to create quality family time and enjoy nature. This ordeal did not get worse only because I had taken the precaution of obtaining the letter from the Department before going afield. The proposed rule change defining handgun appears to be the latest way to pressure hunters from taking these increasingly popular handguns afield. People would understand and complain about what is happening if the proposed rule included an outright ban; this is "death by a thousand cuts." If there is scientific peer reviewed data that proves harvest will increase if hunters shoulder a pistol, then restructure the hunt. Hunters might not get drawn quite as often or have one less day to hunt, but I would much rather hunt less than be restricted, pestered, fined, cited, convicted, and punished by the new Department of "handgun, shotgun, rifle and muzzleloader" control. The definitions for pistols, shotguns, muzzle loaders and

rifles don't need to be changed; they already exist and are universally accepted. Imagine two sets of nonconforming rules or laws; it would be a mess that becomes more confusing and tangled over time. The Department will get more hunting and fishing participation and funds in the future if you quit taking the fun out of it through unnecessary rules.

**Agency Response:** The Commission used a combination of the state and federal definitions to create the proposed definition. The federal firearm definitions are part of the Gun Control Act of 1968; the purpose of the act is to provide support to federal, state, and local law enforcement officials in their fight against crime and violence. The act regulates the manufacture, trade, possession, transfer, record keeping, transport, and destruction of firearms, ammunition, and firearms accessories. They are enforced by state agencies and the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The state firearm definitions are part of Arizona Revised Statutes, Title 13 - Criminal Code. The purpose of the code is to maintain order, resolve disputes, protect persons and their property, provide for smooth functioning of society, and safeguard civil liberties. In a nutshell, the code protects citizens from criminals who would inflict physical harm on others or take their worldly goods. The Commission's intent in defining firearms used for the purpose of hunting is not to "control" any citizen but to regulate methods of take within specific hunting seasons; the definitions are proposed to simply facilitate consistent interpretation of Commission rules.

*The following comments address the proposed amendment that prohibits the use of any ammunition that does not expand upon impact for the take of wildlife:*

**Written Comment: July 16, 2018.** Reasons for concern regarding the proposed rule change requiring ammunition for taking wildlife to be "expanding." Are the following fixed ammunition and or projectiles considered "expanding?" Soft and hard cast lead bullets Round nose, semi wadcutter of any point type; .22 long rifle 40 grain that does not have a hollow point; Elmer Keith hard cast semi wadcutter. He took much big game; Plated bullets; Copper plated bullets of all styles; Amax 750 grain .50 BMG projectile - Aluminum tip (11,000 Lb. muzzle energy); Cast lead bullets with flat points used in lever action tube magazines; Patched Round ball for muzzleloaders; BBs; Monolithic copper or brass bullets (solids) of any point type other than hollow point; Tungsten core solids used for dangerous game and Bison; Solid brass or copper bullets with high ballistic coefficients such as marketed by Barnes Bullets; Cast lead bullets that are hollow pointed by the user to expand. Commercial reloading equipment is available to do this; Plated and drawn bullets of all bullet nose types; Full metal jacket pistol bullets drilled to hollow point; Steel shotgun pellets; Lead shotgun pellets; Bismuth shotgun pellets; Tungsten shotgun pellets; Barnes Tac LR solid brass bullet line of lathe turned monolithic without hollow points; All Barnes Banded solid bullets. These are designed and intended for hunting; and Hornady's whole line of Frontier Lead bullets which are cold swaged without hollow points. Regarding non-expanding bullets over-penetrating and endangering people's property and wildlife, please review TAB plus 1. What has become of know your target and what lies beyond? Full metal jacket military bullets have long been used

legally in some states for predator hunting to minimize pelt damage. Two holes help drain more blood over time. Pittman Robertson money is still collected from the sale of military full metal jacketed ammunition to generate revenue for wildlife conservation. If the animal is large there is opportunity for these projectiles to yaw and tumble with substantial killing power. Who is going to decide all this in the field? Does the Department's intent and reason for the proposed rule change (to prohibit full metal jacket, tracer and armor piercing military ammunition used to take wildlife) strictly restrict the new law to that alone? I do not see that written. If that is the stated purpose then leave the existing rule in place because it is clearly stated. I believe the Arizona Republic ran an article featuring a Department wildlife manager who had written more citations than any of his peers in a year's time; the article mentioned someone in second place. Since there seemed to be a suggestion of competition to be the most prolific citation writer, there could be motive for abuses. The proposed rule is less specific than the current rule. I met resistance when I asked if I could get a written statement regarding specifics of the rule so I may be assured my manner of hunting is lawful. I believe most people who hunt see it as a vehicle to commune with nature; they do not leave their house to get a citation. I would like a written "yes" or "no" from the Department before I go afield; I understand this is not an option. Perhaps there is an unstated concern that non-expanding ammunition is more prone to defeat soft body armor and that is definitely appreciated. If that is a concern it should be stated and considered in the rulemaking process.

**Oral Comment: August 14 and 20, 2018.** The commenter felt the proposed language change for jacketed bullets would negatively affect predator, furbearer, and other small game hunters. The Commenter stated, particularly for furbearer hunters, bullets that expand upon impact damage the animals pelt and that the prohibition on bullets that do not expand was an unneeded regulation and recommended the Commission exempt certain species from the restriction (proposed rule language was provided August 16, 2018). The commenter also indicated there are certain bullets available that are specific for the take of predator, furbearers, and other small game species that are currently legal that would now be restricted because of the proposed language change.

**Agency Response:** The Commission's intent in amending R12-4-303(A) is to prohibit the use of full-jacketed ammunition because the use of this type of ammunition on big game, regardless of manufacturer or designation, is not considered humane for the purpose of take of big game as it does not create 'quick kills' and may result in additional wounding losses. There is no hidden purpose or intent. The Department is often asked whether full-jacketed ammunition is lawful for the take of big game because full-jacketed ammunition sold in sporting goods stores is often labeled for use in hunting. Confusion exists because full-jacketed ammunition is readily available in sporting goods stores and the rule prohibits the use of full-jacketed ammunition "designed for *military use*." This change is proposed as a result of customer comments received by the Department.

***The following comments support the proposed amendment removing the prohibition on the use of any trail camera within one-fourth mile of a developed water source:***

**Written Comment: July 13, 2018.** As I understand the proposed rule regarding passive trail cameras being banned from a man-made water source has been dropped. I'm glad to see this as I see little use for this rule and I feel that the Department should do more to promote the use of trail cameras. It's a great non-consumptive wildlife activity that I think will spark more interest in wildlife among those of the upcoming generation. As far as a scouting tool, they are helpful but not so helpful that they violate the principle of fair chase. The most common complaints about trail camera use can be reduced by education and the Department is in a perfect position to provide this education.

**Written Comment: August 2, 2018.** I wish to thank the Department and the Commission for their effort and action at the Payson Commission meeting held on June 8, 2018 in which the Commission unanimously voted to amend the previously proposed Article 3 Rule R12-4-303 affecting the use of trail cameras. I am in complete support of the decision that was made that day and the current rule in which there are no restrictions on the use of standard trail cameras and no restrictions on the use of standard trail cameras adjacent to water holes. Unfortunately, it did not seem possible to craft a rule that would address the problems with trail cameras at water holes in some isolated units without it also having adverse impacts on other legitimate, useful, and beneficial trail camera uses throughout the state. I also would have wanted to see no restrictions on the use of live action trail cameras but understand and will respect the Commission's decision to do so.

**Agency Response:** The Department appreciates your support.

*The following comments oppose the amendment that prohibits the use of any live-action trail camera for the purpose of taking wildlife:*

**Written Comment: July 28, 2018.** Real time cameras are used by many different people. Many people just to enjoy nature and its many wonders. I would think it would be difficult to police the use of these cameras. I think they do give an added advantage in the process of hunting game. Not many people can afford the high cost of the software. Depending upon when and where we are drawn for either elk and deer we may use passive cameras. It does help but most of the time not. Realistically as a hunter you need do your due diligence to have a successful hunt. I think passive cameras are just fine, but I do not like real time cameras.

**Written Comment: July 31, 2018.** Leave the rule as it is; it means there will be less people in area than there would be and if a person chooses to hunt a waterhole this does not change that. Even with a live-action trail camera, you still need to be able to stalk the animal and get close enough for a shot. Most hunters do not have 20 cameras out in field, they have one to see if the hunting area produces good animals. I see no problem with using trail cameras. Prohibiting them on water is okay. Also suggest prohibiting the use of blinds within one-fourth mile of water.

**Written Comment: August 12, 2018.** Trail cameras should be legal in Arizona.

**Agency Response:** The Commission recognizes there is some opposition to the rule change on the use of trail cameras but hope persons regulated by the rule will understand this was brought up as a Fair Chase issue by sportsmen and women. Due to the advancement and availability of technology, the use of trail cameras to pursue and take wildlife has risen to such a level that it demanded the attention of the Fair Chase Committee. The definition of "live-action trail camera" is meant to address what current technology can and does do and what future technology may be capable of doing. The objective is to stay in front of technology by being proactive rather than reactive. For clarification, only those cameras that are capable of transmitting images to an electronic device are prohibited when used for locating and/or taking wildlife. Cameras that use a Secure Digital (SD) card will still be allowed.

*The following comments support prohibiting the use of all trail cameras for the purpose of taking wildlife:*

**Written Comment: July 30, 2018.** In reference to any proposal regarding trail cameras; the only way to level the playing field is to outlaw them. The everyday hunter does not stand a chance against the outfitters that are placing hundreds of cameras. This will force everyone to scout the hunts. I realize the big business part of hunting, but is the Department more concerned with the views of a small portion of outfitters or the average everyday hunter?

**Written Comment: July 28, 2018.** The Commission in a 5-0 vote agreed to prohibit live-action trail cameras, but allow all other cameras on water holes. I think the Commission had a chance to really benefit wildlife and blew it. I do not know if this decision was made to appease the hunters who do not have the time, skill, or desire to scout on their own or to not upset the trail camera manufacturers. I would like to know why the Commission did not make this decision. The following are some reasons why I think the Commission made a bad decision for wildlife and hunters: How can you tell if a camera is a live-action trail camera? I am sure some people will abide by the rule, but many will not. How will the Department enforce this? By allowing regular trail cameras at water, the wildlife is still being monitored 24 hours a day - what time they come and go, which direction they come in from, and if the water is being used or not. I know they have to be manually checked, but that just means someone has to go to the water every day or two. Guides have become so numerous, they have so many cameras, and they can hire someone to check their cameras. It is really bothersome to come up to a water hole to check for signs and see two, three, or more cameras staring at me. Why won't the Commission give wildlife a break? Water is critical need for wildlife in Arizona, especially in a draught - they have to come to the water to drink. I think the Commission missed a great opportunity to help wildlife in this State and their ruling to allow trail cameras on water gives hunters an unfair advantage over wildlife. Let them put their cameras anywhere else, just not on water.

**Written Comment: July 31, 2018.** No one in this state, other than people who make a living off of our big game animals, want to see the Department issue hunt tags for raffles and auctions. It is hard to believe that a Commissioner said no to any type of funding from licenses or fees. A simple low cost habitat stamp for \$5 a year would raise far more money than "Conserve and Protect" will generate. If the Department surveyed Arizona hunters and asked if they favor issuing tags for fundraising or a habitat stamp, I bet 70% of those surveyed would vote for the stamp. The Department is letting for profit people influence game management too much. Nevada just outlawed trail cameras during the hunts and the Commission just allowed this to continue. You know full well outfitters place hundreds of trail cameras so they know the size and habits of any decent elk or deer in the unit; that is not fair chase. Now, the Sportsmen for Wildlife group is leading Conserve and Protect Arizona and they are in it for the tags. Please stick to allowing biologists to manage our animals and keep the outfitters out of the advisory element.

**Written Comment: August 6, 2018.** I am a licensed guide in Arizona. I feel that the use of trail cameras in such a dry state as Arizona is not fair to the wildlife. The use of trail cameras has increased a tremendous amount in the few years that I have been hunting. Technology without limitations will certainly have a negative impact on Arizona wildlife populations. The regulation of trail camera use is like regulation of the use of aircraft for hunting. Please give our big game animals a fighting chance and keep hunting fair chase.

**Written Comment: August 6, 2018.** The Commission recognized there is a problem with the use of trail cameras. The Commission said they bench marked with other states and spoke with members of the industry and only chose to prohibit the use of wireless remote devices. This is a good start but, only a small part of the camera problem. I would like to know what states and industry they chose to listen to. I believe they left out the voice of the true Arizona sportsman. I have enjoyed the many wonderful opportunities this state has to offer and I have seen many negative things come from the use of trail cameras. It is a shame to see our wildlife commercialized by big outfitters using their pictures to make "hit lists." The outfitters are fighting very hard against regulating trail cameras because this how they sell Arizona's wildlife. It is not ethical. Trail cameras are put on water where animals have no choice but to come drink. This is harassment to the wildlife having multiple cameras flashing, making noise, and excessive human foot traffic to regularly check cameras. This happens all year, even when there are active hunters sitting on the water. Again this is not ethical. Trail cameras have put hunters against hunters. Trail cameras make many sportsmen like me uncomfortable; no one likes to have their picture taken while scouting, hunting, or enjoying the outdoors. After a recent scouting trip, I witnessed cameras set up on the roads to capture the vehicles going to game waters to see who and when they were there. One water had 12 cameras on it. I visited three of the Department's drinkers, and counted 27 cameras between them. This is harassment of the animals and other hunters. I would like to point out Babbitt Ranches and the Big Bo Ranch have placed restrictions of the use of trail cameras on their land, because of hunter confrontations, harassment to their livestock, and the increased human activity around water. I understand that some Sportsman

use trail cameras in a "good" way. But, the use of trail cameras has gotten out of hand. They need to be regulated. Nevada addressed this issue by implementing a season on the use of trail cameras. The general public perception of hunting is fragile. If they were made aware of outfitters selling pictures of our trophy animals, creating "hit lists", harassing the wildlife, and other hunters turning hunting into commercialized money motivated, and ego driven taking of wildlife.

**Agency Response:** After receiving significant opposition to the proposed amendment from persons regulated by the rule, the Commission chose to remove the following language from R12-4-303(A)(5), "Within one-fourth mile (440 yards) of the outer perimeter of a developed water source, a person shall not use any trail camera, or images from a trail camera, for the purpose of taking or aiding in the take of wildlife." Because the proposed prohibition is being removed, the definition of "developed water source" was deemed unnecessary and was removed from R12-4-301.

***The following comments support prohibiting the use of any trail camera near a water source:***

**Written Comment: August 6, 2018.** My wife and I own and operate a 55,000-acre cattle ranch in Arizona. We are writing in support of the ban of trail cameras on developed water. Nearly all the permanent water on our ranch has been developed and maintained by us and is located, mostly, on our private land. Currently, we allow hunters to access our private land to hunt and scout, but trail camera use has increased dramatically in recent years. Much of the activity associated with trail cameras occurs during the most critical summer months when our cattle and the wildlife are extremely dependent on permanent water sources. Hunters who are checking their cameras often drive right up to the water trough, scaring our cattle away. Additional stress during this difficult time likely has a negative impact on the health of our herd along with wildlife populations. We like hunters and want to keep our lands open to hunting, but if this trend continues to increase and negatively affects our livestock operation, we might have to make changes. We have many friends in the ranching business who have similar concerns. A camera ban on developed waters would not affect anyone's ability to hunt and would be a big plus for hunter/landowner relations.

**Written Comment: August 6, 2018.** I own and operate a guide business in Arizona, and I am writing in support of a complete ban of trail cameras within one-fourth mile of developed waters in Arizona. With some shame, we admit to using trail cameras in our operation because it is very difficult to be competitive without them. I do not believe it is fair to the wildlife to use them on water in such a dry state. In many of Arizona's big game units, nearly all water sources are man-made and susceptible to complete coverage with trail cameras. To survive, wildlife has no choice but to be regularly monitored. With all the other advancements in hunting technology, and constant surveillance at a location that wildlife cannot possibly avoid, I cannot see how any reasonable person can think this is "fair chase". If a buck or bull gets big enough, he will be very well known, and it is only a matter of time before he is killed. If these top specimens are never allowed to live out their lives,

I think that it will eventually limit the genetic potential in Arizona's wildlife. I also feel that trail cameras are contributing to young hunters' lack of traditional hunting skills, hard work, and ethics. If this generation of hunters is taught to be reliant on technology and that it should have no limitations, they will likely feel the same about further technological advancements that are sure to come. I have been involved in several "governor's tag" hunts and I completely support the program, as the conservation funding it provides at such a small cost to the State's wildlife is unmatched. That said, the groups that are guiding these hunts are without a doubt the biggest users, and often the biggest abusers, of trail cameras. The high monetary value and extreme competition for the biggest animals tends to bring out the worst in people. Banning the use of trail cameras for a certain portion of the year will likely only play into their favor. A yearlong ban is the only reasonable and enforceable solution. I have a couple of stories of events that I was personally involved in within the last year that might give you an idea of how bad things are getting. I helped my son on a 13B deer hunt a few years ago and it was an incredible experience. It is a big unit with an amazing deer herd and low hunter densities. Fast forward to 2018 and I am helping a friend with the same hunt. There are a great many trail cameras on every water and the hunter traffic in and out of these waters is unbelievable, day and night. These hunters are obviously largely basing their hunt on the constant monitoring of their cameras at water holes. My friend's cameras were stolen during this hunt, and another hunter we know also had cameras stolen. The evening before the opening day, we glassed up a big buck that my friend wanted to hunt. We knew that the buck was well known at the water holes in the area, but we decided it would be worth giving it a try. Knowing there would likely be others hunting this buck, we went in extra early. There were two prominent hills in the area and I set up on one in the dark. We were parked near the end of a long, rough, dead end road and before daylight, nine other vehicles had parked near ours. I had a headlamp on and they all knew I was there, yet seven other people in three groups joined me on top of this small hill and set up to glass before the sun came up. Everyone was friendly and there were no problems, but I doubt if any of us considered it a quality experience. I have no doubt that without the use of trail cameras, these hunters would have been scattered over a large area. On another morning, I climbed a different hill without knowing another hunter was present and he met me with his rifle in his hands and told me that he was there first and I needed to go somewhere else. I left without incident, but I have no doubt that the continued use of trail cameras and subsequent concentration of hunters will lead to dangerous altercations. This next story took place in June and July 2018, I am going to give the people involved fictitious names: Late in 2017, one of my trail cameras that I placed on a water development photographed a giant buck. There were only a couple of other cameras on the water, but I knew that would change as soon as they looked at their photographs. Fast forward to early June 2018, there are now many cameras at this water hole. I got a call from Randy, who told me that all the cameras placed on that water development were vandalized and that he had placed two new cameras there. A couple of weeks later, John called to tell me that all of the cameras at this water were stolen, including mine and his, except for the two that Randy had placed there. A week later, Brent called to tell me he had two cameras at the same water and there were pictures of Tom, with a battery powered steel grinder, cutting the locks and cables and stealing all the other cameras. I have no doubt that Tom's decision to steal the cameras had something to do with the trophy buck that was using this water source. I hope the Commission can see that

the problems with trail cameras on developed water sources far outweigh the benefits. Their use continues to increase at a rapid pace, and so will the problems.

**Agency Response:** After receiving significant opposition to the proposed amendment from persons regulated by the rule, the Commission chose to remove the following language from R12-4-303(A)(5), "Within one-fourth mile (440 yards) of the outer perimeter of a developed water source, a person shall not use any trail camera, or images from a trail camera, for the purpose of taking or aiding in the take of wildlife." Because the proposed prohibition is being removed, the definition of "developed water source" was deemed unnecessary and was removed from R12-4-301.

*The following comments propose regulating the use of trail cameras in some manner:*

**Written Comment: July 8, 2017:** I am a lifetime resident and hunter of Arizona and I am very pleased the Department is addressing the abuse of game cameras. It has become completely out of control in certain units with the number of cameras on water sources. I believe this would be a step in the right direction, but I would rather see them banned completely, or put a season on them such as February 1st to August 1st when they can be used in the field because you are going to run into enforcement issues. I know your agency is going to have a lot opposition with the game cameras but it has to be done. The hunting technology has come so far that you have to give some trophy animals a chance to survive and I believe restricting cameras will do that. This will make people have to physically scout again and give our wildlife a well needed break from 24/7, 365 days a year surveillance. Think about the majority of hunters, myself included that have long range guns, bows, range finders and big optics how much more of an advantage do we need? I would like to see more wins for wildlife in Arizona. I feel like the fight is no longer for the wildlife in our state, it's more about the money and the outfitters. This is not going to be an easy decision for your department because the commercial hunting in Arizona has become a big money business and a bunch of the large outfitters are running thousands of cameras. Make people hunt again. I also am very amazed that the archery deer hunts have not gone to a draw. We are the only state in the U.S. that offers an over the counter tag during the peak of the rut for a month long. I believe making the archery hunts a draw or disbanding the January hunt completely, or at least shortening the season would greatly benefit the deer in Arizona. If you still have to have over the counter tags make it for youth 18 and under. I know this would be a big money issue, but it's time to fight for the wildlife and not money. Between the big money, Social Media, and people basically selling animals on the internet the future of hunting looks very sad. I hope you will take the time to read this and discuss these issues. Please bring back the respect for wildlife and the real meaning of hunting. Don't let social media, outfitters, and money ruin it.

**Written Comment: July 16, 2018.** I support the rule as amended by the Commission in June, 2018 to prohibit the use of trail cameras that have the ability to transmit photos or other information; to include all methods of transmission including uploading to satellites or cell phones. I am disappointed a compromise was not

considered to establish a trail camera "season" so as to prohibit their use just before and during hunting seasons. I have witnessed a number of technological advances that have lessened the hunting experience. I fear, if these trends continue along with the trophy infatuation, hunting as I have known it will cease to exist. Technology and commercialization are no friends of hunters or the activity of hunting.

**Written Comment: July 18, 2018.** I wrote a letter prior to the last meeting; after listening to the web casts and reading as many responses as I could, I still believe that the use of trail cameras should be eliminated from water, especially during hunting seasons. I do not believe the current use of cameras is ethically defensible. Eliminate the use of cameras on water during any hunting season. I have included an overview of Nevada's trail camera regulations, which I believe is very succinct. *"The Nevada Department of Wildlife wants to ensure that all outdoor enthusiasts are aware of the new seasonal restrictions on the use of trail cameras. Since 2010, trail cameras have been a topic of discussion in Nevada. The regulation was discussed in dozens of open meetings, including County Advisory Boards to Manage Wildlife, the Nevada Board of Wildlife Commission, and the Legislative Commission. The use of trail cameras, the technology associated with them, and the issues surrounding the use of them have all continued to escalate. Proponents of the regulation raised several significant issues of concern including the growing commercialization of animal location data. New internet businesses have begun buying and selling GPS location data of animals captured on trail cameras. Also, saturating all or most available water sources with trail cameras in a hunt unit not only disrupts the animals ability to obtain water as camera owners come and go from waters that have as many as 25 or more cameras, but also creates hunter congestion and hunter competition issues. The accessibility to our public lands combined with our wildlife's dependence on our extremely limited water sources make for some real challenges for both wildlife and outdoor enthusiasts. Proponents of the regulation were quick to point out that whether enhanced, protected, or human created water sources (guzzlers), the waters' primary purpose is to assist in herd health and herd growth, not for placement of a technological device at an animal concentration site that potentially makes it easier to kill trophy animals. The new trail camera regulation states that a person shall not place, maintain, or use a trail camera or similar device on public land, or private land without permission from the land owner, from August 1 to December 31 of each year, or if the camera is capable of transmitting the images or video, it shall not be used from July 1 to December 31. The regulation does provide some limited exemptions for livestock monitoring, research, and other miscellaneous uses. NDOW recognizes that there are wholesome and legitimate uses of trail cameras, and unfortunately the use of cameras have been exploited far beyond most sportsmen's definition of reasonable. If you come across a trail camera on public land from August 1 to December 31, NDOW is asking that you leave the camera alone, and consider calling an NDOW office to report its location."*

**Written Comment: July 18, 2018.** I have lived in Arizona for 37 years and have hunted or at least put in for the draw every year that I have lived here. I have seen many changes to the hunting industry in that time period, some good some not so good. I do not support the use of trail cameras in Arizona for a number of reasons. It

seems that every water source that I go to during a hunting season has multiple cameras either nailed/screwed and chained to the trees surrounding the water source. The limbs of the trees are often cut to allow the camera to get a wider field to view. I would assume that cutting live trees is not be allowed in Arizona without a special permit. Cameras at water sources greatly increases the amount of foot/truck traffic to the water sources which often scares the animals away. The animals can't water or feed normally. Pictures of game can now be sent to a mobile devices which give that person an unfair advantage of other hunters. Where's the sport in knowing when and where the animals will be? There's a reason that you don't allow hunters to fly over areas during hunting seasons. I feel the use of trail cameras is the same thing as using airplanes to find game! I have attached the changes that the Nevada Game and Fish have just adopted (please see italicized text above). I am in support of those changes and would like to see them adopted in Arizona.

**Written Comment: July 20, 2018.** Please consider not allowing the use of trail cameras at least one week before or at any time during hunting season. In my opinion it gives the hunter an unfair advantage over the animal and is contrary the rules of fair chase.

**Written Comment: July 28, 2018.** I have been an Arizona resident for 60 years and have hunted Arizona for 55 years. I think the live feed cameras should definitely be banned along with those that allow you to check you camera photos from your phone/computer. I also agree that there should be a one-fourth mile rule banning against cameras around man-made water sources, just like camping. I also believe the should be a five camera limit per individual or licensed guiding operation, it is a pretty sad day when it is nearly impossible for a wild big game animal to live his life without having an extensive internet audience following his every move. A true monster does not stand a chance come hunting season, especially with the high dollar guiding operations, their employees, and their paid "scouting associates."

**Written Comment: August 1, 2018.** I have hunted and put in for the draw for the past 27 years and have never used a trail camera. I have seen the changes that trail cameras have brought, they are mostly negative changes. I do not support the use of trail cameras during hunting season for the following reasons: The impact the users have on cutting down trees or limbs to mount cameras and get better shots is an issue. The driving of stakes into the ground at drinkers causing leaks and water to be wasted and not there for the animals. The traffic at 3:00 am of people and scouts driving all over a unit checking cameras to see where an animal hit, which drives animals off the water before they have rehydrated fully is unhealthy for the animals. Once an animal is seen on camera they then call their hunter to have him come to that area. The use of cameras is comparable to having an alarm company having 24/7 monitoring of your home. This creates a situation for the animals that is not fair chase. Outfitters and other hunters are now putting pics and GPS coordinates up for sale. It is common that outfitters on the strip or Unit 9 are running close to 200 cameras each this is just one unit, this does not allow for a scenario that is fair chase to the animals. Other states such as Nevada have also recognized this issue and made changes to eliminate them during hunting season, I think that this is a very fair change. People can use cameras

up to a certain date, but once hunting starts they must use actually hunting skills rather than monitoring skills to harvest an animal. These are just a few of the reasons I am against the use trail cameras during any hunting season. I have also included the rule changes made by Nevada for reference (please see italicized text above).

**Written Comment: August 10, 2018.** It is beyond me how the Commission could consider allowing the use of trail cameras to aid in the taking of animals in Arizona, especially during an active season, and a reasonable period before such season. The hunting regulations are full of prohibitions against various illegal methods of aiding or assisting in the taking of wildlife including: motor vehicles of all types, lures and other attractants, edible and ingestible substances, aircraft, powerboats, sailboats, spotlights, and dogs in certain cases. If all of these things (and more) are considered illegal and presumably unfair methods of taking game, how could the Commission allowing trail cameras at night (or daytime) at water sources, or otherwise, before and during an actual season?

**Written Comment: August 13, 2018.** The use of trail cameras is getting out of hand. While scouting for elk this year, I drove up to a tank that had 13 cameras on the drinker and two on the road to catch the trucks driving down the road. There is no privacy in the woods any more. My wife and kids got out of the truck to go to the bathroom and there was a camera mounted on a tree on the road going into the tank Trail cameras are being used for commercial use more than anything else. A person cannot sell their game meat after having it butchered. What is the difference? There is none; trail cameras need to go away and people need to go back to the old way of scouting and looking for animals. My daughter and I ran into numerous trail cameras that were left out during hunting seasons for both deer and elk. Trail cameras should not be used during any hunt; they should be taken down before any big game hunt. Trail cameras are being left up year around that is ridiculous. The Commission needs to implement the same rule that Nevada just passed (please see italicized text above). This would be a fair; the only people having problems with the previous trail camera ruling are the outfitters because they are commercializing the use of trail cameras. They are relying on the trail cameras to do the work for them; the sportsmanship has been taken out of hunting.

**Agency Response:** After receiving significant opposition to the proposed amendment from persons regulated by the rule, the Commission chose to prohibit the use of live-action trail cameras for the taking or aiding in the take of wildlife or locating wildlife for the purpose of taking or aiding in the take of wildlife.

***The following comment pertained to the Notice of Proposed Rulemaking, see 24 A.A.R. 529, March 16, 2018:***

**Written Comment: August 2, 2018.** I read the proposed changes and most sounds fine and justifiable. However, this proposal, “A person shall not use any trail camera, or images from a trail camera, for the purpose of taking or aiding in the take of wildlife within one-fourth mile (440 yards) of the outer perimeter of a developed water source.” I do not think it is a necessary rule. It does not mention anything about a live-action

camera or anything that indicates an animal is there right now (and sounds like tree hugger talk). To see what animals may be using the water source and what may be available to hunters should be fine and it is extremely entertaining to see what animals use a water source. I will be very disappointed if this change is approved. The magazines I read say that Arizona bowhunters have a 7-8% success rate; this is extremely low and anything that gives us a slightly better chance should be okay. There are still a ton of things that need to go just right for a bowhunter to be successful. Do not allow this change to go into effect, it will be so disappointing.

**Agency Response:** It appears the person is commenting on an earlier version of the rule that was included in the Notice of Proposed Rulemaking, see 24 A.A.R. 529, March 16, 2018. The person was provided with a copy of the Notice of Supplemental Proposed Rulemaking as approved by the Commission at the June 2018 meeting as published in the Arizona Administrative Register on July 13, 2018 and was advised the Commission's rulemaking to which his comment pertained to is on begins on page 1936 (actual page, 40th), the justification for the trail camera prohibition is in the third paragraph from the bottom on page 1939 (actual page, 43rd), and the proposed rule language is on page 1954 (actual page, 58th) under subsection (A)(4).

**THE FOLLOWING COMMENTS WERE RECEIVED IN RESPONSE TO THE NOTICE OF  
SUPPLEMENTAL PROPOSED RULEMAKING, SEE 24 A.A.R. 2910 OCTOBER 19, 2018:**

**Written Comment: November 2, 2018.** In my opinion, the water source is the most vital part of survival for all animals in the wild setting. Animals that may not be the target of the intended scouting suffer from the frequent visits by hunters checking their camera or set blinds, etc., because of the strain placed on the animals that use the water. Some say cameras do not violate fair chase, but they allow a person to be at home eating supper, watching their favorite hunting channel, and then getting a good night sleep while their camera is working for them 24/7. How can this be fair chase? The law throughout Arizona states you cannot leave equipment or property unattended for certain amounts of time or it becomes abandoned and subject to confiscation. If the Department is not discouraging this illegal practice then it is encouraging it. The next move will be to ban the use of trail cameras statewide or put into effect laws that require checking or moving a camera within 24 hours of placement. Some people will say a trail camera never killed an animal, is that fair chase? An airplane never killed an animal, is that fair chase? If the trail camera is not wisely managed, then it may become banned completely from use statewide; it is a case of give a little or take a lot.

**Agency Response:** As a response to the use of trail cameras comment, please see the Agency Response on page 54. Under A.R.S. § 37-503(D), when mechanical equipment bearing a serial number or registration number (trail camera) is deemed "abandoned" on State land, the agency that confiscates the property is required to take all reasonable efforts to identify any lienholder of record, provide written notice to any identified lienholder of record and refrain from disposal of the property until thirty days after the date of the notice. This means the Department would be required to establish and maintain a system for storing and disposing of any

confiscated property. The Department's principle operational revenue comes from the sale of hunting and fishing licenses, hunt permit-tags, stamps, and matching funds from federal excise taxes hunters and anglers pay on guns, ammunition, fishing tackle, motorboat fuels, and related equipment and Department responsibilities continue to increase or expand. The Commission and the Department have made numerous budget adjustments to address rising costs and flat revenue. Some of these budget adjustments included keeping positions vacant and making cuts to program budgets to address rising costs. At this time and under these circumstances, the Department chooses not to expend valuable resources on programs and processes that do not meet the Commission and Department's visions and goals.

**12. All agency's 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 reason why a general permit is not used:**

For R12-4-307, the rule complies with A.R.S. § 41-1037. The trapping license and bobcat seal described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

For R12-4-309, the rule complies with A.R.S. § 41-1037. The authorization described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

For R12-4-310, the rule complies with A.R.S. § 41-1037. The permits described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

**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:**

Except for the rules listed below, federal law is not directly applicable to the subject of the rules. The rules are based on state law.

For R12-4-303 and R12-4-304, Federal regulation 50 C.F.R. 20.21 is applicable to the subject of the rule. 50 C.F.R. 20.21 establishes general requirements, exceptions, and specific provisions for migratory bird hunting. The Commission has determined the rule is not more stringent than the corresponding federal law.

For R12-4-319, Federal regulation 50 C.F.R. 19 is applicable to the subject of the rule. The Commission has determined the rule is not more stringent than the corresponding federal law. 50 C.F.R. 19 establishes general prohibitions and exceptions for the use of aircraft for the taking of wildlife, requirements for the contents and filing of annual reports by the States regarding permits issued for such shooting or harassing, and regulations necessary for effective enforcement of the Fish and Wildlife Act of 1956 as amended. The Commission has determined the rule is not more stringent than the corresponding 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:**

The agency has not received an analysis that compares the rule's impact of competitiveness of business in this state to the impact on business in other states.

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

Under R12-4-101, C.F.R. 17.11, revised October 1, 2013.

Under R12-4-101, 50 C.F.R. 10.13 revised October 1, 2014.

Under R12-4-303 and R12-4-304, 50 C.F.R. 20.21, revised October 1, 2015.

**14. Whether the rule previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-4-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

The rule was not previously made, amended, or repealed as an emergency rule.

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

**TITLE 12. NATURAL RESOURCES**  
**CHAPTER 4. GAME AND FISH COMMISSION**  
**ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS**

Section

R12-4-101. Definitions

**ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS**

Section

R12-4-216. Crossbow Permit

**ARTICLE 3. TAKING AND HANDLING OF WILDLIFE**

Section

R12-4-301. Definitions

R12-4-302. Use of Tags

R12-4-303. Unlawful Devices, Methods, and Ammunition

R12-4-304. Lawful Methods for Taking Wild Mammals, Birds, and Reptiles

R12-4-305. Possessing, Transporting, Importing, Exporting, and Selling Carcasses or Parts of Wildlife

R12-4-306. Buffalo Hunt Requirements

R12-4-307. Trapping Regulations, Licensing; Methods; Tagging of Bobcat Pelts

R12-4-308. Wildlife Inspections, Check Stations, and Roadblocks

R12-4-309. Authorization for Use of Drugs on Wildlife

R12-4-310. Fishing Permits

R12-4-311. Exemptions from Requirement to Possess an Arizona Fishing License or Hunting License While Taking Wildlife

R12-4-313. Lawful Methods of ~~Taking~~ Take and Seasons for Aquatic Wildlife

~~R12-4-314. Possession, Transportation, or Importation of Aquatic Wildlife~~

~~R12-4-315. Possession of Live Fish; Unattended Live Boxes and Stringers~~ Repeal

~~R12-4-316. Possession, Transportation, or Importation of Live Baitfish, Crayfish, or Waterdogs~~ Repeal

~~R12-4-317. Seasons for Lawfully Taking Fish, Mollusks, Crustaceans, Amphibians, and Aquatic Reptiles~~  
Repeal

R12-4-318. Seasons for Lawfully Taking Wild Mammals, Birds, and Reptiles

R12-4-319. Use of Aircraft to Take Wildlife

R12-4-320. Harassment of Wildlife

R12-4-321. Restrictions for Taking Wildlife in City, County, or Town Parks and Preserves

R12-4-322. Pickup and Possession of Wildlife Carcasses or Parts

**ARTICLE 4. LIVE WILDLIFE**

Section

R12-4-401. Live Wildlife Definitions

**TITLE 12. NATURAL RESOURCES**  
**CHAPTER 4. GAME AND FISH COMMISSION**  
**ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS**

**R12-4-101. Definitions**

A. In addition to the definitions provided under A.R.S. § 17-101, R12-4-301, R12-4-401, and R12-4-501, the following definitions apply to this Chapter, unless otherwise specified:

"Bobcat seal" means the tag a person is required to attach to the raw pelt or unskinned carcass of any bobcat taken by trapping in Arizona or exported out of Arizona regardless of the method of take.

"Bonus point" means a credit that authorizes the Department to issue an applicant an additional computer-generated random number.

"Bow" means a long bow, flat bow, recurve bow, or compound bow of which the bowstring is drawn and held under tension entirely by the physical power of the shooter through all points of the draw cycle until the shooter purposely acts to release the bowstring either by relaxing the tension of the toes, fingers, or mouth or by triggering the release of a hand-held release aid.

"Certificate of insurance" means an official document<sub>2</sub> issued by the sponsor's and sponsor's vendors<sub>2</sub> or subcontractors insurance carrier<sub>2</sub> providing insurance against claims for injury to persons or damage to property which may arise from<sub>2</sub> or in connection with<sub>2</sub> the solicitation or event as determined by the Department.

"Cervid" means a mammal classified as a Cervidae, which includes but is not limited to caribou, elk, moose, mule deer, reindeer, wapiti, and whitetail deer; as defined in the taxonomic classification from the Integrated Taxonomic Information System, available online at [www.itis.gov](http://www.itis.gov).

"Commission Order" means a document adopted by the Commission that does one or more of the following:

- Open, close, or alter seasons,
- Open areas for taking wildlife,
- Set bag or possession limits for wildlife,
- Set the number of permits available for limited hunts, or
- Specify wildlife that may or may not be taken.

"Crossbow" means a device consisting of a bow affixed on a stock having a trigger mechanism to release the bowstring.

"Day-long" means the 24-hour period from one midnight to the following midnight.

"Department property" means those buildings or real property and wildlife areas under the jurisdiction of the Arizona Game and Fish Commission.

"Export" means to carry, send, or transport wildlife or wildlife parts out of Arizona to another state or country.

"Firearm" means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun, or other weapon that will discharge, is designed to discharge, or may readily be converted to discharge a projectile by the action of an explosion caused by the burning of smokeless powder, black powder, or black powder substitute.

"Handgun" means a firearm designed and intended to be held, gripped, and fired by one or more hands, not

intended to be fired from the shoulder, and that uses the energy from an explosive in a fixed cartridge to fire a single projectile through a barrel for each single pull of the trigger.

"Hunt area" means a management unit, portion of a management unit, or group of management units, or any portion of Arizona described in a Commission Order and not included in a management unit, opened to hunting.

"Hunt number" means the number assigned by Commission Order to any hunt area where a limited number of hunt permits are available.

"Hunt permits" means the number of hunt permit-tags made available to the public as a result of a Commission Order.

"Hunt permit-tag" means a tag for a hunt for which a Commission Order has assigned a hunt number.

"Identification number" means the number assigned to each applicant or license holder by the Department as established under R12-4-111.

"Import" means to bring, send, receive, or transport wildlife or wildlife parts into Arizona from another state or country.

"License dealer" means a business authorized to sell hunting, fishing, and other licenses as established under R12-4-105.

"Live baitfish" means any species of live freshwater fish designated by Commission Order as lawful for use in taking aquatic wildlife under R12-4-317.

"Management unit" means an area established by the Commission for management purposes.

"Nonpermit-tag" means a tag for a hunt for which a Commission Order does not assign a hunt number and the number of tags is not limited.

"Nonprofit organization" means an organization that is recognized under Section 501(c) of the U.S. Internal Revenue Code.

"Person" has the meaning as provided under A.R.S. § 1-215.

"Proof of purchase," for the purposes of A.R.S. § 17-331, means an original, or any authentic and verifiable form of the original, of any Department-issued license, permit, or stamp that establishes proof of actual purchase.

"Restricted nonpermit-tag" means a tag issued for a supplemental hunt as established under R12-4-115.

"Solicitation" means any activity that may be considered or interpreted as promoting, selling, or transferring products, services, memberships, or causes, or participation in an event or activity of any kind, including organizational, educational, public affairs, or protest activities, including the distribution or posting of advertising, handbills, leaflets, circulars, posters, or other printed materials for these purposes.

"Solicitation material" means advertising, circulars, flyers, handbills, leaflets, posters, or other printed information.

"Sponsor" means the person or persons conducting a solicitation or event.

"Stamp" means a form of authorization in addition to a license that authorizes the license holder to take wildlife specified by the stamp.

"Tag" means the Department authorization a person is required to obtain before taking certain wildlife as

established under A.R.S. Title 17 and 12 A.A.C. 4.

"Waterdog" means the larval or metamorphosing stage of a salamander.

"Wildlife area" means an area established under 12 A.A.C. 4, Article 8.

**B.** If the following terms are used in a Commission Order, the following definitions apply:

"Antlered" means having an antler fully erupted through the skin and capable of being shed.

"Antlerless" means not having an antler, antlers, or any part of an antler erupted through the skin.

"Bearded turkey" means a turkey with a beard that extends beyond the contour feathers of the breast.

"Buck antelope" means a male pronghorn antelope.

"Adult bull ~~buffalo~~ bison" means a male ~~buffalo~~ bison of any age or any ~~buffalo~~ bison designated by a Department employee during an adult bull ~~buffalo~~ bison hunt.

"Adult cow ~~buffalo~~ bison" means a female ~~buffalo~~ bison of any age or any ~~buffalo~~ bison designated by a Department employee during an adult cow ~~buffalo~~ bison hunt.

"Bull elk" means an antlered elk.

"Designated" means the gender, age, or species of ~~an animal~~ wildlife or the specifically identified ~~animal~~ wildlife the Department authorizes to be taken and possessed with a valid tag.

"Ram" means any male bighorn sheep.

"Rooster" means a male pheasant.

"Yearling ~~buffalo~~ bison " means any ~~buffalo~~ bison less than three years of age or any ~~buffalo~~ bison designated by a Department employee during a yearling ~~buffalo~~ bison hunt.

## ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

### **R12-4-216. Crossbow Permit**

**A.** For the purposes of this Section, "healthcare provider" means a person who is licensed to practice by the federal government, any state, or U.S. territory with one of the following credentials:

Medical Doctor,

Doctor of Osteopathy,

Doctor of Chiropractic,

Nurse Practitioner, or

Physician Assistant.

**B.** A crossbow permit allows a person to use ~~a crossbow or any bow to be drawn and held with an assisting device,~~ the following devices during an archery-only season, as prescribed under R12-4-318, when authorized under R12-4-304 as lawful for the species hunted:

1. A crossbow as defined under R12-4-101,

2. Any bow to be drawn and held with an assisting device, or

3. Pre-charged pneumatic weapons, as defined under R12-4-301, using arrows or bolts and with a capacity of holding and firing only one arrow or bolt at a time.

- C. The crossbow permit does not exempt the permit holder from any other applicable method of take or licensing requirement. The permit holder shall be responsible for compliance with all applicable regulatory requirements.
- D. The crossbow permit does not expire, unless:
1. The medical certification portion of the application indicates the person has a temporary physical disability; then the crossbow permit shall be valid only for the period of time indicated on the crossbow permit as specified by the healthcare provider,
  2. The permit holder no longer meets the criteria for obtaining the crossbow permit, or
  3. The Commission revokes the person's hunting privileges under A.R.S. § 17-340. A person whose crossbow permit is revoked by the Commission may petition the Commission for a rehearing as established under R12-4-607.
- E. An applicant for a crossbow permit shall apply by submitting an application to the Department. The application form is furnished by the Department and is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). A crossbow permit applicant shall provide all of the following information on the application:
1. The applicant's:
    - a. Name;
    - b. Date of birth;
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Residency status;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available; and
    - i. E-mail address, when available;
  2. Affirmation that:
    - a. The applicant meets the requirements of this Section, and
    - b. The information provided on the application is true and accurate, and
  3. Applicant's signature and date.
  4. The certification portion of the application shall be completed by a healthcare provider. The healthcare provider shall:
    - a. Certify the applicant has one or more of the following physical limitations:
      - i. An amputation involving body extremities required for stable function to use conventional archery equipment;
      - ii. A spinal cord injury resulting in a disability to the lower extremities, leaving the applicant nonambulatory;
      - iii. A wheelchair restriction;
      - iv. A neuromuscular condition that prevents the applicant from drawing and holding a bow;
      - v. A failed functional draw test that equals 30 pounds of resistance and involves holding it for four

seconds;

- vi. A failed manual muscle test involving the grading of shoulder and elbow flexion and extension or an impaired range-of-motion test involving the shoulder or elbow; or
  - vii. A combination of comparable physical disabilities resulting in the applicant's inability to draw and hold a bow.
- b. Indicate whether the disability is temporary or permanent and, when temporary, specify the expected duration of the physical limitation; and
  - c. Provide the healthcare provider's:
    - i. Typed or printed name,
    - ii. License number,
    - iii. Business address,
    - iv. Telephone number, and
    - v. Signature and date;
5. A person who holds a valid Challenged Hunter Access/Mobility Permit (CHAMP) and who is applying for a crossbow permit is exempt from the requirements of subsection (E)(4) and shall indicate "CHAMP" in the space provided for the medical certification on the crossbow permit application.
- F.** All information and documentation provided by the applicant is subject to Department verification. The Department shall return the original or certified copy of a document to the applicant after verification.
- G.** The Department shall deny a crossbow permit when the applicant:
- 1. Fails to meet the criteria prescribed under this Section,
  - 2. Fails to comply with the requirements of this Section, or
  - 3. Provides false information during the application process.
- H.** The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
- I.** The applicant claiming a temporary or permanent disability is responsible for all costs associated with obtaining the medical documentation, re-evaluation of the information, or a second medical opinion.
- J.** When acting under the authority of a crossbow permit, the crossbow permit holder shall possess the permit, and exhibit the permit upon request to any peace officer, wildlife manager, or game ranger.
- K.** A crossbow permit holder shall not:
- 1. Transfer the permit to another person, or
  - 2. Allow another person to use or possess the permit.

### **ARTICLE 3. TAKING AND HANDLING OF WILDLIFE**

#### **R12-4-301. Definitions**

In addition to the definitions provided under A.R.S. § 17-101 and R12-4-101, the following definitions apply to this Article unless otherwise specified:

"Administer" means to ~~pursue, capture, or otherwise restrain wildlife in order to directly~~ apply a drug directly to wildlife by injection, inhalation, ingestion, or any other means.

"Aircraft" means any contrivance used for flight in the air or any lighter-than-air contrivance, including unmanned aircraft systems also known as drones.

"Artificial ~~lures and flies and lures~~" means man-made devices intended as visual attractants ~~for to catch fish and~~. Artificial flies and lures does not include living or dead organisms or edible parts of those organisms, natural or prepared food stuffs, ~~artificial salmon eggs, artificial corn, or artificial marshmallows~~ chemicals or organic materials intended to create a scent, flavor, or chemical stimulant to the device regardless of whether it is added or applied during or after the manufacturing process.

"Barbless hook" means any ~~fishhook~~ fish hook manufactured without barbs or on which the barbs have been completely closed or removed.

"Body-gripping trap" means a device designed to capture an animal by gripping the animal's body.

"Cervid" ~~means any member of the deer family (Cervidae); which includes caribou, elk, moose, mule deer, reindeer, wapiti, and whitetail deer.~~

"Confinement trap" means a device designed to capture wildlife alive and hold it without harm.

"Crayfish net" means a net that does not exceed 36 inches on a side or in diameter and is retrieved by means of a hand-held line.

"Deadly weapon" has the same meaning as provided under A.R.S. § 13-3101.

"Device" has the same meaning as provided under A.R.S. § 17-101.

"Dip net" means any net, excluding the handle, that is no greater than ~~3~~ three feet in the greatest dimension, that is hand-held, non-motorized, and the motion of the net is caused by the physical effort of the ~~individual~~ person.

"Drug" means any chemical substance, other than food or mineral supplements, ~~which that~~ affects the structure or biological function of wildlife.

"Edible portions of game meat" means, for:

Upland game birds, migratory game birds and wild turkey: breast.

Bear, bighorn sheep, bison, deer, elk, javelina, mountain lion, and pronghorn antelope: front quarters, hind quarters, loins (backstraps), neck meat, and tenderloins.

Game fish: fillets of the fish.

"Evidence of legality" means the wildlife is accompanied by the applicable license, tag, stamp, or permit required by law and is identifiable as the "legal wildlife" prescribed by Commission Order, which may include evidence of species, gender, antler or horn growth, maturity, and size.

"Foothold trap" means a device designed to capture an animal by the leg or foot.

"Hybrid device" means a device with a combination of components from two or more lawful devices and is used for the take of wildlife, such as but not limited to a firearm, pneumatic weapon, or slingshot that shoots arrows or bolts.

"Instant kill trap" means a device designed to render an animal unconscious and insensitive to pain quickly with inevitable subsidence into death without recovery of consciousness.

"Land set" means any trap used on land rather than in water.

"Live-action trail camera" means an unmanned device capable of transmitting images, still photographs, video, or satellite imagery, wirelessly to a remote device such as but not limited to a computer, smart phone, or tablet. This does not include a trail camera that only records photographic or video data and stores the data for later use, provided the device is not capable of transmitting data wirelessly.

"Minnow trap" means a trap with dimensions that do not exceed 12 inches in depth, 12 inches in width, and 24 inches in length.

"Muzzleloading handgun" means a firearm intended to be fired from the hand, incapable of firing fixed ammunition, ~~having a single barrel, and loaded through the muzzle~~ with black powder or synthetic black powder and a single projectile.

"Muzzleloading rifle" means a firearm intended to be fired from the shoulder, incapable of firing fixed ammunition, having a single barrel ~~and single chamber~~, and loaded through the muzzle with black powder or synthetic black powder and a single projectile.

"Muzzleloading shotgun" means a firearm intended to be fired from the shoulder, incapable of firing fixed ammunition, having a single or double smooth barrel and loaded through the muzzle with black powder or synthetic black powder and using ball shot as a projectile.

~~"Nonprofit organization" means an organization that is recognized as nonprofit under Section 501(c) of the U.S. Internal Revenue Code.~~

"Paste-type bait" means a partially liquefied substance used as a lure for animals.

~~"Person" means any individual, corporation, partnership, limited liability company, non governmental organization or club, licensed animal shelter, government entity other than the Department, and any officer, employee, volunteer, member or agent of a person.~~

"Pneumatic weapon" means a device that fires a projectile by means of air pressure or compressed gas. This does not include tools that are common in the construction and art trade such as, but not limited to, nail and rivet guns.

"Pre-charged pneumatic weapon" means an air gun or pneumatic weapon that is charged from ~~an external~~ a high compression source such as an air compressor, air tank, or internal or external hand pump.

"Prohibited possessor" has the same meaning as provided under A.R.S. § 13-3101.

"Prohibited weapon" has the same meaning as provided under A.R.S. § 13-3101.

"Rifle" means a firearm intended to be fired from the shoulder that uses the energy from an explosive in a fixed cartridge to fire a single projectile through a rifled bore for each single pull of the trigger. This does not include a pre-charged pneumatic weapon.

"Shotgun" means a firearm intended to be fired from the shoulder and that uses the energy from an explosive in a fixed shotgun shell to fire either ball shot or a single projectile through a smooth bore or rifled barrel for each pull of the trigger.

"Sight-exposed bait" means a carcass, or parts of a carcass, lying openly on the ground or suspended in a manner so that it can be seen from above by a bird. This does not include a trap flag, dried or bleached bone

with no attached tissue, or less than two ounces of paste-type bait.

"Simultaneous fishing" means taking fish by using only two lines at one time and not more than two hooks or two artificial flies or lures or flies per line.

"Single-point barbless hook" means a fishhook with a single point, manufactured without barbs, or on which the barbs have been completely closed or removed. This does not include a treble fishhook.

"Sinkbox" means a low-floating device with a depression that affords a hunter a means of concealment beneath the surface of the water.

"Smart device" means any device equipped with a target-tracking system or an electronically-controlled, electronically-assisted, or computer-linked trigger or release. This includes but is not limited to smart rifles.

"Trap flag" means an attractant made from materials other than animal parts that is suspended at least three feet above the ground.

"Water set" means any trap used and anchored in water rather than on land.

#### **R12-4-302. Use of Tags**

- A. In addition to meeting requirements prescribed under A.R.S. § 17-331, ~~an individual~~ a person who takes wildlife shall have in possession any tag required for the particular season or hunt area.
- B. A tag obtained in violation of statute or rule is invalid and shall not be used to take, transport, or possess wildlife.
- C. ~~An individual~~ A person who lawfully possesses both a nonpermit-tag and a hunt permit-tag shall not take a genus or species in excess of the bag limit established by Commission Order for that genus or species.
- D. ~~An individual~~ A person shall:
  - 1. Take and tag only the wildlife identified on the tag; ~~and,~~
  - 2. Use a tag only in the season and hunt for which the tag is valid, as specified by Commission Order.
- E. Except as permitted under R12-4-217, ~~an individual~~ a person shall not:
  - 1. Allow their tag to be attached to wildlife killed by another ~~individual~~ person,
  - 2. Allow their tag to be possessed by another ~~individual who is in a hunt area~~ person while taking wildlife,
  - 3. Allow wildlife killed by that person to be tagged with another person's tag,
  - 3.4. Attach their tag to wildlife killed by another ~~individual~~ person,
  - 4. ~~Attach a tag issued to another individual to wildlife,~~ or
  - 5. Possess a tag issued to another ~~individual~~ person while ~~in a hunt area~~ taking wildlife.
- F. Except as permitted under R12-4-217, immediately after ~~an individual~~ a person kills wildlife, the ~~individual~~ person shall attach the tag to the wildlife carcass in the manner indicated on the tag.
- G. ~~An individual~~ A person who lawfully takes wildlife with a valid tag and authorizes another ~~individual~~ person to possess, transport, or ship the tagged portion of the carcass shall complete the Transportation and Shipping Permit portion of the original tag authorizing the take of that ~~animal~~ wildlife.
- H. If a tag is cut, notched, mutilated, or the Transportation and Shipping Permit portion of the tag is signed or filled out, the tag is no longer valid for the take of wildlife.

**R12-4-303. Unlawful Devices, Methods, and Ammunition**

A. In addition to the prohibitions prescribed under A.R.S. §§ 17-301 and 17-309, the following devices, methods, and ammunition are unlawful for taking ~~any~~ wildlife in this state:

1. ~~An individual~~ A person shall not use any of the following to take wildlife:
  - a. Fully automatic firearms, including firearms capable of selective automatic fire; ~~or~~.
  - b. Tracer, ~~or~~ armor-piercing, ~~or~~ full-jacketed ammunition designed for military use.
  - c. Any smart device as defined under R12-4-301.
  - d. Any self-guided projectiles.
2. A person shall not take big game using full-jacketed or total-jacketed bullets that are not designed to expand upon impact.
- 2.3. ~~An individual~~ A person shall not use or possess any of the following while taking wildlife:
  - a. Poisoned projectiles or projectiles that contain explosives or a secondary propellant;
  - b. Pitfalls of greater than 5-gallon size, explosives, poisons, or stupefying substances, except as permitted under A.R.S. § 17-239 or as allowed by a scientific collecting permit issued under A.R.S. § 17-238;
  - c. Any lure, attractant, or cover scent containing any cervid urine;
  - d. Electronic night vision equipment, electronically enhanced light-gathering devices, thermal imaging devices or laser sights projecting a visible light; except for devices such as laser range finders projecting a non-visible light, scopes with self-illuminating reticles, and fiber optic sights with self-illuminating sights or pins that do not project a visible light onto an animal.
- 3.4. ~~An individual~~ A person shall not by any means:
  - a. Hold wildlife at bay other than during daylight hours, unless authorized by Commission Order.
  - b. Injure, confine, ~~or~~ place, or use a tracking device in or on wildlife for the purpose of taking or aiding ~~another individual to~~ in the take of wildlife.
  - c. Place any substance, device, or object in, on, or by any water source to prevent wildlife from using that water source.
  - d. Place any substance in a manner intended to attract bears.
  - e. Use a manual or powered jacking or prying device to take reptiles or amphibians.
  - f. Use dogs to pursue, tree, corner or hold at bay any wildlife for a hunter, unless that hunter is present for the entire hunt.
  - g. Take migratory game birds, except Eurasian ~~Collared~~ collared-doves, ~~using a shotgun larger than 10 gauge, a shotgun of any description capable of holding more than three shells unless it is plugged with a one piece filler that cannot be removed without disassembling the shotgun so that its total capacity does not exceed three shells, electronically amplified bird calls, or baits, as prohibited under 50 CFR 20.21, revised October 1, 2009. The material incorporated by reference in this Section does not include any later amendments or editions. The incorporated material is available at any Department office, online from the Government Printing Office web site www.gpoaccess.gov, or may be ordered from the~~

~~Superintendent of Documents, U.S. Government Printing Office, 732 N. Capitol St. N.W., Stop IDCC, Washington, D.C. 20401;~~

- i. Using a shotgun larger than 10 gauge, a shotgun of any description capable of holding more than three shells unless it is plugged with a one-piece filler that cannot be removed without disassembling the shotgun so that its total capacity does not exceed three shells.
  - ii. Using electronically amplified bird calls or baits.
  - iii. By means or aid of any motordriven land, water, or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying, or stirring up of any migratory bird.
  - iv. Activities described under subsections (g)(i) through (g)(iii) are prohibited under 50 C.F.R. 20.21, revised October 1, 2015. The material incorporated by reference in this Section does not include any later amendments or editions. The incorporated material is available at any Department office, online from the Government Printing Office website [www.gpoaccess.gov](http://www.gpoaccess.gov), or may be ordered from the Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000.
- h. Discharge a ~~pneumatic weapon .30 caliber or larger~~ any of the following devices while taking wildlife within one-fourth mile (440 yards) of an occupied farmhouse or other residence, cabin, lodge or building without permission of the owner or resident:
  - i. Arrow or bolt,
  - ii. Hybrid device, or
  - iii. Pneumatic weapon .35 caliber or larger.
5. A person shall not use a live-action trail camera, or images from a live-action trail camera, for the purpose of:
  - a. Taking or aiding in the take of wildlife, or
  - b. Locating wildlife for the purpose of taking or aiding in the take of wildlife.
6. A person shall not use images of wildlife produced or transmitted from a satellite or other device that orbits the earth for the purpose of:
  - a. Taking or aiding in the take of wildlife, or
  - b. Locating wildlife for the purpose of taking or aiding in the take of wildlife.
  - c. This subsection does not prohibit the use of mapping systems or programs.
- ~~4.7. An individual~~ A person shall not use edible or ingestible substances to aid in taking big game. The use of edible or ingestible substances to aid in taking big game is unlawful when:
  - ~~An individual~~ A person places edible or ingestible substances for the purpose of attracting or taking big game, or
  - ~~An individual~~ A person knowingly takes big game with the aid of edible or ingestible substances placed for the purpose of attracting wildlife to a specific location.
- ~~5.8.~~ Subsection (A)(4) (A)(7) does not limit Department employees or Department agents in the performance of their official duties.
- ~~6.9.~~ For the purposes of subsection (A)(4) (A)(7), edible or ingestible substances do not include any of the

following:

- a. Water.
- b. Salt.
- c. Salt-based materials produced and manufactured for the livestock industry.
- d. Nutritional supplements produced and manufactured for the livestock industry and placed during the course of livestock or agricultural operations.

**B.** It is unlawful for a person who is a prohibited possessor to take wildlife with a deadly weapon or prohibited weapon.

**B.C.** Wildlife taken in violation of this Section is unlawfully taken.

**C.D.** This Section does not apply to any activity allowed under A.R.S. § 17-302, to ~~an individual~~ a person acting within the scope of their official duties as an employee of the state or United States, or as authorized by the Department.

#### **R12-4-304. Lawful Methods for Taking Wild Mammals, Birds, and Reptiles**

**A.** A hybrid device is lawful for the take of wildlife provided all components of the device are authorized for the take of that species under this Section.

**B.** ~~An individual~~ A person may only use the following methods to take big game when authorized by Commission Order and subject to the restrictions under R12-4-303 and R12-4-318.

~~1.~~ To take antelope:

- a. Centerfire rifles;
- b. Muzzleloading rifles;
- ~~c. All other rifles using black powder or synthetic black powder;~~
- d. Centerfire handguns;
- e. Handguns using black powder or synthetic black powder;
- f. Shotguns shooting slugs, only;
- ~~g. Pre-charged pneumatic weapons .35 caliber or larger;~~
- ~~i. Bows with a standard pull of 30 or more lbs, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges; and~~
- ~~j. Crossbows with a minimum draw weight of 125 lbs, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges or bows as described in subsection (A)(1)(h) to be drawn and held with an assisting device.~~

~~2.1.~~ To take bear:

- a. Centerfire rifles;
- b. Muzzleloading rifles;
- c. All other rifles using black powder or synthetic black powder;
- d. Centerfire handguns;
- e. ~~Handguns using black powder or synthetic black powder~~ Muzzleloading handguns;

- f. Shotguns shooting slugs, only;
- g. Pre-charged pneumatic weapons .35 caliber or larger;
- h. Pre-charged pneumatic weapons using arrows or bolts with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges and capable of firing a minimum of 250 feet per second;
- ~~h.i.~~ Bows with a standard pull of 30 or more ~~lbs~~ pounds, using arrows with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges;
- ~~i.j.~~ Crossbows with a minimum draw weight of 125 ~~lbs~~ pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges or bows as described in subsection ~~(A)(2)(h)~~ (B)(1)(i) to be drawn and held with an assisting device; and
- ~~j.k.~~ Pursuit with dogs only between August 1 and December 31, provided the ~~individual~~ person shall immediately kill or release the bear after it is treed, cornered, or held at bay. For the purpose of this subsection, “release” means the ~~individual~~ person removes the dogs from the area so the bear can escape on its own after it is treed, cornered, or held at bay.

3.2. To take bighorn sheep:

- a. Centerfire rifles;
- b. Muzzleloading rifles;
- c. All other rifles using black powder or synthetic black powder;
- d. Centerfire handguns;
- e. ~~Handguns using black powder or synthetic black powder~~ Muzzleloading handguns;
- f. Shotguns shooting slugs, only;
- g. Pre-charged pneumatic weapons .35 caliber or larger;
- h. Pre-charged pneumatic weapons using arrows or bolts with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges and capable of firing a minimum of 250 feet per second;
- ~~h.i.~~ Bows with a standard pull of 30 or more ~~lbs~~ pounds, using arrows with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges; and
- ~~i.j.~~ Crossbows with a minimum draw weight of 125 ~~lbs~~ pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges or bows as described in subsection ~~(A)(3)(h)~~ (B)(2)(i) to be drawn and held with an assisting device.

4.3. To take ~~buffalo~~ bison:

- a. ~~State-wide~~ Statewide, except for the ~~game~~ management units identified under subsection ~~(A)(4)(b)~~ (B)(3)(b):
  - i. Centerfire rifles;
  - ii. Muzzleloading rifles;

- iii. All other rifles using black powder or synthetic black powder;
  - iv. Centerfire handguns no less than .41 Magnum or centerfire handguns with an overall cartridge length of no less than two inches;
  - v. Pre-charged pneumatic weapons 40 caliber or larger a minimum of 500 foot pounds of energy;
  - vi. Pre-charged pneumatic weapons using arrows or bolts with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges and capable of firing a minimum of 250 feet per second; and
  - ~~vii.~~ Bows with a standard pull of 40 or more ~~lbs~~ pounds, using arrows with broadheads of no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges; ~~and~~
  - ~~viii.~~ Crossbows with a minimum draw weight of 125 ~~lbs~~ pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges or bows as described in subsection ~~(A)(4)(a)(i)-(v)~~ (B)(3)(a)(vi) to be drawn and held with an assisting device.
- b. In ~~game management units~~ Management Units 5A and 5B:
- i. Centerfire rifles,
  - ii. Muzzleloading rifles, and
  - iii. All other rifles using black powder or synthetic black powder.

~~5.4.~~ To take deer:

- a. Centerfire rifles;
- b. Muzzleloading rifles;
- c. All other rifles using black powder or synthetic black powder;
- d. Centerfire handguns;
- e. ~~Handguns using black powder or synthetic black powder~~ Muzzleloading handguns;
- f. Shotguns shooting slugs, only;
- g. Pre-charged pneumatic weapons .35 caliber or larger;
- h. Pre-charged pneumatic weapons using arrows or bolts with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges and capable of firing a minimum of 250 feet per second;
- ~~h.i.~~ Bows with a standard pull of 30 or more ~~lbs~~ pounds, using arrows with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges; and
- ~~i.j.~~ Crossbows with a minimum draw weight of 125 ~~lbs~~ pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges or bows as described in subsection ~~(A)(5)(h)~~ (B)(4)(i) to be drawn and held with an assisting device.

~~6.5.~~ To take elk:

- a. Centerfire rifles;
- b. Muzzleloading rifles;

- c. All other rifles using black powder or synthetic black powder;
- d. Centerfire handguns;
- e. ~~Handguns using black powder or synthetic black powder~~ Muzzleloading handguns;
- f. Shotguns shooting slugs, only;
- g. Pre-charged pneumatic weapons 40 caliber or larger and capable of firing a minimum of 500 foot pounds of energy;
- h. Pre-charged pneumatic weapons using arrows or bolts with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges and capable of firing a minimum of 250 feet per second;
- ~~g.i.~~ Bows with a standard pull of 30 or more ~~lbs~~ pounds, using arrows with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges; and
- ~~h.j.~~ Crossbows with a minimum draw weight of 125 ~~lbs~~ pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges or bows as described in subsection ~~(A)(6)(g)~~ (B)(5)(h) to be drawn and held with an assisting device.

~~7.6.~~ To take javelina:

- a. Centerfire rifles;
- b. Muzzleloading rifles;
- c. All other rifles using black powder or synthetic black powder;
- d. Centerfire handguns;
- e. ~~Handguns using black powder or synthetic black powder~~ Muzzleloading handguns;
- f. Shotguns shooting slugs, only;
- g. Pre-charged pneumatic weapons .35 caliber or larger;
- h. Pre-charged pneumatic weapons using arrows or bolts with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges and capable of firing a minimum of 250 feet per second;
- ~~h.i.~~ Bows with a standard pull of 30 or more ~~lbs~~ pounds, using arrows with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges;
- ~~i.j.~~ Crossbows with a minimum draw weight of 125 ~~lbs~~ pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges or bows as described in subsection ~~(A)(7)(h)~~ (B)(6)(i) to be drawn and held with an assisting device;
- ~~j.k.~~ .22 rimfire magnum rifles; and
- ~~k.l.~~ 5 mm rimfire magnum rifles.

~~8.7.~~ To take mountain lion:

- a. Centerfire rifles;
- b. Muzzleloading rifles;

- c. All other rifles using black powder or synthetic black powder;
  - d. Centerfire handguns;
  - e. ~~Handguns using black powder or synthetic black powder~~ Muzzleloading handguns;
  - f. Shotguns shooting slugs or shot;
  - g. Pre-charged pneumatic weapons .35 caliber or larger;
  - h. Pre-charged pneumatic weapons using arrows or bolts with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges and capable of firing a minimum of 250 feet per second;
  - ~~h.i.~~ Bows with a standard pull of 30 or more ~~lbs~~ pounds, using arrows with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges;
  - ~~i.j.~~ Crossbows with a minimum draw weight of 125 ~~lbs~~ pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges or bows as described in subsection (A)(8)(h) (B)(7)(i) to be drawn and held with an assisting device;
  - ~~j.k.~~ Artificial light, during seasons with day-long hours, provided the light is not attached to or operated from a motor vehicle, motorized watercraft, watercraft under sail, or floating object towed by a motorized watercraft or a watercraft under sail; and
  - ~~k.l.~~ Pursuit with dogs, provided the ~~individual~~ person shall immediately kill or release the mountain lion after it is treed, cornered, or held at bay. For the purpose of this subsection, "release" means the ~~individual~~ person removes the dogs from the area so the mountain lion can escape on its own after it is treed, cornered, or held at bay.
8. To take pronghorn antelope:
- a. Centerfire rifles;
  - b. Muzzleloading rifles;
  - c. All other rifles using black powder or synthetic black powder;
  - d. Centerfire handguns;
  - e. Muzzleloading handguns;
  - f. Shotguns shooting slugs, only;
  - g. Pre-charged pneumatic weapons .35 caliber or larger;
  - h. Pre-charged pneumatic weapons using arrows or bolts with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges and capable of firing a minimum of 250 feet per second;
  - i. Bows with a standard pull of 30 or more pounds, using arrows with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges; and
  - j. Crossbows with a minimum draw weight of 125 pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges or bows as described in subsection (B)(8)(i) to be drawn and held with an assisting

device.

9. To take turkey:
  - a. Shotguns shooting shot;
  - b. Bows with a standard pull of 30 or more ~~lbs~~ pounds, using arrows with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges; and
  - c. Crossbows with a minimum draw weight of 125 ~~lbs~~ pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges or bows as described in subsection ~~(A)(9)(b)~~ (B)(9)(b) to be drawn and held with an assisting device.
  - d. Pre-charged pneumatic weapons using arrows or bolts with broadheads no less than 7/8 inch in width with metal, ceramic-coated metal, or ceramic cutting edges and capable of firing a minimum of 250 feet per second;

**B.C.** ~~An individual~~ A person may only use the following methods to take small game, when authorized by Commission Order and subject to the restrictions under R12-4-303 ~~and~~, R12-4-318, and R12-4-422.

1. To take cottontail rabbits and tree squirrels:
  - a. Firearms,
  - b. Bow and arrow,
  - c. Crossbow,
  - d. Pneumatic weapons,
  - e. Slingshots,
  - f. Hand-held projectiles,
  - g. Falconry, and
  - h. Dogs.
2. To take all upland game birds and Eurasian ~~Collared~~ collared-dove:
  - a. Bow and arrow;
  - b. Falconry;
  - c. Pneumatic weapons;
  - d. Shotguns shooting shot, only;
  - e. Handguns shooting shot, only;
  - f. Crossbow;
  - g. Slingshot;
  - h. Hand-held projectiles; and
  - i. Dogs.
3. To take migratory game birds, except Eurasian ~~Collared~~ collared-dove:
  - a. Bow and arrow;
  - b. Crossbow;
  - c. Falconry;

- d. Dogs;
- e. Shotguns shooting shot:
  - i. Ten gauge or smaller, except that lead shot shall not be used or possessed while taking ducks, geese, swans, mergansers, common moorhens, or coots; and
  - ii. Incapable of holding more than a total of three shells, as prescribed under 50 ~~CFR~~ C.F.R. 20.21, published October 1, ~~2009~~ 2015. The material incorporated by reference in this subsection does not include any later amendments or editions. The material is available at any Department office, online from the Government Printing Office ~~web site~~ website [www.gpoaccess.gov](http://www.gpoaccess.gov), or may be ordered from the Superintendent of Documents, ~~U.S. Government Printing Office, 732 N. Capitol St. N.W., Stop: IDCC, Washington, D.C. 20401~~ P.O. Box 979050, St. Louis, MO 63197-9000.

**C.D.** ~~An individual~~ A person may take waterfowl from any watercraft, except a sinkbox, subject to the following conditions:

1. The motor is shut off, the sail is furled, as applicable, and any progress from a motor or sail has ceased;
2. The watercraft may be:
  - a. Adrift as a result of current or wind action;
  - b. Beached;
  - c. Moored;
  - d. Resting at anchor; or
  - e. Propelled by paddle, oars, or pole; and
3. The ~~individual~~ person may only use the watercraft under power to retrieve dead or crippled waterfowl; shooting is prohibited while the watercraft is ~~underway~~ under power.

**D.E.** ~~An individual~~ A person may take predatory and ~~fur-bearing~~ fur-bearing animals by using the following methods, when authorized by Commission Order and subject to the restrictions under R12-4-303 and R12-4-318:

1. Firearms;
2. Pre-charged pneumatic weapons .22 caliber or larger;
3. Bow and arrow;
4. Crossbow;
5. Traps not prohibited under R12-4-307;
6. Artificial light while taking raccoon provided the light is not attached to or operated from a motor vehicle, motorized watercraft, watercraft under sail, or floating object towed by a motorized watercraft or a watercraft under sail;
7. Artificial light while taking coyote during seasons with day-long hours, provided the light is not attached to or operated from a motor vehicle, motorized watercraft, watercraft under sail, or floating object towed by a motorized watercraft or a watercraft under sail; and
8. Dogs.

**E.F.** ~~An individual~~ A person may take nongame mammals and birds by any method authorized by Commission

Order and not prohibited under R12-4-303 ~~or~~, R12-4-318, and R12-4-422, subject to the following restrictions.

~~An individual~~ A person:

1. Shall not take nongame mammals and birds using foothold traps;
2. Shall check pitfall traps of any size daily, release non-target species, remove pitfalls when no longer in use, and fill any holes;
3. Shall not use firearms at night; and
4. May use artificial light while taking nongame mammals and birds, if the light is not attached to or operated from a motor vehicle, motorized watercraft, watercraft under sail, or floating object towed by a motorized watercraft or a watercraft under sail.

**F.G.** ~~An individual~~ A person may take reptiles by any method not prohibited under R12-4-303 or R12-4-318 subject to the following restrictions. ~~An individual~~ A person:

1. Shall check pitfall traps of any size daily, release non-target species, remove pitfalls when no longer in use, and fill any holes;
2. Shall not use firearms at night; and
3. May use artificial light while taking reptiles provided the light is not attached to or operated from a motor vehicle, motorized watercraft, watercraft under sail, or floating object towed by a motorized watercraft or a watercraft under sail.

**R12-4-305. Possessing, Transporting, Importing, Exporting, and Selling Carcasses or Parts of Wildlife**

A. ~~An individual~~ A person shall ensure that evidence of legality remains with the carcass or parts of a carcass of any ~~wild mammal, bird, or reptile~~ wildlife that the ~~individual~~ person possesses, transports, or imports until arrival at the ~~individual's~~ person's permanent abode, a commercial processing plant, or the place where the wildlife is to be consumed.

B. In addition to the requirement ~~in~~ under subsection (A), ~~an individual~~ a person possessing or transporting the following wildlife shall ensure each:

1. Big game animal, sandhill crane, and pheasant has the required valid tag attached ~~as prescribed under R12-4-302~~ in the manner indicated on the tag;
2. Migratory game bird, except sandhill cranes, has one fully feathered wing attached;
3. Sandhill crane and Eurasian-collared dove has either the fully feathered head or one fully feathered wing attached; ~~and~~
4. Quail has attached a fully feathered head, or a fully feathered wing, or a leg with foot attached, when the current Commission Order has established separate bag or possession limits for any species of quail; and
5. Freshwater fish has the head, tail, or skin attached so the species can be identified and the total number and required length determined.

C. ~~An individual~~ A person who has lawfully taken wildlife that requires a valid tag when prescribed by the Commission may authorize its transportation or shipment by completing and signing the Transportation and Shipping Permit portion of the valid tag for that animal. A separate Transportation and Shipping Permit issued

by the Department is necessary to transport or ship to another state or country any big game taken with a resident license. Under A.R.S. § 17-372(B), ~~an individual~~ a person may ship other lawfully taken wildlife by common carrier after obtaining a valid Transportation and Shipping Permit issued by the Department. The ~~individual~~ person shall provide the following information ~~on the permit form~~:

1. Number and description of the wildlife to be transported or shipped;
  2. Name, address, license number, and license class of the ~~individual~~ person who took the wildlife;
  3. Tag number;
  4. Name and address of the ~~individual~~ person receiving a portion of the carcass of the wildlife as authorized under subsection (D), if applicable;
  5. Address of destination where the wildlife is to be transported or shipped; and
  6. Name and address of transporter or shipper.
- D. ~~An individual~~ A person who lawfully takes wildlife under a tag may authorize another individual to possess the head or carcass of the wildlife by separating and attaching the tag as prescribed under R12-4-302.
- E. ~~An individual~~ A person who receives a portion of the wildlife shall provide the identity of the ~~individual~~ person who took and gave the portion of the wildlife upon request to any peace officer, wildlife manager, or game ranger.
- F. ~~An individual~~ A person shall not possess the horns of a bighorn sheep, taken by a hunter in this state, unless the horns are marked or sealed as ~~prescribed~~ established under R12-4-308.
- G. Except as provided under R12-4-307, before ~~an individual~~ a person may sell, offer for sale, or export the raw pelt or unskinned carcass of a bobcat taken in this state, the ~~individual~~ person shall:
1. Present the bobcat for inspection at any Department office, and
  2. Purchase a bobcat seal by paying the fee established under R12-4-102 at any Department office or other location as determined and published by the Department. Department personnel or an authorized agent shall attach and lock the bobcat seal only to a pelt or unskinned carcass presented with a validated transportation tag.
- H. ~~An individual~~ A person who takes bear or mountain lion under A.R.S. § 17-302 ~~during a closed season~~ may retain the carcass of the wildlife if the ~~individual~~ person has a valid hunting license and the carcass is immediately tagged with a nonpermit-tag or a valid hunt permit-tag as required under R12-4-114 and R12-4-302, ~~unless provided the individual person has already taken~~ not reached the applicable bag limit for that big game animal. An animal retained under this subsection shall count ~~towards~~ toward the applicable bag limit for bear or mountain lion as authorized by Commission Order. The ~~individual~~ person shall comply with inspection and reporting requirements established under R12-4-308.
- I. ~~An individual~~ A person may possess, transport, or import only the following portions of a cervid lawfully taken in another state or country:
1. Boneless portions of meat, or meat that has been cut and packaged either personally or commercially;
  2. Clean hides and capes with no skull or soft tissue attached, except as required for proof of legality;
  3. Clean skulls with antlers, clean skull plates, or antlers with no meat or soft tissue attached, this includes

velvet antlers;

4. Finished taxidermy mounts or products; and
  5. Upper canine teeth with no meat or tissue attached.
- J. A private game farm license holder may transport a cervid lawfully killed or slaughtered at the license holder's game farm to a licensed meat processor.
- K. ~~An individual~~ A person may possess or transport only the following portions of a cervid lawfully killed or slaughtered at a private game farm authorized under R12-4-413:
1. Boneless portions of meat, or meat that has been cut and packaged either personally or commercially;
  2. Clean hides and capes with no skull or soft tissue attached;
  3. Clean skulls with antlers, clean skull plates, or antlers with no meat or soft tissue attached, this includes velvet antlers;
  4. Finished taxidermy mounts or products; and
  5. Upper canine teeth with no meat or tissue attached.
- L. ~~An individual~~ A person who obtains ~~buffalo bison~~ meat as authorized under R12-4-306 may sell the meat.
- M. Except for cervids, which are subject to requirements established under subsections (I), (J), and (K), ~~an individual~~ a person may import into this state the carcasses or parts of wildlife, including aquatic wildlife, lawfully taken in another state or country if transported and exported in accordance with the laws of the state or country of origin.
- ~~N. An individual in possession of or transporting the carcass of any freshwater fish taken within this state shall ensure that the head, tail, or skin is attached so that the species can be identified, numbers counted, and any required length determined.~~
- ~~O.N.~~ A person shall not transport live crayfish from the site where taken, except as permitted under R12-4-316.
- ~~P.O.~~ A person in possession of a common carp (*Cyprinus carpio*), buffalofish (*Ictiobus* spp.), or crayfish (families *Astacidae*, *Cambaridae*, and *Parastacidae*) carcass taken under Commission Order may sell the carcass.

**R12-4-306. Buffalo Bison Hunt Requirements**

- A. When authorized by Commission Order, the Department shall conduct a hunt to harvest ~~buffalo bison~~ from the state's ~~buffalo bison~~ herds.
- B. A hunter with a ~~buffalo bison~~ permit-tag or nonpermit-tag shall, when required:
1. Provide a signed written acknowledgment that the hunter received, read, understands, and agrees to comply with the requirements of this Section.
  2. Hunt in the order scheduled.
  2. ~~Be accompanied by an authorized Department employee, when required, and~~
  3. Be accompanied by an authorized Department employee who:
    - a. Shall designate the bison to be harvested, and



and a Department employee did not accompany the hunter during the bison hunt.

3. At the time of ~~check-out~~ check out, the hunter shall provide all of the following information:
  - a. Hunter's name,
  - b. Hunter's contact number,
  - c. Tag number,
  - d. Sex of ~~buffalo~~ bison taken,
  - e. Age of the ~~buffalo~~ bison taken: adult or yearling,
  - f. Number of days hunted, and
  - g. Number of ~~buffalo~~ bison seen while hunting.
4. ~~When accompanied by an~~ An authorized Department employee who accompanies the hunter, ~~the employee~~ shall conduct the ~~check-out~~ check out at the end of the hunt.

**~~F.D.~~** Failure to comply with the requirements of this Section shall result in the invalidation of the hunter's permit-tag or nonpermit-tag, consistent with the written acknowledgment signed and agreed to by the hunter.

#### **R12-4-307. Trapping Regulations, Licensing; Methods; Tagging of Bobcat Pelts**

- A. An Arizona trapping license permits ~~an individual~~ a person to trap predatory and fur-bearing animals. ~~The Department shall issue a registration number to a trapper and enter the number on the trapping license at the time the trapper purchases the license. The trapper registration number is not transferable.~~
- B. A trapping license is required for any ~~individual~~ person ~~14~~ 10 years of age and older. ~~An individual~~ A person under the age of ~~14~~ 10 is not required to purchase a trapping license, but shall apply for and obtain a registration number. The trapper registration number is not transferable.
- C. ~~An individual~~ A person born on or after January 1, 1967 shall successfully complete a Department-approved trapping education course before applying for a trapping license.
- D. ~~An individual~~ A person applying for a trapping registration number or trapping license shall pay the applicable fees established under R12-4-102.
- E. ~~An individual~~ A person applying for a trapping registration number or trapping license shall apply using a form furnished by the Department. The form is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). The ~~individual~~ person shall provide all of the following information on the form:
  1. ~~Applicant's:~~
    - a. ~~Full name, address, and telephone number;~~
    - b. ~~Date of birth and physical description;~~
  2. ~~Identification number assigned by the Department;~~
  1. The applicant's personal information:
    - a. Name;
    - b. Date of birth;
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number;

- e. Residency status and number of years of residency immediately preceding application, when applicable;
- f. Mailing address, when applicable;
- g. Physical address;
- h. Telephone number, when available; and
- i. E-mail address, when available;

~~3.2.~~ Category of license:

- a. Resident,
- b. Nonresident, or
- c. ~~Juvenile Youth~~, and

4.3. The applicant's signature and date.

F. A trapper may only trap predatory and fur-bearing animals during trapping seasons established by Commission Order.

G. A trapper shall:

- 1. Inspect traps daily;
- 2. Kill or release all predatory and fur-bearing animals;
- 3. Possess a choke restraint device that enables the trapper to release a javelina from a trap when trapping in a javelina hunt unit, as designated by Commission Order;
- 4. Possess a device that is designed or manufactured to restrain a trapped animal while it is being removed from a trap when its release is required ~~by~~ under this Section; and
- 5. Release, without additional injury, all animals that cannot lawfully be taken by trap.
- 6. Subsections (G)(3) and (G)(4) do not apply when the trapper is using a confinement trap.

H. A trapper shall not:

- 1. Bait a confinement trap with:
  - a. A live animal;
  - b. Any edible parts of small game, big game, or game fish; or
  - c. Any part of any game bird or nongame bird.
- 2. Set any trap within:
  - a. One-half mile (880 yards) of any of the following areas developed for public use:
    - i. Boat ramp or launching area,
    - ii. Camping area,
    - iii. Picnic area, ~~or~~
    - iv. Roadside rest area, or
    - v. Developed wildlife viewing platform.
  - b. One-half mile of any occupied ~~residence~~ farmhouse or other residence, cabin, lodge or building without permission of the owner or resident.
  - c. One-hundred yards of an interstate highway or any other highway maintained by the Arizona

Department of Transportation.

- d. Fifty feet of any trail maintained for public use by a government agency.
  - e. Seventy-five feet of any other road as defined under A.R.S. § 17-101.
  - f. Subsections (H)(2)(b), (H)(2)(c), (H)(2)(d), and (H)(2)(e) do not apply when the trapper is using a confinement trap.
3. Set a foothold trap within 30 feet of sight-exposed bait.
  4. Use any:
    - a. Body-gripping or other instant kill trap with an open jaw spread that exceeds 5 inches for any land set or 10 inches for any water set;
    - b. Foothold trap with an open jaw spread that exceeds 7 1/2 inches for any water set;
    - c. Snare, unless authorized under subsection (I);
    - d. Trap with an open jaw spread that exceeds 6 1/2 inches for any land set; or
    - e. Trap with teeth.
- I.** A trapper who uses a foothold trap to take wildlife with a land set shall use commercially manufactured traps that meet the following specifications:
1. A padded or rubber-jawed trap or an unpadded trap with jaws permanently offset to a minimum of 3/16 inch and a device that allows for pan tension adjustment;
  2. A foothold trap that captures wildlife by means of an enclosed bar or spring designed to prevent the capture of non-targeted wildlife or domestic animals; or
  3. A powered cable device with an inside frame hinge width no wider than 6 inches, a cable loop stop size of at least 2 inches in diameter to prevent capture of small non-target species, and a device that allows for a pan tension adjustment.
- J.** A trapper who uses a foothold trap to take wildlife with a land set shall ensure that the trap has an anchor chain equipped with at least two swivels as follows:
1. An anchor chain 12 inches or less in length shall have a swivel attached at each end.
  2. An anchor chain greater than 12 inches in length shall have one swivel attached at the trap and one swivel attached within 12 inches of the trap. The anchor chain shall be equipped with a shock-absorbing spring that requires less than 40 pounds of force to extend or open the spring.
- K.** A trapper shall ensure that each trap has either the name and address or the registration number of the trapper marked on a metal tag attached to the trap. The registration number assigned by the Department is the only acceptable registration number.
- L.** A trapper shall immediately attach a valid bobcat transportation tag to the pelt or unskinned carcass of a bobcat taken in this state. The trapper shall validate the transportation tag by providing all of the following information on the bobcat transportation tag:
1. Current trapping license number,
  2. ~~Game management~~ Management unit where the bobcat was taken,
  3. Sex of the bobcat, and

4. Method by which the bobcat was taken.
- M.** The Department shall provide transportation tags with each trapping license. Additional transportation tags are available at any Department office at no charge.
- N.** A trapper shall ensure that all bobcats taken in this state have a bobcat seal attached and locked either through the mouth and an eye opening or through both eye openings no later than ~~10 days after the close of trapping season~~ April 1 of each year.
1. When available, bobcat seals are issued on a first-come, first-served basis at Department offices and other locations at those times and places as determined and published by the Department.
  2. The trapper shall pay the bobcat seal fee established under R12-4-102.
  3. Department personnel or an authorized agent shall attach and lock a bobcat seal only to a pelt or unskinned carcass presented with a validated transportation tag and a complete lower jaw identified with labels provided with the transportation tag. Department personnel or authorized agents shall collect the transportation tags and jaws before attaching the bobcat seal.
- O.** Department personnel shall attach a bobcat seal to a bobcat pelt seized under A.R.S. § 17-211(E)(4) before disposal by the Department to the public.
- P.** A licensed trapper shall file the annual report prescribed under A.R.S. § 17-361(D). The report form is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov).
1. The trapper shall submit the report to Arizona Game and Fish Department, ~~Game~~ Terrestrial Wildlife Branch, 5000 W. Carefree Highway, Phoenix, AZ 85086 by April 1 of each year.
  2. A report is required even when trapping activities were not conducted. ~~The report form is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov).~~
  3. The Department shall deny a trapping license to any trapper who fails to submit an annual report until the trapper complies with reporting requirements.
- Q.** Persons suffering property loss or damage due to wildlife and who take responsive measures as permitted under A.R.S. §§ 17-239 and 17-302 are exempt from this Section. This exemption does not authorize any form of trapping prohibited under A.R.S. § 17-301.

**R12-4-308. Wildlife Inspections, Check Stations, and Roadblocks**

- A.** The Department has the authority to establish mandatory wildlife check stations.
1. The Department shall publish in the Commission Order establishing the season the:
    - a. Location,
    - b. Check in requirements, and
    - c. ~~Check out~~ Check out requirements for that specific season.
  2. The Department shall ensure a wildlife check station with a published:
    - a. Check in requirement is open:
      - i. 8:00 a.m. the day before the season until 8:00 p.m. the first day of the season, and
      - ii. 8:00 a.m. to 8:00 p.m. during each day of the season.

- b. ~~Check out~~ Check out requirement is open:
  - i. 8:00 a.m. to 8:00 p.m. during each day of the season, and
  - ii. Until 12:00 ~~noon~~ p.m. on the day after the close of the season.
- 3. A hunter shall:
  - a. Check in at a wildlife check station in person before hunting when the Department includes a check in requirement in the Commission Order for that season;
  - b. Check out at a wildlife check station in person after hunting when the Department includes a ~~check out~~ check out requirement in the Commission Order for that season and shall:
    - i. Present for inspection any wildlife taken; and
    - ii. Display any license, tag, or permit required for taking or transporting wildlife.
- B.** The Department may conduct inspections of lawfully taken wildlife at the Department's Phoenix and regional offices or designated locations during the posted business hours.
  - 1. A bighorn sheep hunter shall check out either in person or by designee within three days after the close of the season. The hunter or designee shall submit the intact horns and skull for inspection and photographing. A Department representative shall affix a mark or seal to one horn of each bighorn sheep lawfully taken under Commission Order. It is unlawful for any person to remove, alter, or obliterate the mark or seal.
  - 2. A ~~successful~~ hunter who harvests a bear or mountain lion ~~hunter~~ shall:
    - a. Report information about the kill to the Department either in person or by telephone within 48 hours of taking the wildlife. The report shall include the:
      - i. Name of the hunter,
      - ii. Hunter's hunting license number,
      - iii. Sex of the wildlife taken,
      - iv. Management unit where the wildlife was taken,
      - v. Telephone number where the hunter can be reached for additional information, and
      - vi. Any additional information required by the Department.
    - b. Present either in person or by designee the skull, hide, and attached proof of sex for inspection within 10 days of taking the wildlife. If a hunter freezes the skull or hide before presenting it for inspection, the hunter shall prop the jaw open to allow access to the teeth and ensure that the attached proof of sex is identifiable and accessible.
  - 3. For seasons other than bear, bighorn sheep, or mountain lion, ~~where~~ a hunter who harvests wildlife for which a harvest objective is established, ~~a successful hunter~~ shall report information about the kill either in person or by telephone within 48 hours of taking the wildlife. The report shall include the information required under subsection (B)(2)(a).
- C.** The Director may establish vehicle roadblocks at specific locations when necessary to ensure compliance with applicable wildlife laws. Any occupant of a vehicle at a roadblock shall, upon request, present for inspection all wildlife in possession, and ~~produce and display any license, tag, stamp, or permit required for taking or transporting wildlife~~ provide evidence of legality as defined under R12-4-301.

- D. This Section does not limit the game ranger or wildlife manager's authority to conduct stops, searches, and inspections authorized under A.R.S. §§ 17-211(E), 17-250(A)(4), and 17-331, or to establish voluntary wildlife survey stations to gather biological information.

**R12-4-309. Authorization for Use of Drugs on Wildlife**

- A. A person shall not administer any drug to any wildlife under the jurisdiction of the state, including but not limited to drugs used for fertility control, disease prevention or treatment, immobilization, or growth stimulation without written authorization from the Department or as otherwise provided under subsection (E). This authorization does not:
1. Exempt a person from any state or federal statute, rule, or regulation, or any municipal or county code or ordinance; or
  2. Authorize a person to engage in any activity using federally protected wildlife.
- B. A person requesting written authorization for the use of drugs on wildlife shall submit the request in writing to the Department at 5000 W. Carefree ~~Hwy~~ Highway, Phoenix, AZ 85086 and at least 120 days before the anticipated start date of the activity ~~and provide~~. The written request shall include all of the following:
1. A plan that includes:
    - a. The purpose and need for the proposed activity;
    - b. A clear statement of the objectives; for fertility control the statement shall include the target wildlife population goals or densities and the anticipated time-frame for meeting these objectives;
    - c. A description of the agent, drug, or method ~~including federal approvals or permits obtained, as applicable,~~ and any mandated labeling restrictions or limitations designed to reduce or minimize detrimental effects to wildlife and humans;
    - ~~d. Required approvals, including, but not limited to, any federal or state agency approvals for specific use;~~
    - e.d. Citations of published scientific literature documenting field studies on the efficacy and safety for both target and non-target species, including predators, scavengers, and humans;
    - ~~f.e.~~ A description of the activity area;
    - ~~g.f.~~ A description of the target species population and current status;
    - ~~h.g.~~ A description of the field methodology for delivery that includes the following, as applicable:
      - i. Timing,
      - ii. Sex and number of animals to be treated,
      - iii. Percentage of the population to be treated,
      - iv. Calculated population effect, and
      - v. Short and long term monitoring and evaluation procedures.
  2. Documentation regarding the experience and credentials of the applicant or the applicant's agents as it applies to the requested activity;
  3. ~~Written endorsement from the agency or institution; required when the applicant is a government agency,~~

~~university, or other institution; and~~

~~4.3. Written permission from landowners or lessees in all locations where the drug will be administered; and~~

4. Written endorsement from the agency or institution; required when the applicant is a government agency, university, or other institution. The person signing the written endorsement shall have the authority to execute the written endorsement on behalf of the agency or institution.

C. The Department shall notify the applicant of the Department's decision to grant or deny the request within 90 days. The Department has the authority to place conditions on the written authorization regarding:

1. Locations and time-frames,
2. Drugs and methodology,
3. Limitations,
4. Reporting requirements, and
5. Any other conditions deemed necessary by the Department.

D. A person with authorization shall:

1. Carry written authorization while engaged in the activity and exhibit it upon request to any peace officer, wildlife manager, or game ranger;
2. Allow Department personnel to be present to monitor activities for compliance, public safety, and proper treatment of animals;
3. Adhere to all drug label restrictions and precautions;
4. Provide an annual and final report:
  - a. The annual report ~~must~~ shall include the number of animals treated, the level of treatment effect obtained to date, and any problems including mortalities or morbidities of target animals. The person shall submit the annual report to the Department by January 31 of each year or as otherwise specified in the written authorization.
  - b. The final report ~~must~~ shall include the end results, including the number of wildlife treated and treatment effects on target and non-target wildlife, including mortalities, morbidities, and reproductive rate changes. The person shall submit the final report to the Department no later than 90 days after the completion of the project for which the permit was issued.
5. Comply with all conditions and requirements set forth in the written authorization.

E. This Section does not prohibit the treatment of wildlife by a licensed veterinarian or holder of a special license in accordance with ~~R12-4-407(A)(2)~~ R12-4-407(B)(2) and (8), ~~R12-4-428(B)(13)~~, R12-4-413(K)(5), R12-4-420(J)(3), activities as authorized under R12-4-418, R12-4-420, R12-4-421, and R12-4-423, ~~an individual a~~ person exempt from special licensing under R12-4-407(A)(4) and (5), or reasonable lethal removal activities for wildlife control as authorized under A.R.S. § 17-239(A).

F. This Section does not limit:

1. Department employees or Department agents in the performance of their official duties related to wildlife management,
2. The practices of aquaculture facilities administered by the ~~US~~ U.S. Fish and Wildlife Service, and

commercial aquaculture facilities operating under a valid license from the Arizona Department of Agriculture, or

3. The use of supplements or drugs as a part of conventional livestock operations where those supplements may incidentally be consumed by wildlife.
- G. The Department shall take possession of and dispose of any remaining wildlife drugs administered in violation of this Section and any devices and paraphernalia used to administer those drugs, as authorized under A.R.S. §§ 17-211(E), 17-231(A), and 17-240(B).
- H. Require the person with authorization to indemnify the Department against any injury or damage resulting from the use of animal drugs.

**R12-4-310. Fishing Permits**

- A. The Department may issue a fishing permit to state, county, or municipal agencies or departments and to nonprofit organizations ~~licensed by or contracted with the Department of Economic Security or Department of Health Services,~~ whose primary purpose is to provide ~~physical or mental rehabilitation or training~~ treatment and care for ~~individuals~~ persons with physical, developmental, or mental disabilities.
- B. The permit:
1. Is valid for ~~the any two days specified on the permit~~ within a 30 day period;
  2. Authorizes ~~up to 20 individuals~~ persons with physical, developmental, or mental disabilities to fish without a fishing license upon any public waters except that fishing in the waters of the Colorado River is restricted to fishing from the Arizona shoreline only, unless the persons fishing under the authority of the permit also possess a valid Colorado River stamp from the adjacent state; and
  3. Does not exempt ~~individuals~~ persons fishing under the authority of the permit from compliance with other statutes, Commission Orders, and rules not contained in this Section.
- C. An applicant for a fishing permit shall submit a properly completed application to the Department. The application is furnished by the Department and is available from any Department office and online at [www.azgfd.gov](http://www.azgfd.gov).
1. The applicant shall provide all of the following information:
    - a. The name, address, and telephone number of the agency, department, or nonprofit organization requesting the permit;
    - b. The name, position title, and telephone number of the ~~individuals~~ persons responsible for supervising the ~~individuals~~ persons fishing under the authority of the permit;
    - c. The total number of ~~individuals~~ persons who will be fishing under the authority of the permit;
    - d. The dates ~~of the two days~~ for which the permit will be ~~valid~~ used; and
    - e. The location for which the permit will be valid.
  2. In addition to the information required under subsection (C)(1), nonprofit organizations shall also submit ~~documentation that they are licensed by or have a contract with the Department of Economic Security or the Department of Health Services for the purpose of providing rehabilitation or treatment services to~~

~~individuals or groups with physical, developmental, or mental disabilities;~~

- a. A copy of the organization's articles of incorporation and evidence that the organization has tax-exempt status under Section 501(c) of the Internal Revenue Code, unless a current and correct copy is already on file with the Department; and
  - b. Document identifying the organization's mission.
- D. The Department shall ~~issue~~ either grant or deny the fishing permit ~~to an applicant within 30 calendar days of receiving an application~~ within the applicable overall time-frame established under R12-4-106.
- E. The fishing permit holder shall provide instruction on fish identification, fishing ethics, safety, and techniques to the ~~individuals~~ persons who will be fishing under authority of the permit. ~~The Department shall provide the lesson plan for this instruction to the permit holder~~ curriculum outline provided by the Department.
- F. Each ~~individual~~ person fishing ~~without a license~~ under the sole authority of the fishing permit may take only one-half the regular bag limit established by Commission Order for any species, unless the regular bag limit is one, in which case the permit authorizes the regular bag limit.
- G. The permit holder shall submit a report to the Department ~~not~~ no later than 30 days after the end of the authorized fishing dates. The report form is furnished by the Department and is available at any Department office. The permit holder shall report all of the following information on the form:
1. The fishing permit number and the information contained in the permit;
  2. The total number of ~~individuals~~ persons who fished and total hours fished;
  3. The total number of fish caught, kept, and released, by species.
- H. The Department may deny future fishing permits to a permit holder who failed to submit the report required under subsection (G) until the permit holder complies with reporting requirements.

**R12-4-311. Exemptions from Requirement to Possess an Arizona Fishing License or Hunting License While Taking Wildlife**

In addition to the exemptions prescribed under A.R.S. § 17-335, R12-4-206(E), R12-4-207(E), and R12-4-209(E) and provided the person's fishing ~~and~~, hunting, or trapping license privileges are not currently revoked by the Commission:

1. A fishing license is not required when a person is:
  - a. Fishing from artificial ponds, tanks, and lakes contained entirely on private lands that are not:
    - i. Open to the public, and
    - ii. Managed by the Department.
  - b. Taking ~~terrestrial mollusks or crustaceans~~ from private property nonnative terrestrial mollusks, such as but not limited to brown garden snails (*Helix aspersa*) and decollata snails (*Rumina decollata*), or crustaceans, such as crayfish.
  - c. Fishing in Arizona on any designated Saturday occurring during National Fishing and Boating Week, except in waters of the Colorado River forming the common boundaries between Arizona and California, Nevada, or Utah where fishing without a license is limited to the shoreline, unless the state with concurrent

jurisdiction removes licensing requirements on the same day.

- d. Participating in an introductory fishing education program sanctioned by the Department, during scheduled program hours, only. A sanctioned program shall have a Department employee, ~~sport fishing contractor~~, or authorized volunteer instructor present during scheduled program hours. For the purposes of this subsection, "authorized volunteer instructor" means a person who has successfully passed the Department's required background check, or provided documentation of the person's application for a fingerprint clearance card, and sport fishing education workshop.
2. A hunting license is not required when a person is participating in an introductory hunting event organized, sanctioned, or sponsored by the Department. The person may hunt small game, ~~fur-bearing~~ fur-bearing, predator, and designated mammals during scheduled event hours, only. To hunt migratory game birds, the ~~individual person~~ shall have any stamps required by federal regulation. The introductory hunting event shall have a Department employee, certified hunter education instructor, or authorized volunteer present during scheduled hunting hours. For the purposes of this subsection, "authorized volunteer" means a person who has successfully passed the Department's required background check, or provided documentation of the person's application for a fingerprint clearance card, and Department event best practices training ~~or provide documentation of the person's application for a fingerprint clearance card~~. This subsection does not apply to any event that requires ~~participants~~ a participant to obtain a permit-tag or nonpermit-tag.

**R12-4-313. Lawful Methods of Taking Take and Seasons for Aquatic Wildlife**

- A. ~~An individual may take aquatic wildlife as defined under A.R.S. § 17-101, subject~~ Subject to the restrictions prescribed under R12-4-303, R12-4-317, and of this Section. Aquatic, a person may take aquatic wildlife may be taken during the day or night and may be taken using artificial light as prescribed under A.R.S. § 17-301. When a fish die-off is imminent or when otherwise deemed appropriate, the Commission may designate a special season by Commission Order to allow fish to be taken by hand or by any hand-held, non-motorized implement that does not discharge a projectile.
- B. ~~The Commission may, through Commission Order, prescribe legal sizes for possession of aquatic wildlife.~~
- ~~C.B.~~ A person who possesses a valid Arizona fishing license may take aquatic wildlife by angling or simultaneous fishing as defined under R12-4-301 with any bait, artificial ~~lure~~ fly, or fly lure subject to the following restrictions, an individual:
  1. ~~Shall not possess aquatic wildlife other than aquatic wildlife prescribed by Commission Order;~~
  - ~~2.1. Shall not use~~ Except for sunfish of the genus *Lepomis*, the flesh of game fish may not be used as bait, except sunfish of the genus *Lepomis*;
  - ~~3.2. May use live~~ Live baitfish, as defined under R12-4-101, may only be used in designated areas designated prescribed by Commission Order; and designated areas may subsequently be closed or restricted by Commission Order.
  - ~~4.3. Shall~~ Waterdogs may not use waterdogs be used as live bait in that portion of Santa Cruz County lying east and south of State Highway 82 or that portion of Cochise County lying west of the San Pedro River and

south of State Highway 82.

4. Shall not use more than two lines at any one time.
5. The Commission may further restrict the lawful methods of take on particular waters by designating one or more of the following special seasons by Commission Order:
  - a. An “artificial flies and lures” season in which only artificial flies and lures may be used in designated areas,
  - b. A “barbless hooks” season in which only the use of barbless or single-point barbless hooks may be used in designated areas,
  - c. An “immediate kill or release” season in which a person must kill and retain the designated species as part of the person’s bag limit or immediately release the wildlife,
  - d. A “catch and immediate release” in which a person must immediately release the designated species,  
or
  - e. An “immediate kill” season in which a person must immediately kill and retain the designated species as part of the person’s bag limit.

**D.C.** In addition to angling, ~~an individual~~ a person who possesses a valid Arizona fishing license may also take the following aquatic wildlife using the following methods, ~~subject to the restrictions established under R12-4-303, R12-4-317, and this Section:~~

1. A hybrid device is lawful for the take of aquatic wildlife provided all components of the device are authorized for the take of that species under this subsection.
- ~~2.~~ Carp (Cyprinus carpio), buffalofish, mullet, tilapia, goldfish, and shad may be taken by:
  - a. Bow and arrow,
  - b. Crossbow,
  - c. Snare,
  - d. Gig,
  - e. Spear or spear gun, or
  - f. Snagging,
3. A person shall not use any of the methods of take listed under subsection (C)(2) within 200 yards of a designated swimming area as indicated by way of posted signs or notices.
- ~~2.~~ 4. Except for snagging, ~~an individual~~ a person shall not use any of the methods of take listed under subsection ~~(D)(1)~~ (C)(2) within 200 yards of any boat dock or ~~designated swimming area~~ fishing pier.
- ~~3.~~ 5. Striped bass may be taken by spear or spear gun in waters designated by Commission Order.
4. Live baitfish may be taken for personal use as bait by:
  - a. ~~A cast net not to exceed a radius of 4 feet measured from the horn to the leadline;~~
  - b. ~~A minnow trap, as defined under R12-4-301;~~
  - e. ~~A seine net not to exceed 10 feet in length and 4 feet in width; or~~
  - d. ~~A dip net.~~
- ~~5.~~ 6. Catfish may be taken by bow and arrow or crossbow in waters designated by Commission Order.

~~6.7.~~ Amphibians, soft-shelled turtles, mollusks, and crustaceans may be taken by minnow trap, crayfish net, hand, or with any hand-held, non-motorized implement that does not discharge a projectile, unless otherwise permitted under this Section.

~~7.8.~~ In addition to the methods described under subsection ~~(D)(6)~~ (C)(7), bullfrogs may be taken by:

- a. Bow and arrow,
- b. Crossbow,
- c. Pneumatic weapon, or
- d. Slingshot.

9. Live baitfish may be taken for personal use as bait by:

- a. A cast net not to exceed a radius of 4 feet measured from the horn to the headline;
- b. A minnow trap, as defined under R12-4-301;
- c. A seine net not to exceed 10 feet in length and 4 feet in width; or
- d. A dip net.

~~8.10.~~ In addition to the methods described under subsection ~~(D)(6)~~ (C)(7), crayfish may be taken with the following devices:

- a. A trap not more than 3 feet in the greatest dimension,
- b. A dip net as defined under R12-4-301, or
- c. A seine net not larger than 10 feet in length and 4 feet in width.

~~E.~~ ~~An individual who uses a crayfish net and minnow trap shall:~~

~~1. Attach a water resistant identification tag to the trap when it is unattended. The tag shall include the individual's:~~

- ~~a. Name,~~
- ~~b. Address, and~~
- ~~c. Fishing license number.~~

~~2. Raise and empty the trap daily.~~

11. The Commission may further restrict the lawful methods of take on particular waters by designating one or more of the following special seasons by Commission Order:

- a. A “snagging” season in which a person may use this method only at times and locations designated by Commission Order, or
- b. A “spear or spear gun” season in which a person may use this method only at times and locations designated by Commission Order.

D. Aquatic wildlife taken in violation of this Section is unlawfully taken.

**R12-4-314. Repealed Possession, Transportation, or Importation of Aquatic Wildlife**

A. The Commission may prescribe legal sizes for possession of aquatic wildlife through Commission Order.

B. A person who possesses a valid Arizona fishing license may possess live aquatic wildlife lawfully taken on the waters where taken, but the person shall not transport the aquatic wildlife alive from the waters where taken

except that:

1. A person may transport live baitfish listed in subsection C(1);
2. A person may transport live waterdogs except in the portion of Santa Cruz County lying east and south of State Highway 82 or the portion of Cochise County lying west of the San Pedro River and south of State Highway 82; and
3. Any crayfish taken on waters within Yuma or La Paz Counties may be transported alive for use as live bait in that portion of La Paz County west of Highway 95 and south of Interstate 10, Yuma County, and on the Colorado River from the Palo Verde Diversion Dam downstream to the Southern international boundary with Mexico.

C. A person who possesses a valid Arizona fishing license may import, transport, or possess live baitfish, crayfish, or waterdogs for personal use as live bait only as follows:

1. A person may possess or transport only the following live baitfish for personal use as live bait:
  - a. Fathead minnow (*Pimephales promelas*),
  - b. Golden shiners (*Notemigonus crysoleucas*),
  - b. Goldfish (*Carassius auratus*),
  - c. Longfin Dace (*Agosia chrysogaster*)
  - d. Sonora Sucker (*Catostomus insignis*),
  - e. Speckled Dace (*Rhynchichthys osculus*), and
  - f. Desert Sucker (*Catostomus clarki*).
2. A person may import for personal use live baitfish listed in subsection (C)(1) from:
  - a. California or Nevada, or
  - b. From any other state with accompanying documentation certifying that the fish are free of Furunculosis.
3. A person may import, transport, or possess live waterdogs for personal use as bait, except in the portion of Santa Cruz County lying east and south of State Highway 82 or the portion of Cochise County lying west of the San Pedro River and south of State Highway 82.
4. A person shall not import, transport, or move live crayfish between waters for personal use as live bait except as allowed in 12 A.A.C. 4, Article 4, or except as allowed in subsection (B)(3).

D. A person shall attach water-resistant identification to any unattended live boxes or stringers holding fish and ensure the identification bears the person's:

1. Name,
2. Address, and
3. Fishing license number.

E. A person who uses a crayfish net or a minnow trap shall raise and empty the trap daily and shall attach water-resistant identification to any unattended traps and ensure the identification bears the person's:

1. Name,
2. Address, and

3. Fishing license number.

F. A person shall not knowingly disturb the crayfish net, live box, minnow trap, or stringer of another unless authorized to do so by the owner.

**R12-4-315. Possession of Live Fish; Unattended Live Boxes and Stringers Repeal**

~~A. An individual may possess fish taken alive as provided under R12 4 313 on the waters where taken, except when the take or possession is expressly prohibited under R12 4 313 or R12 4 317, but the individual shall not transport the fish alive from the waters where taken except as authorized under R12 4 316.~~

~~B. An individual shall attach water resistant identification to any unattended live boxes or stringers holding fish and ensure the identification bears the individual's:~~

- ~~1. Name,~~
- ~~2. Address, and~~
- ~~3. Fishing license number.~~

**R12-4-316. Possession, Transportation, or Importation of Live Baitfish, Crayfish, or Waterdogs Repeal**

~~A. An individual may possess live baitfish, crayfish, or waterdogs for use as live bait only as established under R12 4 317 and this Section.~~

~~B. An individual may possess or transport the following live baitfish for personal use as live bait as established under R12 4 317:~~

- ~~1. Fathead minnow (*Pimephales promelas*),~~
- ~~2. Mosquitofish (*Gambusia affinis*),~~
- ~~3. Threadfin shad (*Dorosoma petenense*),~~
- ~~4. Golden shiners (*Notemigonus crysoleucas*), and~~
- ~~5. Goldfish (*Carassius auratus*).~~

~~C. An individual who possesses a valid Arizona fishing license may:~~

- ~~1. Import, transport, or possess live waterdogs for personal use as bait, except in the portion of Santa Cruz County lying east and south of State Highway 82 or the portion of Cochise County lying west of the San Pedro River and south of State Highway 82.~~
- ~~2. Import live baitfish listed under subsection (B) from California or Nevada without accompanying documentation certifying the fish are free of disease.~~
- ~~3. Import live baitfish listed under subsection (B) from any other state with accompanying documentation certifying that the fish are free of Furunculosis.~~

~~D. An individual may:~~

- ~~1. Trap or capture live crayfish as provided under R12 4 313.~~
- ~~2. Use live crayfish as bait only in the body of water where trapped or captured, not in an adjacent body of water, except for the portion of La Paz County west of Highway 95 and south of Interstate 10, Yuma County, and on the Colorado River from the Palo Verde Diversion Dam downstream to the Southern~~

~~international boundary with Mexico.~~

~~E. An individual shall not:~~

- ~~1. Import, transport, move between waters, or possess live crayfish for personal use as live bait except as allowed in 12 A.A.C. 4, Article 4, and except for the portion of La Paz County west of Highway 95 and south of Interstate 10, Yuma County, and on the Colorado River from the Palo Verde Diversion Dam downstream to the southern international boundary with Mexico.~~
- ~~2. Transport crayfish alive from the site where taken except for the portion of La Paz County west of Highway 95 and south of Interstate 10, Yuma County, and on the Colorado River from the Palo Verde Diversion Dam downstream to the southern international boundary with Mexico.~~
- ~~3. Import, transport, move between waters, or possess live red shiner (*Cyprinella lutrensis*) for personal use.~~

**~~R12-4-317. Seasons for Lawfully Taking Fish, Mollusks, Crustaceans, Amphibians, and Aquatic Reptiles Repeal~~**

- ~~A. Methods of lawfully taking aquatic wildlife during seasons designated by Commission Order as “general” seasons are designated under R12-4-313.~~
- ~~B. Other seasons designated by Commission Order have specific requirements and lawful methods of take more restrictive than those for general seasons, as prescribed under this Section. While taking aquatic wildlife under R12-4-313 an individual participating in:
  - ~~1. An “artificial lures and flies only” season shall use only artificial lures and flies as defined under R12-4-301. The Commission may further restrict “artificial lures and flies only” season to the use of barbless or single barbless hooks as defined under R12-4-301.~~
  - ~~2. A “live baitfish” season shall not possess or use any species of fish as live bait at, in, or upon any waters unless that species is specified as a live baitfish for those waters by Commission Order. Live baitfish shall not be transported from the waters where taken except as authorized under R12-4-316.~~
  - ~~3. An “immediate kill or release” season shall kill and retain the designated species as part of the bag limit or immediately release the wildlife. Further fishing is prohibited after the legal bag limit is killed.~~
  - ~~4. A “catch and immediate release” season shall immediately release the designated species.~~
  - ~~5. An “immediate kill” season shall immediately kill and retain the designated species as part of the bag limit.~~
  - ~~6. A “snagging” season shall use this method only at times and locations designated by Commission Order.~~
  - ~~7. A “spear or spear gun” season shall use this method only at times and locations designated by Commission Order.~~~~
- ~~C. A “special” season may be designated by Commission Order to allow fish to be taken by hand or by any hand held, non motorized implement that does not discharge a projectile. The “special” season may apply to any waters where a fish die off is imminent due either to poor or low water conditions, Department fish renovation activities, or as designated by Commission Order.~~

**R12-4-318. Seasons for Lawfully Taking Wild Mammals, Birds, and Reptiles**

- A. Methods of lawfully taking wild mammals, birds, and reptiles during seasons designated by Commission Order as "general" seasons are designated under R12-4-304.
1. Lawful devices are defined under R12-4-101 and R12-4-301.
  2. Lawful devices are listed under this Section by the range of effectiveness, from greatest range to least range.
  3. A hybrid device may be used in a general season, provided:
    - a. All components of the hybrid device are designated as lawful for a given species under R12-4-304, and
    - b. No components are prohibited under R12-4-303.
- B. Methods of lawfully taking big game during seasons designated by Commission Order as "special" are designated under R12-4-304. "Special" seasons are open only to a person who possesses a special big game license tag authorized under A.R.S. § 17-346 and R12-4-120.
- C. When designated by Commission Order, the following seasons have specific requirements and lawful methods of take more restrictive than those for general and special seasons, as ~~prescribed~~ established under this Section. While taking the species authorized by the season, a person participating in:
1. A "CHAMP" season shall be a challenged hunter access/mobility permit holder as established under R12-4-217.
  2. A "youth-only hunt" shall be under the age of 18. A youth hunter whose 18th birthday occurs during a "youth-only hunt" for which the youth hunter has a valid permit or tag may continue to participate for the duration of that "youth-only hunt."
  3. A "pursuit-only" season may use dogs to pursue bears, mountain lions, or raccoons as designated by Commission Order, but shall not kill or capture the quarry. A person participating in a "pursuit-only" season shall possess and, at the request of Department personnel, produce an appropriate and valid hunting license and any required tag for taking the animal pursued, even though there shall be no kill.
  4. A "restricted season" may use any lawful method authorized for a specific species under R12-4-304, except dogs may not be used to pursue the wildlife for which the season was established.
  5. An "archery-only" season shall not use any other weapons, including crossbows or bows with a device that holds the bow in a drawn position except as authorized under R12-4-216. A person participating in an "archery-only" season may use one or more of the following methods or devices if authorized under R12-4-304 as lawful for the species hunted:
    - a. Bows and arrows, and
    - b. Falconry.
  6. A "handgun, archery, and muzzleloader (HAM)" season may use one or more of the following methods or devices if authorized under R12-4-304 as law  
ful for the species hunted:
    - a. ~~Bows and arrows,~~

- ~~b. Crossbows or bows to be drawn and held with an assisting device,~~
  - ~~e. Handguns, and~~
  - ~~d. Muzzle loading rifles as defined under R12-4-301.~~
  - a. Muzzleloading rifles,
  - b. Handguns,
  - c. Muzzleloading handguns,
  - d. Bows and arrows,
  - e. Crossbows or bows to be drawn and held with an assisting device, and
  - f. Pre-charged pneumatic weapons capable of holding and discharging a single projectile .35 caliber or larger.
7. A "muzzleloader" season may use one or more of the following methods or devices if authorized under R12-4-304 as lawful for the species hunted:
- a. ~~Bows and arrows;~~
  - ~~b. Crossbows or bows to be drawn and held with an assisting device, and~~
  - ~~e. Muzzleloading rifles or handguns, as defined under R12-4-301.~~
  - a. Muzzleloading rifles or muzzleloading handguns,
  - b. Bows and arrows, and
  - c. Crossbows or bows to be drawn and held with an assisting device.
8. A "limited weapon" season may use one or more of the following methods or devices for taking wildlife, if authorized under R12-4-304 as lawful for the species hunted:
- a. ~~Any trap except foothold traps,~~
  - ~~b. Bows and arrows,~~
  - ~~e. Capture by hand,~~
  - ~~d. Crossbows or bows to be drawn and held with an assisting device,~~
  - ~~e. Dogs,~~
  - ~~f. Falconry,~~
  - ~~g. Hand-propelled projectiles,~~
  - ~~h. Nets,~~
  - ~~i. Pneumatic weapons discharging a single projectile .25 caliber or smaller, or~~
  - ~~j. Slingshots.~~
  - a. Bows and arrows,
  - b. Crossbows or bows to be drawn and held with an assisting device,
  - c. Pneumatic weapons capable of holding and discharging a single projectile .25 caliber or smaller,
  - d. Hand-propelled projectiles,
  - e. Any trap except foothold traps,
  - f. Slingshots,
  - g. Dogs,

- h. Falconry,
  - i. Nets, or
  - j. Capture by hand.
9. A "limited weapon hand or hand-held implement" season may use one or more of the following methods or devices for taking wildlife, if authorized under R12-4-304 as lawful for the species hunted:
- a. Catch-pole,
  - b. Hand,
  - c. Snake hook, or
  - d. Snake tongs.
10. A "limited weapon-pneumatic" season may use one or more of the following methods or devices for taking wildlife, if authorized under R12-4-304 as lawful for the species hunted:
- ~~a. Capture by hand,~~
  - ~~b. Dogs,~~
  - ~~e. Falconry,~~
  - ~~d. Hand propelled projectiles,~~
  - ~~e. Nets,~~
  - ~~f. Pneumatic weapons discharging a single projectile .25 caliber or smaller, or~~
  - ~~g. Slingshots.~~
  - a. Pneumatic weapons discharging a single projectile .25 caliber or smaller,
  - b. Hand-propelled projectiles,
  - c. Slingshots,
  - d. Dogs,
  - e. Falconry,
  - f. Nets, or
  - g. Capture by hand.
11. A "limited weapon-rimfire" season may use one or more of the following methods or devices for taking wildlife, if authorized under R12-4-304 as lawful for the species hunted:
- ~~a. Any trap except foothold traps,~~
  - ~~b. Bows and arrows,~~
  - ~~e. Capture by hand,~~
  - ~~d. Crossbows or bows to be drawn and held with an assisting device,~~
  - ~~e. Dogs,~~
  - ~~f. Falconry,~~
  - ~~g. Hand propelled projectiles,~~
  - ~~h. Nets,~~
  - ~~i. Pneumatic weapons,~~
  - ~~j. Rifled firearms using rimfire cartridges,~~

- ~~k. Shotgun shooting shot or slug, or~~
  - ~~l. Slingshots.~~
  - a. Rifled firearms using rimfire cartridges.
  - b. Shotgun shooting shot or slug.
  - c. Bows and arrows.
  - d. Crossbows or bows to be drawn and held with an assisting device.
  - e. Pneumatic weapons.
  - f. Hand-propelled projectiles.
  - g. Any trap except foothold traps.
  - h. Slingshots.
  - i. Dogs.
  - j. Falconry.
  - k. Nets, or
  - l. Capture by hand.
12. A "limited weapon-shotgun" season may use one or more of the following methods or devices for taking wildlife, if authorized under R12-4-304 as lawful for the species hunted:
- ~~a. Any trap except foothold traps,~~
  - ~~b. Bows and arrows,~~
  - ~~e. Capture by hand,~~
  - ~~d. Crossbows or bows to be drawn and held with an assisting device,~~
  - ~~e. Dogs,~~
  - ~~f. Falconry,~~
  - ~~g. Hand-propelled projectiles,~~
  - ~~h. Nets,~~
  - ~~i. Pneumatic weapons,~~
  - ~~j. Shotgun shooting shot or slug, or~~
  - ~~k. Slingshots.~~
  - a. Shotgun shooting shot or slug.
  - b. Muzzleloading shotgun.
  - c. Bows and arrows.
  - d. Crossbows or bows to be drawn and held with an assisting device.
  - e. Pneumatic weapons.
  - f. Hand-propelled projectiles.
  - g. Any trap except foothold traps.
  - h. Slingshots.
  - i. Dogs.
  - j. Falconry.

- k. Nets, or
  - l. Capture by hand.
13. A "limited weapon-shotgun shooting shot" season may use one or more of the following methods or devices for taking wildlife, if authorized under R12-4-304 as lawful for the species hunted:
- a. ~~Any trap except foothold traps,~~
  - b. ~~Bows and arrows,~~
  - e. ~~Capture by hand,~~
  - d. ~~Crossbows or bows to be drawn and held with an assisting device,~~
  - e. ~~Dogs,~~
  - f. ~~Falconry,~~
  - g. ~~Hand-propelled projectiles,~~
  - h. ~~Nets,~~
  - i. ~~Pneumatic weapons,~~
  - j. ~~Shotgun shooting shot, or~~
  - k. ~~Slingshots.~~
  - a. Shotgun shooting shot,
  - b. Muzzleloading shotgun shooting shot,
  - c. Bows and arrows,
  - d. Crossbows or bows to be drawn and held with an assisting device,
  - e. Pneumatic weapons,
  - f. Hand-propelled projectiles,
  - g. Any trap except foothold traps,
  - h. Slingshots,
  - i. Dogs,
  - j. Falconry,
  - k. Nets, or
  - l. Capture by hand.
14. A "falconry-only" season shall be a falconer licensed under R12-4-422 unless exempt under A.R.S. § 17-236(C) or R12-4-407. A falconer participating in a "falconry-only" season shall use no other method of take except falconry.
15. A "raptor capture" season shall be a falconer licensed under R12-4-422 unless exempt under R12-4-407.

**R12-4-319. Use of Aircraft to Take Wildlife**

~~A. For the purposes of this Section, "locate" means any act or activity that does not take or harass wildlife and is directed at locating or finding wildlife in a hunt area.~~

~~B.A.~~ An individual A person shall not take or assist in taking wildlife from or with the aid of aircraft, including drones.

~~C.B.~~ Except in hunt units with Commission-ordered special seasons under R12-4-115 and R12-4-120 and hunt units with seasons only for mountain lion and no other concurrent big game season, ~~an individual~~ a person shall not locate or assist in locating wildlife from or with the aid of an aircraft, including drones, in a hunt unit with an open big game season. This restriction begins 48 hours before the opening of a big game season in a hunt unit and extends until the close of the big game season for that hunt unit.

~~D.C.~~ ~~An individual~~ A person who possesses a special big game license tag for a special season under R12-4-115 or R12-4-120 or ~~an individual~~ a person who assists or will assist such a licensee shall not use an aircraft, including drones, to locate wildlife beginning 48 hours before and during a Commission-ordered special season.

~~E.D.~~ This Section does not apply to any ~~individual~~ person acting within the scope of official duties as an employee or authorized agent of the state or the United States to manage or protect or aid in the management or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops.

E. For the purposes of this Section, "locate" means any act or activity that does not take or harass wildlife and is directed at locating or finding wildlife in a hunt area.

#### **R12-4-320. Harassment of Wildlife**

A. In addition to the provisions established under A.R.S. § 17-301, it is unlawful to harass, molest, chase, rally, concentrate, herd, intercept, torment, or drive wildlife with or from any aircraft, including drones, as defined under R12-4-301, or with or from any motorized terrestrial or aquatic vehicle.

B. This Section does not apply to ~~individual's~~ person's acting:

1. In accordance with the provisions established under A.R.S. § 17-239; or
2. Within the scope of official duties as an employee or authorized agent of the state or the United States to manage or protect or aid in the management or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops.

#### **R12-4-321. Restrictions for Taking Wildlife in City, County, or Town Parks and Preserves**

A. All city, county, and town parks and preserves are closed to hunting and trapping, unless open by Commission Order.

B. Unless otherwise provided under Commission Order or rule, a city, county, or town may:

1. Limit or prohibit any ~~individual~~ person from hunting ~~or trapping~~ within ~~1/4~~ one-fourth mile (440 yards) or trapping within one half mile (880 yards) of any:
  - a. Developed picnic area,
  - b. Developed campground,
  - c. Developed trailhead,
  - d. Developed wildlife viewing platform,
  - ee. Boat ramp,
  - ef. Shooting range,
  - eg. Occupied structure, or

~~h.~~ Golf course.

2. Require ~~an individual~~ a person entering a city, county, or town park or preserve, for the purpose of hunting, to declare the ~~individual's~~ person's intent to hunt within ~~when entering~~ the park or preserve, if the park or preserve has ~~an entry station in operation~~ a check in process established.
3. Allow ~~an individual~~ a person to take wildlife in a city, county, or town park or preserve only during the posted park or preserve hours.

C. The requirements of subsection (B)(1) do not apply to a reptile and amphibian limited weapon hand or hand-held implement season established by Commission Order.

**R12-4-322. Pickup and Possession of Wildlife Carcasses or Parts**

A. For the purposes of this Section, the following definitions apply:

1. "Fresh" means the majority of the wildlife carcass or part is not exposed dry bone and is comprised mainly of hair, hide, or flesh.
2. "Not fresh" means the majority of the wildlife carcass or part is exposed dry bone due to natural processes such as scavenging, decomposition, or weathering.

B. If not contrary to federal law or regulation, ~~an individual~~ a person may pick up and possess naturally shed antlers or horns or other wildlife parts that are not fresh without a permit or inspection by a Department law enforcement officer.

C. If not contrary to federal law or regulation, ~~an individual~~ a person may only pick up and possess a fresh wildlife carcass or its parts under this Section if the ~~individual~~ person notifies the Department prior to pick up and possession and:

1. The Department's first report or knowledge of the carcass or its parts is voluntarily provided by the ~~individual~~ person wanting to possess the carcass or its parts;
2. A Department law enforcement officer or an authorized Department employee or agent is able to observe the carcass or its parts at the site where the animal was found in the same condition and location as when the animal was originally found by the ~~individual~~ person wanting to possess the carcass or its parts; and
3. A Department law enforcement officer, using the officer's education, training, and experience, determines the animal died from natural causes. The Department may require the ~~individual~~ person to take the officer to the site where the animal carcass or parts were found when an adequate description or location cannot be provided to the officer.

D. If a Department law enforcement officer determines that the ~~individual~~ person wanting to possess the carcass or its parts is authorized to do so under subsection (C), the officer may authorize possession of the carcass or its parts.

E. Wildlife parts picked up and possessed from areas under control of jurisdictions that prohibit such activity, such as other states, reservations, or national parks, are illegal to possess in this state.

F. This Section does not authorize the pickup and possession of a threatened or endangered species carcass or its parts.

**R12-4-401. Live Wildlife Definitions**

In addition to definitions provided under A.R.S. § 17-101, and for the purposes of this Article, the following definitions apply:

"Adoption" means the transfer of custody of live wildlife to a member of the public, initiated by either the Department or its authorized agent, when no special license is required.

"Agent" means the person identified on a special license and who assists a special license holder in performing activities authorized by the special license to achieve the objectives for which the license was issued. "Agent" has the same meaning as "sublicensee" and "subpermittee" as these terms are used for the purpose of federal permits.

"Aquarium trade" means the commercial industry and its customers who lawfully trade in aquatic live wildlife.

"Aversion training" means behavioral training in which an aversive stimulus is paired with an undesirable behavior in order to reduce or eliminate that behavior.

"Captive live wildlife" means live wildlife held in captivity, physically restrained, confined, impaired, or deterred to prevent it from escaping to the wild or moving freely in the wild.

"Captive-reared" means wildlife born, bred, raised, or held in captivity.

~~"Cervid" means a mammal classified as a Cervidae or member of the deer family found anywhere in the world as defined in the taxonomic classification from the Integrated Taxonomic Information System, available online at [www.itis.gov](http://www.itis.gov).~~

"Circus" means a scheduled event where a variety of entertainment is the principal business, primary purpose, and attraction. "Circus" does not include animal displays or exhibits held as an attraction for a secondary commercial endeavor.

"Commercial purpose" means the bartering, buying, leasing, loaning, offering to sell, selling, trading, exporting or importing of wildlife or their parts for monetary gain.

"Domestic" means an animal species that does not exist in the wild, and includes animal species that have only become feral after they were released by humans who held them in captivity or individuals or populations that escaped from human captivity.

"Educational display" means a display of captive live wildlife to increase public understanding of wildlife biology, conservation, and management without requiring or soliciting payment from an audience or an event sponsor. For the purposes of this Article, "to display for educational purposes" refers to display as part of an educational display.

"Educational institution" means any entity that provides instructional services or education-related services to persons.

"Endangered or threatened wildlife" means wildlife listed under 50 C.F.R. 17.11, revised October 1, 2013, which is incorporated by reference. A copy of the list is available at any Department office, online at [www.gpoaccess.gov](http://www.gpoaccess.gov), or may be ordered from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000. This incorporation by reference does not include any

later amendments or editions of the incorporated material.

"Evidence of lawful possession" means any license or permit authorizing possession of a specific live wildlife species or individual, or other documentation establishing lawful possession. Other forms of documentation may include, but are not limited to, a statement issued by the country or state of origin verifying a license or permit for that specific live wildlife species or individual is not required.

"Exhibit" means to display captive live wildlife in public or to allow photography of captive live wildlife for any commercial purpose.

"Exotic" means wildlife or offspring of wildlife not native to North America.

"Fish farm" means a commercial operation designed and operated for propagating, rearing, or selling aquatic wildlife for any purpose.

"Game farm" means a commercial operation designed and operated for the purpose of propagating, rearing, or selling terrestrial wildlife or the parts of terrestrial wildlife for any purpose stated under R12-4-413.

"Health certificate" means a certificate of an inspection completed by a licensed veterinarian verifying the animal examined appears to be healthy and free of infectious, contagious, and communicable diseases.

"Hybrid wildlife" means an offspring from two different wildlife species or genera. Offspring from a wildlife species and a domestic animal species are not considered wildlife.

"Live baitfish" means any species of live freshwater fish designated by Commission Order as lawful for use in taking aquatic wildlife under R12-4-313 and R12-4-317.

"Live bait" means aquatic live wildlife used or intended for use in taking aquatic wildlife.

"Migratory birds" mean all species listed under 50 C.F.R. 10.13 revised October 1, 2014, and no later amendments or editions. The incorporated material is available from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000, and is on file with the Department.

"Noncommercial purpose" means the use of products or services developed using wildlife for which no compensation or monetary value is received.

"Nonhuman primate" means any nonhuman member of the order Primate of mammals including prosimians, monkeys, and apes.

"Nonnative" means wildlife or its offspring that did not occur naturally within the present boundaries of Arizona before European settlement.

~~"Person" has the same meaning as defined under A.R.S. § 1-215.~~

"Photography" means any process that creates durable images of wildlife or parts of wildlife by recording light or other electromagnetic radiation, either chemically by means of a light-sensitive material or electronically by means of an image sensor.

"Rehabilitated wildlife" means live wildlife that is injured, orphaned, sick, or otherwise debilitated and is provided care to restore it to a healthy condition suitable for release to the wild or for lawful captive use.

"Research facility" means any association, institution, organization, school, except an elementary or secondary school, or society that uses or intends to use live animals in research.

"Restricted live wildlife" means wildlife that cannot be imported, exported, or possessed without a special license or lawful exemption.

"Shooting preserve" means any operation where live wildlife is released for the purpose of hunting.

"Special license" means any license issued under this Article, including any additional stipulations placed on the license authorizing specific activities normally prohibited under A.R.S. § 17-306 and R12-4-402.

"Species of greatest conservation need" means any species listed in the Department's Arizona's State Wildlife Action Plan list Tier 1a and 1b published by the Arizona Game and Fish Department. The material is available for inspection at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov).

"Stock" and "stocking" means to release live aquatic wildlife into public or private waters other than the waters where taken.

"Taxa" means groups of animals within specific classes of wildlife occurring in the state with common characteristics that establish relatively similar requirements for habitat, food, and other ecological, genetic, or behavioral factors.

"Unique identifier" means a permanent marking made of alphanumeric characters that identifies an individual animal, which may include, but is not limited to, a tattoo or microchip.

"USFWS" means the United States Fish and Wildlife Service.

"Volunteer" means a person who:

Assists a special license holder in conducting activities authorized under the special license,

Is under the direct supervision of the license holder at the premises described on the license,

Is not designated as an agent, and

Receives no compensation.

"Wildlife disease" means any disease that poses a health risk to wildlife in Arizona.

"Zoo" means any facility licensed by the Arizona Game and Fish Department under R12-4-420 or, for facilities located outside of Arizona, licensed or recognized by the applicable governing agency.

"Zoonotic" means a disease that can be transmitted from animals to humans or, more specifically, a disease that normally exists in animals but that can infect humans.

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 4. GAME AND FISH COMMISSION**

**ARTICLE 3. TAKING AND HANDLING OF WILDLIFE**

**R12-4-101, R12-4-216, R12-4-301, R12-4-302, R12-4-303, R12-4-304, R12-4-305,  
R12-4-306, R12-4-307, R12-4-308, R12-4-309, R12-4-310, R12-4-311, R12-4-313, R12-4-314,  
R12-4-315, R12-4-316, R12-4-317, R12-4-318, R12-4-319, R12-4-320, R12-4-321, R12-4-322, and R12-4-401**

**Economic, Small Business and Consumer Impact Statement**

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

**1. Identification of the proposed rulemaking.**

The Arizona Game and Fish Commission proposes to amend its Article 3 rules, governing the taking and handling of wildlife, to enact amendments developed during the preceding Five-year Review Report. The amendments proposed in the five-year review report are designed to clarify current rule language; protect public health and safety and private property rights; facilitate job growth and economic development; support Fair Chase principles and the tenets of the North American Model of Wildlife Conservation; enable the Department to provide better customer service; and reduce regulatory and administrative burdens wherever possible. After evaluating the scope and effectiveness of the proposed amendments specified in the review, the Commission proposes additional amendments to further implement the original proposals.

Arizona's great abundance and diversity of native wildlife can be attributed to careful management and the important role of the conservation programs the Arizona Game and Fish Department has developed. The Department's management of both game and nongame species as a public resource depends on sound science and active management. As trustee, the state has no power to delegate its trust duties and no freedom to transfer trust ownership or management of assets to private establishments. Without strict agency oversight and management, the fate of many of our native species would be in jeopardy. Wildlife can be owned by no individual and is held by the state in trust for all the people.

An exemption from Executive Order 2015-01 was provided for this rulemaking by Hunter Moore, Natural Resource Policy Advisor, Governor's Office, in an email dated August 22, 2017.

In addition to replacing the term "buffalo" with "bison" and "individual" with "person", nonsubstantive amendments made to make rules clearer and more concise; the Commission proposes the following substantive amendments:

**R12-4-101. Definitions**

The objective of the rule is to establish definitions that assist persons regulated by the rule and members of the public in understanding the unique terms that are used throughout 12 A.A.C. 4. Game and Fish Commission Rules. The rule was adopted to facilitate consistent interpretation of Commission rules and to prevent persons regulated by the rule from misinterpreting the intent of Commission rules.

Because the terms "cervid," "nonprofit organization," and "person" are used in multiple Game and Fish Commission rules, the Commission proposes to amend the rule to define these terms under R12-4-101. The

Commission proposes to amend the rule to define terms used in multiple Game and Fish Commission rules and Commission Orders: "bow," "crossbow," and "handgun." Defining these terms will aid in facilitating a consistent interpretation of Commission Orders and rules. In addition, the Commission proposes to amend the rule to define "export" and "import" to reduce regulatory ambiguity. It is often assumed the terms "import" and "export" mean something is being brought into or taken out of the country. For the purposes of Game and Fish Commission rules, "import" and "export" mean something is being brought into or taken out of the State. These changes are proposed as a result of customer comments received by the Department. The Commission proposes to amend the rule to replace the term "animal" with "wildlife" to make the rule more concise.

#### **R12-4-216. Crossbow Permit**

The objective of the rule is to establish eligibility requirements, conditions, and restrictions for the crossbow permit. The permit allows a person, who cannot draw and hold a bow, to use a crossbow during an archery-only hunt.

The Commission proposes to amend the rule to allow a Crossbow Permit holder to use a pre-charged pneumatic weapon, as defined under R12-4-301, using bolts or arrows and with a capacity of holding and firing only one arrow or bolt at a time during an archery-only season. This change is proposed as a result of customer comments received by the Department.

#### **R12-4-301. Definitions**

The objective of the rule is to establish definitions that assist persons regulated by the rule and members of the public in understanding the unique terms that are used throughout Article 3. The rule was adopted to facilitate consistent interpretation of Article 3 rules and to prevent persons regulated by the rule from misinterpreting the intent of Commission rules.

The Commission proposes to amend the definition of "administer" to remove the phrase "pursue, capture, or otherwise restraining wildlife" as the language is unnecessarily restrictive.

In recent years, due to the affordability and availability of drones, their use has significantly increased. While the definition of "aircraft" includes any lighter-than-air contrivance designed for flight, confusion remains as to whether a drone is considered an aircraft. The Commission proposes to amend the definition of "aircraft" to clearly state that drones are considered aircraft.

Many anglers believe scented, flavored, and chemically treated devices are legal artificial lures because the definition of "artificial lures" does not specifically address them. Since this definition was adopted, the popularity of these types of baits, often marketed as "lures" and "artificial," has increased; and their use is causing unacceptable mortality rates in released trout caught in some catch-and-release waters. The Commission proposes to amend the definition to clearly state that artificial flies and lures does not include chemical and organic attractants. The purpose of restricting scented, flavored, and chemically treated flies and lures is to minimize the mortality of fish, particularly trout mortalities because trout tend to gulp the lure deeper, resulting in a 30 to 90% mortality rate after being released. In addition, the Commission proposes to amend the definition of "artificial lures and flies" to increase consistency between Commission

rules, Commission Orders and public outreach materials; Commission rules use the phrase "artificial lures and flies;" Commission Orders, and all other public outreach materials use the phrase "artificial flies and lures."

The Commission proposes to repeal the definition of "cervid." Because the term is used in multiple Game and Fish Commission rules, the Commission intends to define this term under R12-4-101.

Under A.R.S. § 13-3102(A)(4), a person commits misconduct involving weapons by knowingly possessing a deadly weapon or prohibited weapon if such person is a prohibited possessor. Under A.R.S. § 13-3101(A)(1), "deadly weapon" means anything that is designed for lethal use. As a result of amendments made to R12-4-303 (Unlawful Devices, Methods, and Ammunition), the Commission proposes to define "deadly weapon," "prohibited possessor," and "prohibited weapon."

The Commission also proposes to define "edible portions of game meat" to increase consistency between statute, Commission Orders, and rules. While A.R.S. § 17-340 defines edible portions of bighorn sheep, bison, deer, elk, game fish, javelina, migratory game birds, pronghorn antelope, upland game birds, and wild turkey, the statute does not address bear or mountain lion, which are considered big game. This change is in response to customer comments received by the Department.

A.R.S. §§ 17-231(A)(3) and 17-301(D)(2) authorizes the Commission to adopt rules establishing the taking of wildlife with firearms, fishing equipment, archery equipment, or other implements in hand as may be defined. The Commission also proposes to amend the rule to define "device," "hybrid device," "muzzleloading shotgun," "pneumatic weapon," "rifle," and "shotgun." Defining these terms will aid in facilitating a consistent interpretation of Commission Orders and rules.

In addition, the Commission is aware of devices that use lasers and computers that enable a person with no hunting or shooting experience to easily hit a target up to 500 yards away. As a result of amendments made to R12-4-303 (Unlawful Devices, Methods, and Ammunition), the Commission proposes to define "smart device." This change is in response to customer comments received by the Department.

#### **R12-4-302. Use of Tags**

The objective of the rule is to establish requirements for the possession and lawful use of tags issued by the Department. A.R.S. § 17-332 authorizes the Commission to prescribe the manner in which a licensee shall attach a tag to a big game animal. The rule was adopted to establish the manner and method in which a person shall attach a tag to wildlife and ensure consistent interpretation of and compliance with A.R.S. § 17-332.

The Commission is aware of a problem with the enforcement of the rule. The rule establishes that only the hunter listed on the tag shall use the tag and attach it to game lawfully harvested by the hunter listed on the tag. When two persons are hunting, and knowingly deviate from this mandate - both parties are involved in the violation. There is a circumstance within the current rule that results in only one of the two persons unlawfully using a tag to be in violation of the rule. For example: Hunter A harvests an elk. Hunter A then allows Hunter B to place Hunter B's tag on the elk, enabling Hunter A to continue hunting for another elk after having reached their bag limit for elk. Even though both parties were involved in the unlawful tagging

of the elk, only Hunter B would be cited under this rule. The Commission proposes to amend the rule to establish that it is unlawful for a person to allow another person's tag to be attached to wildlife that person harvested.

The Commission proposes to amend the rule to replace the term "hunt area" with "taking wildlife" to clarify unlawful uses of a tag.

#### **R12-4-303. Unlawful Devices, Methods, and Ammunition**

The objective of the rule is to establish those devices, methods, and ammunition that are unlawful for taking of any wildlife in Arizona. A.R.S. § 17-301(D)(2) authorizes the Commission to adopt rules establishing the taking of wildlife with firearms, archery equipment, or other implements in hand as may be defined. The rule was adopted to establish methods and devices that are unlawful for the take of wildlife and ensure consistent interpretation of and compliance with 17-301(D)(2). The Commission believes the reason the rule exists is to prohibit those devices and methods that compromise safe hunting practices or the spirit of fair chase. "Fair Chase" means the ethical and lawful pursuit and take of free-range wildlife in a manner that does not give the hunter or angler improper or unfair advantage over such wildlife. The following criteria are used to evaluate whether a new technology or practice violates the Fair Chase ethic; does the technology or practice allow a hunter or angler to: locate or take wildlife without acquiring necessary hunting and angling skills or competency; pursue or take wildlife without being physically present and pursuing wildlife in the field; or almost guarantee the harvest of wildlife when the technology or practice prevents wildlife from eluding take.

The Commission is aware that confusion exists regarding the use of full-jacketed ammunition. Full-jacketed ammunition is sold by sporting goods stores and is often labeled by the manufacturer for use in target practice, but there are manufacturers who also label the ammunition for use in hunting. Confusion exists because full-jacketed ammunition is readily available in sporting goods stores and the rule prohibits the use of full-jacketed ammunition "designed for military use." A person could assume the ammunition sold by a sporting goods store may be used for hunting purposes because it is readily available to the public for purchase. The use of full-jacketed ammunition for hunting is prohibited because it does not create a substantial wound for the humane harvest of big game. The uniform and aerodynamic design means the ammunition is more likely to penetrate the animal and keep going out the other side, possibly injuring people or wildlife farther downrange and leaving only a small wound in the big game animal, resulting in wounding loss. This would impact hunter opportunity, because a person who wounds a big game animal may not be aware the animal was wounded and may continue to hunt and possibly wound or take another big game animal. Ammunition designed to expand creates a wound cavity and slows the bullet down so that it will not continue beyond the target with much force, if at all. The Commission proposes to amend the rule to remove specify that any ammunition that does not expand on impact shall not be used for the take of big game to make the rule more concise. This change also allows the continued use of ammunition that does not expand for the take of small game, fur bearers, and predators. This change is in response to customer comments received by the Department.

The Commission is aware of arrows or bolts capable of being fitted with explosive tips that discharge upon impact, some allow the user to insert a bullet into a modified broadhead and others are manufactured with a small broadhead inside a shotgun shell. Under R12-4-303, a person is prohibited from using any projectile that contains explosives because the Commission believes they compromise the spirit of fair chase. The Commission proposes to amend the rule to include projectiles that contain a secondary propellant to proactively address emerging technology.

Due to technological advances in hunting scopes (for any lawful hunting device), the Commission proposes to clarify the rule to address laser range finders that project a non-visible light onto an animal. A laser distance meter emits a pulse of laser at a target. The pulse then reflects off the target and back to the sending device (in this case, a laser distance meter). This "time of flight" principle is based on the fact that laser light travels at a fairly constant speed through the Earth's atmosphere. Inside the meter, a simple computer quickly calculates the distance to target. The Commission does not believe these types of hunting scopes compromise the spirit of fair chase because the hunter still must possess the necessary hunting skills or competency in order to take an animal. This change is in response to customer comments received by the Department.

Smart devices are becoming more prevalent in the firearm and hunting industries (devices equipped with a target-tracking system or an electronically-controlled, electronically-assisted, or computer-linked trigger or release). These smart devices enable a person with little or no experience to easily hit a target more than 500 yards away with very high accuracy; once a target is selected, the smart device controls the trigger mechanism and discharges only when the weapon is pointed at the designated target, taking into account dozens of variables, including wind, barometric pressure, elevation, inclination or declination, ballistic performance, etc. Normally, it takes years of practice to hit a target at that distance, but a smart device can make a person into a sharpshooter in a matter of hours or even less. Because the Commission believes these devices compromise the spirit of fair chase and the Commission's Fair Chase Policy, the Commission proposes to amend the rule to prohibit the use a smart device while taking wildlife. This change is in response to customer comments received by the Department.

While the current use of self-guided ammunition is not popular due to limited availability and the high costs involved, the Commission believes it is necessary to proactively address concerns about the use of self-guided ammunition and prohibit its use for taking or aiding in the take of wildlife.

The Commission is aware of instances where a person will use a watercraft to chase and harass waterfowl in an effort to force the waterfowl to take flight so they may be hunted by another person. The Commission proposes to amend the rule to clarify federally prohibited activities to ensure consistent interpretation of A.R.S. § 17-301 as it applies to migratory birds and prevent persons from inadvertently violating federal regulations applicable to migratory bird hunting.

Under A.R.S. § 17-309(A)(4), it is unlawful to discharge a firearm while taking wildlife within one-fourth mile of an occupied farmhouse or other residence, cabin, lodge or building without permission of the owner or resident. Under R12-4-303(A)(3)(h), it is unlawful to discharge a pneumatic weapon .30 caliber or larger

while taking wildlife within one-fourth mile of an occupied farmhouse or other residence, cabin, lodge or building without permission of the owner or resident. In addition, the Commission is aware of instances where a hunter who lives on the edge of a municipal boundary is unable to archery hunt on his own property because Commission Order closes areas within one-fourth mile of an occupied residence. For example, a hunter who lives on the edge of a forest boundary and who is miles away from the nearest residence is unable to archery hunt on their own property because of the location of their own home. In addition, the Commission and Department have received a number of complaints about persons archery hunting near their private property. The Commission proposes to amend the rule to prohibit the discharge of hybrid device, arrow, or bolt while taking wildlife within one-fourth mile of an occupied farmhouse or other residence, cabin, lodge or building without permission of the owner or resident, to increase consistency between statute and rules. This language mirrors statutory language under A.R.S. § 17-309, which prohibits a person from discharging a firearm while taking wildlife within one-fourth mile of an occupied farmhouse or other residence, cabin, lodge, or building without permission of the owner or resident. This change is in response to customer comments received by the Department.

In addition, the Commission is aware confusion exists as to what distance constitutes "one-fourth mile" and "one-half mile." The Commission proposes to clarify this distance by also referencing this distance in yards (440 or 880, as applicable) to reduce regulatory uncertainty. This change is in response to customer comments received by the Department.

The Commission recognized the need to evaluate regulatory measures pertaining to the use of trail cameras, as they relate to the 'take of wildlife' and the Fair Chase hunting ethic, and directed the Department to evaluate current rule language as it pertains to trail cameras. The team benchmarked with other states and spoke with members of industry and ultimately made recommendations to prohibit the use of trail cameras capable of sending a wireless remote signal to another electronic device for the purpose of taking or aiding in the taking of wildlife or taking or aiding in the take of wildlife, or locating wildlife for the purpose of taking or aiding in the take of wildlife.

While the current use of satellite imagery for hunting is not popular due to the costs involved, the Commission believes it is necessary to proactively address concerns about the use of satellite imagery and prohibit its use for taking or aiding in the take of wildlife. The Commission proposes to amend the rule to prohibit the use of images of wildlife produced or transmitted from a satellite or other device that orbits the earth; this prohibition does not include mapping systems or programs. This change is in response to customer comments received by the Department.

Under A.R.S. § 13-3102(A)(4), a person commits misconduct involving weapons by knowingly possessing a deadly weapon or prohibited weapon if such person is a prohibited possessor. Under A.R.S. § 13-3101(A)(1), "deadly weapon" means anything that is designed for lethal use. The Commission proposes to amend the rule to prohibit a person who is a prohibited possessor from using a deadly weapon or prohibited weapon to take wildlife to remove regulatory uncertainty.

#### **R12-4-304. Lawful Methods for Taking Wild Mammals, Birds, and Reptiles**

The objective of the rule is to establish lawful devices and methods a person may use to take wild mammals, birds, and reptiles during seasons established by Commission Order. A.R.S. § 17-301(D)(2) authorizes the Commission to adopt rules establishing the taking of wildlife with firearms, archery equipment, or other implements in hand as may be defined. The rule was adopted to establish methods and devices that may be used for the take of specific wildlife and ensure consistent interpretation of and compliance with A.R.S. § 17-301(D)(2).

The availability of hybrid devices (weapons with components from two or more different devices) is increasing. Depending on the species, some hybrid devices may be used for the take of wildlife, while others cannot. The Commission proposes to amend the rule to allow the use of a hybrid device for the taking of wildlife provided all components of the device are authorized for the take of that species. This change is in response to customer comments received by the Department.

The Commission proposes to amend the rule to replace references to "antelope" with "pronghorn antelope" to reflect language used in Commission Order and public outreach materials.

In 2013, the Commission amended the rule to allow the use of pre-charged pneumatic weapons for the take of all wildlife, except bison, elk, and turkey due to concerns that pre-charged pneumatic weapons would not create a substantial wound for the humane harvest of a large animal (bison and elk) and public safety concerns (turkey). Subsequent discussions with persons in the pre-charged pneumatic weapon industry indicate that it is also necessary to reference the caliber of the bullet. This change enables the Commission to establish a lethal standard for the take of bison and elk using a pre-charged pneumatic weapon. These changes are in response to customer comments received by the Department.

The Commission believes technological advances in ceramic or ceramic coated broadheads have proven they can be as effective as traditional metal broadheads. A ceramic broadhead is typically produced by dry-pressing zirconia powder and then hardening the broadheads through the process of compacting and forming a solid mass of material by heat or pressure to make the ceramic as hard as metal. The broadhead is then sharpened by grinding the edges with a diamond-dust-coated grinding wheel. Zirconia is 8.5 on the Mohs scale of mineral hardness, compared to 4.5 for normal steel and 7.5 to 8 for hardened steel and 10 for diamond. This very hard edge significantly reduces the need for sharpening, making them a desirable product for archery hunters. The Commission proposes to amend the rule to allow the use of ceramic and ceramic-coated broadheads. This change is in response to customer comments received by the Department.

The Commission proposes to allow the use of pre-charged pneumatic weapons using arrows or bolts for the take of wildlife during a general season wherever a bow or crossbow is listed as a lawful method of take for that species: bear, bighorn sheep, bison, deer, elk, javelina, mountain lion, pronghorn antelope, and turkey. The Commission believes these types of devices do not compromise the spirit of fair chase. This change is in response to customer comments received by the Department.

Under A.R.S. § 17-235, the Commission is required to prescribe seasons, bag limits, possession limits and other regulations pertaining to taking migratory birds in accordance with the Migratory Bird Treaty Act and

regulations issued thereunder. The Commission proposes to incorporate by reference the most recent version of 50 C.F.R. 20.21 and reflect the most recent Government Printing Office contact information.

The Commission proposes to amend the rule to replace references to "handguns using black powder or synthetic black powder" with "muzzleloading handguns" to make the rule more concise.

**R12-4-305. Possessing, Transporting, Importing, Exporting, and Selling Carcasses or Parts of Wildlife**

The objective of the rule is to conserve wildlife resources by establishing requirements for the lawful possession, transport, import, export, or sale of wildlife. The Commission's rule protects native wildlife by preventing the spread of disease, reducing the risk of released animals competing with native wildlife, discouraging illegal trade of native wildlife, and preventing interactions between humans and wildlife that may threaten public health or safety. The rule was adopted to prevent the unlawful possession, transport, import, export, or sale of wildlife and allow for lawful possession by establishing the methods for complying with governing statutes.

The Commission proposes to amend the rule to state the tag shall be attached in the manner indicated on the tag to increase consistency between Commission rules.

In addition, the Commission proposes to amend the rule to specify the manner in which a person may provide evidence of legality for Eurasian collared-doves to reduce regulatory ambiguity.

The rule requires a person who receives a portion of wildlife to provide the identity of the person who took and gave the wildlife, but does not state under what circumstances this action is required. The Commission proposes to amend the rule to add "upon request to any peace officer, wildlife manager, or game ranger" to reduce ambiguity and increase consistency between Commission rules.

The Department issues both permit-tags (through computer draw) and nonpermit-tags (over the counter) for the take of wildlife. The Commission proposes to amend the rule to reflect both types of tags issued by the Department to make the rule more concise.

Under A.R.S. § 17-302(A), a landowner or lessee who is a livestock operator and whose livestock were recently attacked or killed by bear or mountain lion may lawfully exercise such measures as necessary to prevent further damage from the offending bear or mountain lion, including the taking of such bear or mountain lion; and further states that dogs may be used to facilitate the pursuit of the depredating bear or mountain lion. The statute also states that no portion of an animal taken pursuant to A.R.S. § 17-302 shall be retained or sold by any person except as authorized by the Commission. In response to comments made by hunters, the Commission amended R12-4-305(H) to allow a person who takes a depredating bear or mountain lion to retain the carcass provided the person has a valid hunting license and the carcass is immediately tagged with a valid hunt permit-tag or nonpermit-tag (unless the person has already taken the applicable bag limit for that big game animal). This change also prevents the animal from going to waste.

The Commission proposes to amend the rule to restrict the import of velvet antlers of cervids to address Chronic Wasting Disease (CWD) concerns. Growing antlers of cervids are covered by a highly innervated and vascularized apical skin layer, referred to as velvet, which is shed after an increase in testosterone and

ossification of antlers. In a recent study, findings of prions in antler velvet of CWD-affected elk suggest that this tissue may play a role in disease transmission among cervids. At this time, the most effective management approach has to be to take measures to ensure, to the greatest extent possible, that the disease does not enter into Arizona. If it does, there will be substantial financial impact to the Department, captive cervid breeders, and the rural economy that is supported, in part, by hunting.

The Commission proposes to amend the rule to clarify that, when possessing, transporting, or importing cervid meat that has been cut and packaged, the meat may be personally or commercially cut and packaged. This change is in response to customer comments received by the Department.

The Commission also proposes to replace the phrase "wild mammal, bird, or reptile" with "wildlife" to indicate the rule applies to all wildlife, unless otherwise specified, to make the rule more concise.

#### **R12-4-306. Buffalo Hunt Requirements**

The objective of the rule is to establish rules of practice governing bison hunts, which are conducted by the Department to harvest bison appropriate to management objectives and land carrying capacity. In Arizona, bison are found on two wildlife areas operated solely by the Department; Raymond, located east of Flagstaff, and House Rock, located east of the North Kaibab National Forest. Both wildlife areas are managed to provide viewing opportunities as well as hunting opportunity. The rule was adopted to ensure the Department manages these herds on a sustainable basis.

In the past, the hunts on Raymond and House Rock were managed differently to allow the Department greater flexibility in conducting these hunts. Over time, the Department has implemented more effective control measures for these hunts and, as a result, now manages both areas in the same manner. The Commission proposes to amend the rule to combine bison hunt requirements into one subsection to make the rule more concise.

Currently, a hunter who takes a bison, or their designee, is required to present the bison in person to the Department for inspection. The Commission proposes to amend the rule to allow the hunter to check out either in person or by telephone to reduce the burden and costs on persons regulated by the rule. This change is in response to customer comments received by the Department.

The Commission is aware of electronic methods implemented by other fish and wildlife agencies that allow a person to check-in or check-out electronically, such as an online system or mobile device application. The Commission proposes to amend the rule to allow a person to check-in and check-out electronically, when made available by the Department, to reduce the costs and burdens to persons regulated by the rule. This change is in response to customer comments received by the Department.

#### **R12-4-307. Trapping Regulations, Licensing; Methods; Tagging of Bobcat Pelts**

The objective of the rule is to establish requirements and restrictions necessary to regulate trapping in a fair and humane manner with the utmost regard for wildlife management principles and public safety. In addition, the rule establishes trapping reporting requirements as required under A.R.S. § 17-361(D). Trapping is the use of a device to remotely catch an animal. Fur-bearing and predatory animals may be trapped for a variety of purposes, including food, the fur trade, pest control, and wildlife management.

Under A.R.S. § 17-301, it is unlawful to take wildlife with any leghold trap, instant kill body gripping design trap, or by a poison or a snare on any public land. The rule was adopted to establish requirements and restrictions to ensure responsible trapping and safeguard the future of trapping and ensure consistent interpretation of and compliance with A.R.S. § 17-301.

The Commission proposes to amend the rule to remove redundant language regarding the issuance of a trapping registration number.

In 2013, the Legislature amended A.R.S. Title 17 to allow the Arizona Game and Fish Commission to establish license classifications and fees. As a result of the subsequent rulemaking, any person age 10 and older is required to possess a license in order to lawfully take wildlife; this change was consistent with other Western states. The Commission proposes to amend the rule to require a person age 10 or older to possess a trapping license in order to trap in Arizona to increase consistency between Commission rules. In addition, under A.R.S. § 17-361(D) a person who possesses a trapping license is required to submit a trapping report. A trapper under the age of 14 was not required to submit a trapping report because they were not required to possess a trapping license. Reducing the trapping license age requirement will also enable the Department to gather additional valuable harvest data.

The Commission has amended license rules within Article 2 (licenses; permits; stamps; tags) and 4 (live wildlife) to increase consistency in format between application requirements. The Commission proposes to amend the rule to reflect changes made to other license application rules to increase consistency between Commission rules.

The Commission is aware of some confusion as to the daily trap check requirement prescribed under A.R.S. § 17-361(B). The statute requires a trapper to inspect all traps in use daily. Some trappers have asked if a trail camera could be used to meet this statutory mandate. Because "inspect" and "view" are very different actions, the Commission believes a trapper should be physically present in the trap area when inspecting their traps in order to meet the inspection requirements prescribed in statute.

Under R12-4-321, a city, county, or town may limit or prohibit any person from hunting within one-fourth mile (440 yards) or trapping within one-half mile (880 yards) of any developed picnic area, campground, boat ramp, shooting range, occupied structure, or golf course. The Commission also proposes to amend the rule to incorporate other areas developed for public use, as referenced under R12-4-321, to increase consistency between rules within Article 3.

In addition, under A.R.S. § 17-309 and R12-4-303, a person is prohibited from conducting certain activities involving the take of wildlife within a specific distance from "an occupied farmhouse or other residence, cabin, lodge or building," while this rule references "occupied residence or building." The Commission proposes to amend the rule to mirror statutory language to increase consistency between statute and Commission rule.

In addition, the Commission is aware confusion exists as to what distance constitutes "one-fourth mile" and "one-half mile." The Commission proposes to clarify this distance by also referencing this distance in yards

(440 or 880, as applicable) to reduce regulatory uncertainty. This change is in response to customer comments received by the Department.

To comply with CITES (Convention on International Trade in Endangered Species), which aims to protect against over-exploitation of certain species, a person is required to obtain and attach a bobcat seal to all bobcats exported (trapped or hunted) out of Arizona. The information gathered from persons obtaining these seals is used to record population and biological information that helps in conservation management decisions. Currently, a person who traps a bobcat in Arizona is required to obtain a bobcat seal from the Department and attach the seal to the bobcat pelt within ten days of the end of the bobcat trapping season. The Commission proposes to amend the rule to require a trapper to ensure a bobcat seal is attached to a bobcat no later than April 1 of each year to reduce the burden on persons regulated by the rule; this is approximately 30 days after the close of the trapping season and coincides with the date the annual trapping report is due.

Since the rule was last amended, the Department implemented a new organizational structure; the Game Branch is now referred to as the Terrestrial Wildlife Branch. The Commission proposes to amend the rule to reference the Terrestrial Wildlife Branch to make the rule more concise.

In light of comments received by the Department, the Commission proposes to amend the rule to allow a trapper to use a trail camera for the purpose of remotely observing traps they have lawfully set. While this change will allow the trapper to view their traps without disturbing the immediate area, this change does not allow the trapper to use the trail camera to meet the daily inspection requirement prescribed under A.R.S. § 17-361(B).

#### **R12-4-308. Wildlife Inspections, Check Stations, and Roadblocks**

The objective for the rule is to establish requirements for wildlife check stations and wildlife inspections, as authorized by the Director. Wildlife check stations and inspections enable the Department to obtain biological data and verify evidence of legality. Under A.R.S. § 17-211(E), game rangers and wildlife managers may inspect all wildlife taken or transported and seize all wildlife taken or possessed in violation of law, or showing evidence of illegal taking. The rule was adopted to ensure consistent interpretation of and compliance with A.R.S. § 17-211(E) and all applicable laws and rules.

The Commission believes that to have a successful hunt, one does not have to harvest wildlife; whether a person takes a bull elk, a spike deer, a limit of dove, or goes home empty-handed, the Commission believes the times spent in the field with friends and family are some of the best times a person can ever have. The Commission proposes to amend the rule to replace the phrase "successful hunter" with "hunter who harvests" because the Commission believes a harvest is not required in order to have a "successful" hunt.

In addition, the Commission proposes to replace the phrase "produce and display any license, tag, stamp, or permit required for taking or transporting wildlife" with "provide evidence of legality as defined under R12-4-301" to make the rule more concise.

The Commission is aware of electronic methods implemented by other fish and wildlife agencies that allow a person to check-in or check-out electronically, such as an online system or mobile device application. The

Commission proposes to amend the rule to allow a person to check-in and check-out electronically, when made available by the Department, to reduce the costs and burdens to persons regulated by the rule. This change is in response to customer comments received by the Department.

**R12-4-309. Authorization for Use of Drugs on Wildlife**

The objective of the rule is to establish the restrictions, application, reporting, and exemption from requirements for the authorization for use of drugs on wildlife, including but not limited to, fertility drugs, growth hormones, and tranquilizers. Such drugs are used in research and population management for fertility control, disease prevention or treatment, immobilization, or growth stimulation. The rule was adopted to proactively provide the Department with measures designed to ensure the necessary regulatory measures are in place for the use of drugs on wildlife.

In 2015, the Commission amended Article 4 special license rules to notice license holders that a special license does not exempt the license holder from any municipal, county, state or federal code, ordinance, statute, regulation, or rule or authorize the license holder to engage in any activity using wildlife that is protected by federal regulation. The Commission proposes to amend the rule to state the authorization does not exempt a person from any municipal, county, state or federal code, ordinance, statute, regulation, or rule or authorize a person to engage in any activity using wildlife that is protected by federal regulation to increase consistency between Commission rules.

The Commission proposes to amend the rule to remove the requirement that the applicant include information regarding federal approvals and/or permits because having this language in rule implies the Department verifies that the applicant possesses all of the necessary approvals and/or permits and that those approvals and/or permits are valid. The Commission believes it is the applicant's responsibility to ensure they apply for and obtain all required federal approvals and/or permits.

The Commission proposes to amend the rule to require the written endorsement to be signed by a person who has the authority to sign documents on behalf of a government agency, university, or institution to ensure the applicant has sufficient permission to conduct the activities noted on the application and associated documents.

Statute and rules that require a person to present a license, stamp, permit, or authorization to members of law enforcement also reference the terms "wildlife manager" and "game ranger." The Commission proposes to amend the rule to reference "wildlife manager" and "game ranger" to increase consistency between Commission rules.

The rule requires a person who is authorized to use drugs on wildlife by the Department to submit an annual and final report; however, the rule does not establish a time-frame for either of these reports. The Commission proposes to establish due dates for the annual and final report to make the rule more concise.

The Commission proposes to amend the rule to require a person applying for authorization to use drugs on wildlife to indemnify the Department against any injury or damage resulting from the use of animal drugs in light of recent law suits taking place at the federal level.

In 2013, the Commission amended R12-4-428 (captive standards) to remove the annual veterinary

inspection requirement for all wildlife from R12-4-428 and reference the inspection requirement only in those rules where an annual veterinary inspection should be required and when wildlife is held for more than one year. Subsection (E) establishes the rule does not prohibit the treatment of wildlife by a licensed veterinarian or holder of a special license; the Commission proposes to amend the rule to replace the reference to R12-4-428 with R12-4-413 and R12-4-420 to make the rule more concise and increase consistency between Commission rules.

#### **R12-4-310. Fishing Permits**

The objective of the rule is to establish requirements for the fishing permit available to governmental agencies and nonprofit organizations that provide rehabilitation and treatment services for persons with disabilities. The Commission recognizes fishing and hunting as a fundamental requirement of wildlife conservation in Arizona and introductory fishing or hunting events actively promote participation in a variety of recreational opportunities. The rule was adopted to permit these agencies to provide outdoor fishing opportunities to persons with physical, developmental, or mental disabilities, without requiring them to obtain a fishing license.

The Commission proposes to amend the rule to remove the requirement that a nonprofit be licensed or contracted with the Department of Economic Security (DES) or Department of Health Services (DHS) to provide physical or mental rehabilitation or training to persons with physical, developmental, or mental disabilities and replace the terms "rehabilitation or training" with "treatment and care." The Department receives approximately 100 fishing permit applications annually. Of those 100 applications, approximately 50% are denied either because the agency, department, or nonprofit is not contracted with DES or DHS or they provide "habilitative care and treatment" instead of "rehabilitative care and treatment." The Fishing Permit was originally established to provide unlicensed fishing opportunities to a segment of the public that has difficulty engaging in this recreational activity. The Commission believes the rule with the proposed amendments will continue to meet the original intent of the rule, while expanding unlicensed fishing opportunities to additional agencies, departments, and nonprofits.

The Commission proposes to amend the rule to specify the permit is valid for any two days within a 30 day period. An agency, department, or nonprofit is required to submit a report no later than 30 days after the end of the authorized fishing dates; and an agency, department, or nonprofit that fails to submit the report is not eligible for another permit until the reporting requirement has been met. Currently, a Fishing Permit applicant may choose any two days within a within a calendar year; some applicants have chosen dates more than six months apart, which can be problematic when the agency, department, or nonprofit submits a subsequent application before the second date listed on the first permit has passed.

Currently, the Fishing Permit allows up to 20 persons to fish without a license. When an applicant proposed to hold an event for more than 20 persons, the applicant was required to submit an additional application. In these scenarios, the Department also issued and administered additional fishing permits. The Commission proposes to amend the rule to remove the twenty person limit to reduce the burdens and costs to persons regulated by the rule.

The Commission proposes to amend the rule to require a nonprofit to provide a copy of its Articles of Incorporation and a document identifying its mission at the time of application. Because the rule is being amended to remove the requirement that a nonprofit be contracted or licensed by DES or DHS, the Department will use these documents to determine the applicant's eligibility for the fishing permit.

The Commission proposes to amend the rule to replace the reference to "lesson plan" with "curriculum outline" to make the rule more concise. The Department's Education Branch is responsible for the issuance of the fishing permit; their internal documents and outreach information refers to the instructional document as a curriculum outline, rather than a lesson plan: a lesson plan is a detailed description of topics to be covered in a single class (to include what information is provided when); a curriculum outline establishes the key points that must be covered in a single class. The order and manner in which the instruction is provided should be left to the judgment of the instructor as more or less information on a particular key point may be required depending on the individuals receiving the instruction.

#### **R12-4-311. Exemptions from Requirement to Possess an Arizona Fishing License or Hunting License While Taking Wildlife**

The objective of the rule is to establish the circumstances under which a person is not required to possess a fishing or hunting license while taking wildlife. A.R.S. § 17-331 states, "Except as provided by this title, rules prescribed by the Commission or Commission Order, a person shall not take any wildlife in this state without a valid license or a Commission approved proof of purchase." The rule was adopted to identify the circumstances under which a fishing or hunting license is not required due to statutory exemptions or when determined necessary by the Commission. The Commission recognizes fishing or hunting as a fundamental requirement of wildlife conservation in Arizona and introductory fishing or hunting events actively promote participation in a variety of recreational opportunities.

The Commission proposes to amend the rule to reference "trapping license" as one of the licenses that may be revoked by the Commission; provide examples of terrestrial mollusks and crustaceans; and remove the reference to "sport fishing contractor" as the Department no longer contracts this service to make the rule more concise.

The Commission proposes to amend the rule to provide examples of nonnative terrestrial mollusks to reduce regulatory ambiguity.

A.R.S. § 17-215 states, each employee and volunteer who has contact with children or vulnerable adults as part of their regular duties must have a valid fingerprint clearance card issued pursuant to A.R.S. § 41-1758.07 or provide the Department documentation of the person's application for a fingerprint clearance card. The Commission proposes to amend the rule to allow a person to provide documentation of the person's application for a fingerprint clearance card as prescribed under A.R.S. § 17-215 to reflect statutory requirements.

#### **R12-4-313. Lawful Methods of Taking Aquatic Wildlife**

The objective of the rule is to establish lawful devices and methods a person may use to take aquatic wildlife during seasons established by Commission Order. A.R.S. § 17-301 authorizes the Commission to

determine lawful methods for the taking of fish. The rule was adopted to establish additional devices and methods by which a person may lawfully take aquatic wildlife and ensure consistent interpretation of and compliance with A.R.S. § 17-301.

The Commission proposes to combine R12-4-313 and R12-4-317 (Seasons for Lawfully Taking Fish, Mollusks, Crustaceans, Amphibians, and Aquatic Reptiles) to increase consistency between Commission Orders, rules, and Department publications; with this amendment R12-4-317 will be repealed.

The Commission proposes to amend the title of the rule to Lawful Methods of Take and Seasons for Aquatic Wildlife to more accurately reflect the subject matter of the rule as amended.

The Commission recently amended R12-4-609 Commission Orders to authorize the Commission to establish a special season allowing fish to be taken by additional methods on waters where a fish die-off is imminent. This change was made as a result of an incident involving Tempe Town Lake that gave light to the fact that the Commission did not have sufficient authority to issue an Order to allow the take of fish by additional methods on waters where a fish die-off was imminent. The Commission proposes to amend the rule to increase consistency between Commission rules.

Because scientific terms are italicized in other Commission rules, the Commission proposes to italicize scientific terms referenced in this rule to increase consistency in formatting with other Commission rules.

In 2014, the Commission amended its license and stamp rules as a result of legislation that authorized the Commission to simplify its license structure. In an effort to simplify the licensing process and increase value, the Department decided to eliminate the "two-pole" stamp and roll the simultaneous fishing privilege into the fishing license. As a result of eliminating the two-pole stamp, there is some confusion as to how many poles are lawful for one person to use while fishing. The Commission proposes to amend the rule to state a person may not use more than two lines at any one time while fishing to facilitate a consistent interpretation of simultaneous fishing.

The availability of hybrid devices (weapons with components from two or more different devices) is increasing. Depending on the species, some hybrid devices may be used for the take of aquatic wildlife, while others cannot. The Commission proposes to amend the rule to allow the use of a hybrid device for the taking of aquatic wildlife provided all components of the device are authorized for the take of that species. This change is in response to customer comments received by the Department.

In addition, under A.R.S. § 17-211(E)(4), a game ranger may seize all wildlife taken or possessed in violation of law or showing evidence of illegal taking. The Commission proposes to amend the rule to state aquatic wildlife taken in violation of Title 17 or this rule is unlawfully taken.

The Commission proposes to amend the rule to prohibit a person from using a bow and arrow, crossbow, snare, gig, spear or spear gun within 200 yards of a fishing pier. The Commission proposes to amend the rule to prohibit a person from using a bow and arrow, crossbow, snare, gig, spear or spear gun, or snagging fish within 200 yards of a designated swimming area. Both of these changes are proposed to better protect public health and safety.

**R12-4-315. Possession of Live Fish; Unattended Live Boxes and Stringers**

The objective of the rule is to establish requirements necessary for the temporary possession of live fish. All freshwater game fish are listed as restricted live wildlife. Under R12-4-406, a person must possess a valid special license and any required federal authorization or have a lawful exemption in order to lawfully possess restricted live wildlife. The rule was adopted to provide a lawful mechanism by which a person can temporarily hold live freshwater game fish.

The Commission proposes to combine R12-4-315 and R12-4-316 (Possession, Transportation, or Importation of Live Baitfish, Crayfish, or Waterdogs) to increase consistency between Commission Orders, rules, and Department publications; with this amendment the Commission will adopt a new rule, R12-4-314, and both R12-4-315 and R12-4-316 will be repealed.

The Commission proposes to amend the title of the rule to Possession, Transportation, or Importation of Aquatic Wildlife to more accurately reflect the subject matter of the rule as amended.

The Commission proposes to amend the rule to add the following native fish to the list of live baitfish that a person may use for live bait: Longfin Dace (*Agosia chrysogaster*), Sonora Sucker (*Catostomus insignis*), Speckled Dace (*Rhynchithys osculus*), and Desert Sucker (*Catostomus clarki*). As a result of the Department's Statewide Sport Fish Stocking Consultation with the U.S. Fish and Wildlife Service, a conservation measure was developed within the Conservation and Mitigation Program to conduct a statewide live bait use assessment and complete a risk analysis to identify recommendations for live bait management in Arizona. The Live Bait Team evaluated the potential to minimize the risk and threats to native aquatic species, while continuing to maintain live bait use opportunities that have social and economic importance to the angling community. The goal of the live bait management team's recommendations is to prevent the transport and introduction of nonnative live bait and aquatic invasive species, pathogens, and parasites that impinge on the Department's ability to manage the State's aquatic resources. Because the unlawful release or improper use of nonnative live baitfish has resulted in established populations, to better protect native aquatic wildlife and its habitat, the team recommends allowing the use of certain native live baitfish for use in angling.

Both A.R.S. § 17-236(C) and R12-4-307 prohibit a person from disturbing the trap of another unless permitted by the owner. The Commission proposes to amend the rule to prohibit a person from knowingly disturbing the crayfish net, live box, minnow trap, or stringer of another unless authorized to do so by the owner to increase consistency between statute and Commission rules.

With this rulemaking, the Commission proposes to combine R12-4-315 (Possession of Live Fish; Unattended Live Boxes and Stringers) and R12-4-316 to increase consistency between Commission Orders, rules, and Department publications; and renumber the rule to R12-4-314 and repeal both R12-4-315 and R12-4-316.

**R12-4-316. Possession, Transportation, or Importation of Live Baitfish, Crayfish, or Waterdogs**

The objective of the rule is to establish restrictions designed to control the introduction of undesirable species and to reduce the likelihood that baitfish, crayfish, and waterdogs (larval salamanders) may be

released in waters where they could establish populations that compete with existing and native aquatic wildlife. The rule was adopted to protect and preserve native aquatic wildlife and habitat.

With this rulemaking, the Commission proposes to combine R12-4-315 (Possession of Live Fish; Unattended Live Boxes and Stringers) and R12-4-316 to increase consistency between Commission Orders, rules, and Department publications; and renumber the rule to R12-4-314 and repeal both R12-4-315 and R12-4-316.

#### **R12-4-317. Seasons for Lawfully Taking Fish, Mollusks, Crustaceans, Amphibians, and Aquatic Reptiles**

The objective of the rule is to establish special restrictions and requirements for various seasons to allow the Department to achieve management plans and goals for the preservation and harvest of aquatic wildlife, while providing maximum hunt opportunities for the public. A.R.S. § 17-301(D)(2) authorizes the Commission to adopt rules establishing the taking of wildlife with firearms, fishing equipment, archery equipment, or other implements in hand as may be defined. The rule was adopted to ensure consistent interpretation of and compliance with A.R.S. § 17-301(D)(2).

With this rulemaking, the Commission proposes to combine R12-4-313 (Lawful Methods of Taking Aquatic Wildlife) and R12-4-317 to increase consistency between Commission Orders, rules, and Department publications; and repeal this rule.

#### **R12-4-318. Seasons for Lawfully Taking Wild Mammals, Birds, and Reptiles**

The objective of the rule is to establish special restrictions and requirements for various hunt structures in order to allow the Department to achieve management goals for the preservation and harvest of wildlife, while at the same time providing maximum wildlife-oriented recreational opportunities for the public. Under A.R.S. § 17-301(D)(2), the Commission has the authority to adopt rules establishing the taking of wildlife with firearms, fishing equipment, archery equipment, or other implements in hand as may be defined. The rule was adopted to ensure consistent interpretation of and compliance with A.R.S. § 17-301(D)(2).

The Commission proposes to amend the rule to reference rules where lawful devices are defined to ensure consistent interpretation of terms used within Commission Orders and rules. In the current rule, R12-4-301 is referenced under each season. The Commission proposes to amend the rule to reference R12-4-301 only under subsection (A) to remove redundant language. These changes are made to make the rule more concise.

The availability of hybrid devices (weapons with components from two or more different devices) is increasing. Depending on the species, some hybrid devices may be used for the take of wildlife, while others cannot. The Commission proposes to amend the rule to allow the use of a hybrid device for the taking of wildlife provided all components of the device are authorized for the take of that species. This change is in response to customer comments received by the Department.

The Commission proposes to amend the rule to provide the devices and methods listed under each season by their range of effectiveness, from greatest range to least range to assist persons regulated by the rule;

knowing which devices and methods are most effective may aid a person in choosing a device or method for their hunt.

The Commission proposes to amend the rule to reference "muzzleloading handguns" under subsection (C)(7) to ensure persons regulated by the rule are aware that only a muzzleloading handgun is lawful under that season to remove regulatory ambiguity.

The Commission proposes to amend the rule to allow a person to use a pre-charged pneumatic weapon capable of holding and discharging a single projectile .35 caliber or larger as a lawful method of take during a "handgun, archery, and muzzleloader (HAM)" season to provide persons regulated by the rule additional hunter opportunity.

The Commission proposes to amend the rule to allow a person to use a muzzleloading shotgun as a lawful method of take during a "limited weapon-shotgun" season to provide persons regulated by the rule additional hunter opportunity.

The Commission proposes to amend the rule to allow a person to use a muzzleloading shotgun shooting shot as a lawful method of take during a "limited weapon-shotgun shooting shot" season to provide persons regulated by the rule additional hunter opportunity.

#### **R12-4-319. Use of Aircraft to Take Wildlife**

The objective of the rule is to prohibit the use of aircraft for the purpose of hunting or harassing wildlife to provide for fair chase and pursuit of game animals. A.R.S. § 17-301(B) states, "A person shall not take wildlife, except aquatic wildlife, or discharge a firearm or shoot any other device from a motor vehicle, including an automobile, aircraft, train or powerboat, or from a sailboat, boat under sail, or a floating object towed by powerboat or sailboat except as expressly permitted by the commission." The rule was adopted to ensure consistent interpretation of and compliance with A.R.S. § 17-301(B).

In recent years, the availability and use of drones has increased significantly. The Commission proposes to amend R12-4-319 to clarify drones are considered to be aircraft and are not lawful to use for the purpose of locating or assisting in locating wildlife.

#### **R12-4-320. Harassment of Wildlife**

The objective of the rule is to prohibit the use of vehicles for the purpose of hunting or harassing wildlife to provide for fair chase and pursuit of game animals. A.R.S. § 17-301(B) states, "A person shall not take wildlife, except aquatic wildlife, or discharge a firearm or shoot any other device from a motor vehicle, including an automobile, aircraft, train or powerboat, or from a sailboat, boat under sail, or a floating object towed by powerboat or sailboat except as expressly permitted by the commission." The rule was adopted to ensure consistent interpretation of and compliance with A.R.S. § 17-301(B).

The rule prohibits the use of vehicles for the purpose of hunting or harassing wildlife to provide for fair chase and pursuit of game animals. The Commission proposes to amend the rule to provide further clarity to the term "aircraft" by referencing drones. The Commission anticipates these changes will result in a rule that is more understandable.

The Commission proposes to amend R12-4-320 to replace the term "individual" with "person" to increase consistency between Commission rules.

**R12-4-321. Restrictions for Taking Wildlife in City, County, or Town Parks and Preserves**

The objective of the rule is to establish restrictions for hunting in city, county, or town parks and preserves. The rule was adopted to allow a person to hunt in city, county, or town parks and preserves where possible. The Maricopa County Parks and Recreation Commission and the Arizona Game and Fish Commission entered into an agreement in 1976 with the following stated objective: "To recognize hunting, fishing and trapping as practical methods for harvesting wildlife resources and to limit restrictions on such methods of harvest to recreational facilities and other developments where people are congregated and require safety precautions." The agreement further specifies restrictions necessary to meet the objectives of the agreement. Because the restrictions affect the public and are more restrictive than methods commonly established under R12-4-304, R12-4-313, R12-4-317, and R12-4-318, they are appropriately established within this rule as well as within the agreement. The agreement remains in effect to date without change.

Under R12-4-307(H)(2)(a), a trapper shall not set a trap within one-half mile of certain public use areas. The Commission proposes to amend the rule to incorporate trapping restrictions and increase consistency between Commission rules.

Because some parks have replaced a physical check in station with an online check-in system, the Commission proposes to amend the rule to clarify a hunter shall declare their intent to hunt when the park or preserve has established a check-in process.

The Commission believes the distance restrictions provided in rule are needed to ensure public health and safety. Persons participating in a reptile and amphibian limited weapon hand or hand-held implement season established by Commission Order use their hand or a catch-pole, snake hook, or snake tongs. Because these methods and devices do not use projectiles, they do not pose the same type of hazard; the Commission proposes to amend the rule to exempt persons participating in a reptile and amphibian limited weapon hand or hand-held implement season from the one fourth and one half mile (440 or 880 yards, as applicable) prohibition when hunting in a city, county, or town park or preserve.

**R12-4-322. Pickup and Possession of Wildlife Carcasses or Parts**

The objective of the rule is to allow persons to pick up and possess naturally shed antlers, horns, or other wildlife parts that are not fresh without a Department inspection. In addition, the rule prohibits a person from collecting or possessing fresh wildlife parts unless a Department officer has inspected the wildlife parts and determined the animal died from natural causes. The possession of any threatened or endangered species carcass or its parts is prohibited.

The Commission proposes to amend the rule to allow a Department employee or agent to assist in determining whether an inspection by a law enforcement officer is required to reduce the burden on the Department and persons regulated by the rule. In the event a law enforcement officer is not available, a Department employee or agent who has experience in determining whether an animal died from natural causes may conduct the inspection.

### **R12-4-401. Live Wildlife Definitions**

The objective of the rule is to establish definitions that assist persons regulated by the rule and members of the public in understanding the unique terms that are used throughout Article 4. The rule was adopted to facilitate consistent interpretation of Article 4 rules and to prevent persons regulated by the rule from misinterpreting the intent of Commission rules.

The Commission proposes to transfer the definition of "cervid" under R12-4-401 to R12-4-101 as the term "cervid" is used in Articles 1 and 3.

The Commission also proposes to remove the definition of "person" as person is defined under R12-4-101.

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

Overall, the Commission believes the amendments proposed in this rulemaking result in a rule that is either less burdensome or has no impact on the regulated community. Therefore, this subsection will address only the proposed trail camera prohibitions and restrictions, which received the greatest number of public comment.

Over the years, the Department has received a number of public comments requesting the Department regulate the use of trail cameras because they were perceived to be a violation of fair chase, infringe on a person's privacy, or are a blight on the landscape.

The Commission recognizes that development of new or improved technologies and practices can provide multiple benefits to hunters, anglers, businesses, and the economy. In its effort to preserve hunting and angling as the foundations of the North American Model of Wildlife Conservation, the Commission gives careful consideration to weigh the Fair Chase implications of a new technology or practice with the benefits the technology or practice may provide to improving competency or increasing participation in hunting or angling. These tradeoffs are carefully weighed in an open public process before determining whether a given technology or practice should be limited or prohibited in the interests of preserving Fair Chase. Fair chase is defined as the ethical, sportsmanlike and lawful pursuit and taking of free-ranging wildlife in a manner that does not give a hunter or angler an improper or unfair advantage. An overwhelming majority of the public supports lawful hunting, and the Commission recognizes the importance of fair chase to the survival of hunting and angling because both pursuits provide the primary sources of funding for wildlife conservation in North America. Advances in technology are inevitable; new or improved products that benefit hunters, anglers, businesses, or the economy are made available every day. The Fair Chase Committee, made up of representatives from the sporting community and Department, evaluate whether a new technology or practice is a fair-chase issue by asking: 1) Does it allow a hunter or angler to locate or take wildlife without acquiring necessary skills or competency? 2) Does it allow for the pursuit or taking of wildlife without being physically present and pursuing wildlife in the field? 3) Does it prevent wildlife from eluding detection or make the harvesting of wildlife almost certain? The Fair Chase Committee, after careful consideration, recommended the Commission regulate the use of trail cameras because live-action trail cameras because they prevent wildlife from eluding detection.

Although it is difficult to quantify the frequency due to the fact that the use of trail cameras is sometimes seasonal and is more frequent in some units than others; the Commission is aware that their use is an issue throughout the 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.**

The Commission believes the use and placement of some trail cameras used for the purpose of locating, taking, or aiding in the take of wildlife violate the principles of Fair Chase and the North American Model (a set of principles that, collectively applied, has led to the form, function, and successes of wildlife conservation and management in the U.S. and Canada). The use of trail cameras has the potential to jeopardize the future of hunting as a sport due to the social perception that they provide an unfair advantage to the hunter.

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

The Commission anticipates the rule changes will prevent or diminish the frequency of the targeted conduct. While it is not possible to quantify the actual change in frequency of the targeted conduct expected from the rule change, the Commission believes that over time, through continued outreach, education, and enforcement of the rule changes identified under (A)(1), the frequency of the targeted conduct will be significantly reduced.

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

The Commission's intent in proposing the amendments listed above is to address the ethical taking and handling of wildlife, increase hunter opportunity, and encourage hunter recruitment and retention. These areas include the use of tags, lawful and unlawful methods of taking and possessing wildlife and wildlife parts, seasons, check-in/check-out requirements, and reporting requirements. The Commission believes the majority of the rulemaking is intended to benefit persons regulated by the rule and the Department by increasing consistency between Commission Order and rule, reducing regulatory ambiguity, clarifying rule language to ease enforcement, creating consistency among existing Commission rules, providing greater opportunities for hunting and fishing, reducing the burden on persons regulated by the rules where practical, allowing the Department additional oversight to handle advances in hunting and angling technology and protecting the spirit of fair chase. As areas within Arizona become increasingly urbanized, more people are now living isolated from nature and outdoor activities such as hunting. As hunters represent a smaller percentage of the overall population, growing segments of society are questioning the validity of hunting including its benefits, how it is conducted, and if it should continue as a legal activity. Regulated hunting fundamentally supports wildlife conservation efforts in North America. The loss of hunting would equate to a measureable loss in conservation efforts. Hunting and angling are the cornerstones of the North American Model of Wildlife Conservation and continue to be the primary source of funding for conservation efforts in Arizona. Hunters and anglers support 18,220 jobs in Arizona; this especially benefits rural communities. Spending by sportsmen and women in Arizona generated \$132 million in State and local taxes in 2011;

enough to support the average salaries of 2,311 police and sheriff's patrol officers. The economic stimulus of hunting and fishing equates to \$3.4 million a day being pumped into Arizona's economy. ~ *Congressional Sportsmen's Foundation: 2013 Sportsman's Economic Report - Arizona*. Fair Chase issues can erode public support of hunting and angling and threaten the funding that drives Arizona's conservation mission and the economic benefit of those activities to our State. In addition, there exists a general expectation that hunting be conducted under appropriate conditions; animals are taken for legitimate purposes such as food, to accomplish wildlife agency management goals, and to mitigate property damage. It is also expected that the hunting is done sustainably and legally, and that hunters show respect for the land and animals they hunt. In the broadest sense, hunters are guided by a conservation ethic, but the most common term used to describe the actual ethical pursuit of an animal is "fair chase." "Fair Chase" means the ethical and lawful pursuit and take of free-range wildlife in a manner that does not give the hunter or angler improper or unfair advantage over such wildlife. The following criteria are used to evaluate whether a new technology or practice violates the Fair Chase ethic; does the technology or practice allow a hunter or angler to: locate or take wildlife without acquiring necessary hunting and angling skills or competency; pursue or take wildlife without being physically present and pursuing wildlife in the field; or almost guarantee the harvest of wildlife when the technology or practice prevents wildlife from eluding take. The Commission anticipates the rulemaking will result in an overall benefit to persons regulated by the rule. The Commission anticipates the rulemaking will result in no significant impact, if any, to political subdivisions of this state, private and public employment in businesses, agencies or political subdivisions, or state revenues. The Commission has determined the rulemaking will not require any new full-time employees. The Commission has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. The Department will incur costs related to the cost of rulemaking, developing an electronic check-in/check-out system, and implementing rule changes (administration, training, forms, etc.); although the Department believes that implementing these changes now will result in resource savings in the future. Therefore, the Commission has determined that the benefits of the rulemaking outweigh any costs.

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

Name: Celeste Cook, Director's Office Rules and Policy Manager  
Address: Arizona Game and Fish Department  
5000 W. Carefree Highway  
Phoenix, Arizona 85086  
Telephone: (623) 236-7390  
Fax: (623) 236-7677  
E-mail: CCook@azgfd.gov

**B. The economic, small business and consumer impact statement:**

**1. Identification of the proposed rulemaking.**

See paragraph (A)(1) above.

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

Overall, the majority of the amendments to Article 3 are made to simply clarify current processes and requirements, increase consistency between Commission rules and statute, and reduce regulatory ambiguity. Therefore, the Commission anticipates the proposed rules will have little or no impact on persons regulated by the rule. Of those rules that may have an impact on persons regulated by the rule, the Commission provides the following:

The Commission anticipates allowing a person who holds a valid Crossbow Permit to use a pre-charged pneumatic weapon that fires bolts or arrows may benefit from the additional opportunity because the device is easier to manipulate and use. In addition, the Commission anticipates businesses that manufacture or sell these types of pre-charged pneumatic weapons and businesses that manufacture, sell, or recharge air tanks may benefit from a minimal increase in sales.

The Commission anticipates prohibiting a person from using a smart device for the purpose of taking wildlife may have a negative impact on persons who currently possess such a device by their inability to use that smart device for the purpose of hunting. The Commission anticipates only a small number of persons may be moderately impacted due to the high cost of these types of devices.

The Commission anticipates prohibiting the use of trail cameras for taking or aiding in the take of wildlife may have a negative impact on persons who currently use trail cameras for the purpose of taking wildlife. The Commission anticipates the proposed prohibition may have a minimal impact on businesses that manufacture or sell trail cameras; however, the Commission believes any impact will be insignificant as the cameras may be and are used for many purposes, not just for locating wildlife for the purpose of take. The Commission anticipates the proposed prohibition may have a negative impact on businesses that provide guide or outfitter services as they will no longer be able to guarantee they can guide a client to a specific animal; guides advertise their business through promotion of trail camera photographs of trophy animals. The Commission anticipates the impact may be minimal to moderate depending on the guide or outfitter service's current use of cameras; some may place between ten and twenty trail cameras on the landscape, while others may place hundreds.

The Commission anticipates allowing the use of hybrid devices for angling and hunting may benefit persons who fish and hunt by allowing additional options for methods of take. Businesses that sell or manufacture these types of devices may benefit from a minimal to substantial increase in sales, depending on the types of hybrid devices that are available for sale.

The Commission anticipates allowing the use of ceramic and ceramic-coated broadheads for archery hunting may benefit persons who hunt by allowing additional options for archery hunting. Businesses that sell or manufacture these types of broadheads may benefit from a minimal increase in sales.

The Commission anticipates allowing the use of a pre-charged pneumatic weapon that fires bolts or arrows may benefit a person who hunts by providing additional options for methods of take. Businesses that manufacture or sell these types of pre-charged pneumatic weapons and businesses that manufacture, sell, or

recharge air tanks may benefit from a minimal to substantial increase in sales depending on the types of pre-charged pneumatic weapons that are available for sale.

The Commission anticipates specifying how a person may provide evidence of legality for a Eurasian-collared dove may benefit persons who hunt them. Because the Eurasian-collared dove is not considered a migratory bird or an upland game bird, providing evidence of legality for these game birds was not consistently applied throughout the state.

The Commission anticipates allowing a person who takes a depredating bear or mountain lion to retain the carcass (providing the person has a valid hunting license and a valid bear nonpermit-tag or hunt permit-tag) may benefit the hunter by allowing them to lawfully use their tag and by preventing the animal carcass from going to waste.

The Commission anticipates allowing a person who takes a bison to conduct their check-out electronically may benefit persons regulated by the rule by providing a more convenient and expedient method for providing harvest data to the Department in real time.

The Commission anticipates requiring a person between the ages of 10 to 14 to obtain a trapping license may have a minimal impact on persons regulated by the rule. The cost of the youth trapping license is \$10.

The Commission anticipates extending the time-frame in which a person must obtain a bobcat seal may benefit persons who take a bobcat by allowing them more time to present the bobcat carcass for inspection.

The Commission anticipates removing the requirement that an applicant for a Two-day Group fishing license be contracted by the Department of Economic Services or the Department of Health Services may benefit permit applicants who were previously not eligible for the permit.

The Commission anticipates removing the 20 person limit may benefit persons regulated by the rule because they will not be required to complete an additional application for additional persons.

The Commission anticipates requiring a nonprofit to provide a copy of its Articles of Incorporation may benefit permit applicants who were previously not eligible for the permit.

The Commission anticipates allowing a person to use a pre-charged pneumatic weapon discharging a single shot as a lawful method of take during a "Handgun, archery, and muzzleloader (HAM)" season may benefit persons who hunt by allowing additional options for methods of take.

The Commission anticipates allowing a person to use a muzzleloading shotgun as a lawful method of take during a "limited weapon-shotgun" season may benefit persons who hunt by allowing additional options for methods of take.

The Commission anticipates allowing a person to use a muzzleloading shotgun shooting shot as a lawful method of take during a "limited weapon-shotgun shooting shot" season may benefit persons who hunt by allowing additional options for methods of take.

The Commission anticipates allowing a person to capture reptiles and amphibians during a "limited weapon hand or hand-held implement" season may benefit persons who previously were not able to hunt reptiles and amphibians in a park or preserve due to the prohibition on hunting.

The Commission anticipates allowing a Department employee has experience in determining whether an animal died from natural causes may conduct the inspection may benefit a person who found naturally shed antlers, horns or other wildlife parts by reducing the amount of time they may wait for an officer to arrive at the location where the naturally shed antlers, horns or other wildlife parts were found.

**3. Cost benefit analysis:**

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

Minimal	less than \$1,000
Moderate	\$1,000 to \$9,999
Substantial	\$10,000 or more

**(a) Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the Economic, Small Business, and Consumer Impact Statement shall notify the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by council.**

The amendments will benefit the Department by providing it with the necessary authority and resources to more effectively manage the taking and handling of wildlife. Although additional opportunities are created, the Department does not anticipate additional costs associated with regulating these changes. Amendments prohibiting the use of certain devices and methods places additional enforcement duties on Department officers; however, the Commission has determined that these amendments will not require additional full-time employees.

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

The Commission does not anticipate the proposed rulemaking will significantly affect political subdivisions of this state.

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

The Commission anticipates the proposed amendments will have no substantial impact on businesses, their revenues, or their payroll expenditures. Of those that do or may have an impact, the Commission does not anticipate the impact will be significant. The Commission's intent in the proposed rulemaking is to promote public safety, improve customer-service, remove regulatory ambiguity, reduce burdens and costs to persons regulated by the rule wherever possible, and provide the Department additional wildlife management oversight. The Commission has determined that the benefits of the rulemaking outweigh any costs.

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

Except as indicated below, the Commission anticipates the proposed amendments will have no substantial impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking. Because, in most instances, the rulemaking either reduces or makes no change to the current regulatory burden, the Commission anticipates persons directly affected by the rule will not incur any additional costs as a result of the rulemaking. For most businesses directly affected by the rulemaking, any anticipated costs incurred are strictly administrative in nature and are believed to be moderate, if at all.

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

**(a) Identification of the small businesses subject to the proposed rulemaking.**

Businesses that provide hunting excursions.

Businesses that provide sporting goods.

Businesses that manufacture ammunition, hunting devices, and trail cameras.

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

The Commission anticipates the proposed rulemaking will not create additional costs for compliance.

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

The Commission believes establishing less stringent compliance requirements for small businesses is not necessary as the proposed rules do not place any reporting requirements on businesses.

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

The Commission anticipates the proposed rulemaking will benefit private persons and consumers by clarifying lawful methods for take and, in doing so, ensuring the continued integrity of and compliance with its rules.

**6. Statement of the probable effect on state revenues.**

The proposed rulemaking will not significantly impact state revenues.

**7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.**

The Commission has determined that there are no alternative methods of achieving the objectives of the proposed rulemaking. The Commission holds that the benefits of the proposed rulemaking outweigh any costs.

**8. 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.**

For this rulemaking, the Commission relied on empirical data based on agency experience and observations, which included comments from the public and agency staff that administer and enforce the rules included in this rulemaking. The Department also solicited comment and information from industry professionals regarding the capabilities and use of some devices. Additionally, the Commission relied on historical data (i.e., meeting notes from previous rulemaking teams, Department reports (sportsman data, violation data, etc.), other state agency rules, etc.), current processes, benchmarking with other states, and the Department's overall mission. This rulemaking includes rules that govern lawful methods for the taking and handling of wildlife. The subjects the rules address are based on statutory requirements and federal regulations rather than natural sciences, thus recommendations relied more heavily on empirical qualitative data using agency experience and observations instead of quantitative data. The Commission approached this rulemaking and the use of the documentation, statistics, and research in a methodical way, testing various approaches and trying to replicate approaches that were successful in other states.

- C. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement.**

The Department tasked a team of subject matter experts to review and make recommendations for rules contained within Article 3. In its review, the team considered all comments from the public and agency staff that administer and enforce Article 3 rules, historical data, current processes and environment, and the Department's overall mission. The team took a customer-focused approach, considering each recommendation from a resource perspective and determining whether the recommendation would cause undue harm to the Department's goals and objectives. The team then determined whether the request was consistent with the Department's overall mission, if it could be effectively implemented given agency resources, and if it was acceptable to the public. The Commission believes the data utilized in completing this economic, small business, and consumer statement is more than adequate.

**ARTICLE 3. TAKING AND HANDLING OF WILDLIFE  
STATUTORY AUTHORITY**

**13-3101. Definitions**

A. In this chapter, unless the context otherwise requires:

1. "Deadly weapon" means anything that is designed for lethal use. The term includes a firearm.
2. "Deface" means to remove, alter or destroy the manufacturer's serial number.
3. "Explosive" means any dynamite, nitroglycerine, black powder, or other similar explosive material, including plastic explosives. Explosive does not include ammunition or ammunition components such as primers, percussion caps, smokeless powder, black powder and black powder substitutes used for hand loading purposes.
4. "Firearm" means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun or other weapon that will expel, is designed to expel or may readily be converted to expel a projectile by the action of an explosive. Firearm does not include a firearm in permanently inoperable condition.
5. "Improvised explosive device" means a device that incorporates explosives or destructive, lethal, noxious, pyrotechnic or incendiary chemicals and that is designed to destroy, disfigure, terrify or harass.
6. "Occupied structure" means any building, object, vehicle, watercraft, aircraft or place with sides and a floor that is separately securable from any other structure attached to it, that is used for lodging, business, transportation, recreation or storage and in which one or more human beings either are or are likely to be present or so near as to be in equivalent danger at the time the discharge of a firearm occurs. Occupied structure includes any dwelling house, whether occupied, unoccupied or vacant.
7. "Prohibited possessor" means any person:
  - (a) Who has been found to constitute a danger to self or to others or to have a persistent or acute disability or grave disability pursuant to court order pursuant to section 36-540, and whose right to possess a firearm has not been restored pursuant to section 13-925.
  - (b) Who has been convicted within or without this state of a felony or who has been adjudicated delinquent for a felony and whose civil right to possess or carry a gun or firearm has not been restored.
  - (c) Who is at the time of possession serving a term of imprisonment in any correctional or detention facility.
  - (d) Who is at the time of possession serving a term of probation pursuant to a conviction for a domestic violence offense as defined in section 13-3601 or a felony offense, parole, community supervision, work furlough, home arrest or release on any other basis or who is serving a term of probation or parole pursuant to the interstate compact under title 31, chapter 3, article 4.1.

- (e) Who is an undocumented alien or a nonimmigrant alien traveling with or without documentation in this state for business or pleasure or who is studying in this state and who maintains a foreign residence abroad. This subdivision does not apply to:
    - (i) Nonimmigrant aliens who possess a valid hunting license or permit that is lawfully issued by a state in the United States.
    - (ii) Nonimmigrant aliens who enter the United States to participate in a competitive target shooting event or to display firearms at a sports or hunting trade show that is sponsored by a national, state or local firearms trade organization devoted to the competitive use or other sporting use of firearms.
    - (iii) Certain diplomats.
    - (iv) Officials of foreign governments or distinguished foreign visitors who are designated by the United States department of state.
    - (v) Persons who have received a waiver from the United States attorney general.
  - (f) Who has been found incompetent pursuant to rule 11, Arizona rules of criminal procedure, and who subsequently has not been found competent.
  - (g) Who is found guilty except insane.
8. "Prohibited weapon":
- (a) Includes the following:
    - (i) An item that is a bomb, grenade, rocket having a propellant charge of more than four ounces or mine and that is explosive, incendiary or poison gas.
    - (ii) A device that is designed, made or adapted to muffle the report of a firearm.
    - (iii) A firearm that is capable of shooting more than one shot automatically, without manual reloading, by a single function of the trigger.
    - (iv) A rifle with a barrel length of less than sixteen inches, or shotgun with a barrel length of less than eighteen inches, or any firearm that is made from a rifle or shotgun and that, as modified, has an overall length of less than twenty-six inches.
    - (v) An instrument, including a nunchaku, that consists of two or more sticks, clubs, bars or rods to be used as handles, connected by a rope, cord, wire or chain, in the design of a weapon used in connection with the practice of a system of self-defense.
    - (vi) A breakable container that contains a flammable liquid with a flash point of one hundred fifty degrees Fahrenheit or less and that has a wick or similar device capable of being ignited.
    - (vii) A chemical or combination of chemicals, compounds or materials, including dry ice, that is possessed or manufactured for the purpose of generating a gas to cause a

mechanical failure, rupture or bursting or an explosion or detonation of the chemical or combination of chemicals, compounds or materials.

(viii) An improvised explosive device.

(ix) Any combination of parts or materials that is designed and intended for use in making or converting a device into an item set forth in item (i), (vi) or (viii) of this subdivision.

(b) Does not include:

(i) Any fireworks that are imported, distributed or used in compliance with state laws or local ordinances.

(ii) Any propellant, propellant actuated devices or propellant actuated industrial tools that are manufactured, imported or distributed for their intended purposes.

(iii) A device that is commercially manufactured primarily for the purpose of illumination.

9. "Trafficking" means to sell, transfer, distribute, dispense or otherwise dispose of a weapon or explosive to another person, or to buy, receive, possess or obtain control of a weapon or explosive, with the intent to sell, transfer, distribute, dispense or otherwise dispose of the weapon or explosive to another person.

B. The items set forth in subsection A, paragraph 8, subdivision (a), items (i), (ii), (iii) and (iv) of this section do not include any firearms or devices that are possessed, manufactured or transferred in compliance with federal law.

### **13-3102. Misconduct involving weapons; defenses; classification; definitions**

A. A person commits misconduct involving weapons by knowingly:

1. Carrying a deadly weapon except a pocket knife concealed on his person or within his immediate control in or on a means of transportation:

(a) In the furtherance of a serious offense as defined in section 13-706, a violent crime as defined in section 13-901.03 or any other felony offense; or

(b) When contacted by a law enforcement officer and failing to accurately answer the officer if the officer asks whether the person is carrying a concealed deadly weapon; or

2. Carrying a deadly weapon except a pocket knife concealed on his person or concealed within his immediate control in or on a means of transportation if the person is under twenty-one years of age; or

3. Manufacturing, possessing, transporting, selling or transferring a prohibited weapon, except that if the violation involves dry ice, a person commits misconduct involving weapons by knowingly possessing the dry ice with the intent to cause injury to or death of another person or to cause damage to the property of another person; or

4. Possessing a deadly weapon or prohibited weapon if such person is a prohibited possessor; or
  5. Selling or transferring a deadly weapon to a prohibited possessor; or
  6. Defacing a deadly weapon; or
  7. Possessing a defaced deadly weapon knowing the deadly weapon was defaced; or
  8. Using or possessing a deadly weapon during the commission of any felony offense included in chapter 34 of this title; or
  9. Discharging a firearm at an occupied structure in order to assist, promote or further the interests of a criminal street gang, a criminal syndicate or a racketeering enterprise; or
  10. Unless specifically authorized by law, entering any public establishment or attending any public event and carrying a deadly weapon on his person after a reasonable request by the operator of the establishment or the sponsor of the event or the sponsor's agent to remove his weapon and place it in the custody of the operator of the establishment or the sponsor of the event for temporary and secure storage of the weapon pursuant to section 13-3102.01; or
  11. Unless specifically authorized by law, entering an election polling place on the day of any election carrying a deadly weapon; or
  12. Possessing a deadly weapon on school grounds; or
  13. Unless specifically authorized by law, entering a nuclear or hydroelectric generating station carrying a deadly weapon on his person or within the immediate control of any person; or
  14. Supplying, selling or giving possession or control of a firearm to another person if the person knows or has reason to know that the other person would use the firearm in the commission of any felony; or
  15. Using, possessing or exercising control over a deadly weapon in furtherance of any act of terrorism as defined in section 13-2301 or possessing or exercising control over a deadly weapon knowing or having reason to know that it will be used to facilitate any act of terrorism as defined in section 13-2301; or
  16. Trafficking in weapons or explosives for financial gain in order to assist, promote or further the interests of a criminal street gang, a criminal syndicate or a racketeering enterprise.
- B. Subsection A, paragraph 2 of this section shall not apply to:
1. A person in his dwelling, on his business premises or on real property owned or leased by that person or that person's parent, grandparent or legal guardian.
  2. A member of the sheriff's volunteer posse or reserve organization who has received and passed firearms training that is approved by the Arizona peace officer standards and training board and who is authorized by the sheriff to carry a concealed weapon pursuant to section 11-441.
  3. A firearm that is carried in:

- (a) A manner where any portion of the firearm or holster in which the firearm is carried is visible.
  - (b) A holster that is wholly or partially visible.
  - (c) A scabbard or case designed for carrying weapons that is wholly or partially visible.
  - (d) Luggage.
  - (e) A case, holster, scabbard, pack or luggage that is carried within a means of transportation or within a storage compartment, map pocket, trunk or glove compartment of a means of transportation.
- C. Subsection A, paragraphs 2, 3, 7, 10, 11, 12 and 13 of this section shall not apply to:
- 1. A peace officer or any person summoned by any peace officer to assist and while actually assisting in the performance of official duties; or
  - 2. A member of the military forces of the United States or of any state of the United States in the performance of official duties; or
  - 3. A warden, deputy warden, community correctional officer, detention officer, special investigator or correctional officer of the state department of corrections or the department of juvenile corrections; or
  - 4. A person specifically licensed, authorized or permitted pursuant to a statute of this state or of the United States.
- D. Subsection A, paragraph 10 of this section does not apply to an elected or appointed judicial officer in the court facility where the judicial officer works if the judicial officer has demonstrated competence with a firearm as prescribed in section 13-3112, subsection N, except that the judicial officer shall comply with any rule or policy adopted by the presiding judge of the superior court while in the court facility. For the purposes of this subsection, appointed judicial officer does not include a hearing officer or a judicial officer pro tempore that is not a full-time officer.
- E. Subsection A, paragraphs 3 and 7 of this section shall not apply to:
- 1. The possessing, transporting, selling or transferring of weapons by a museum as a part of its collection or an educational institution for educational purposes or by an authorized employee of such museum or institution, if:
    - (a) Such museum or institution is operated by the United States or this state or a political subdivision of this state, or by an organization described in 26 United States Code section 170(c) as a recipient of a charitable contribution; and
    - (b) Reasonable precautions are taken with respect to theft or misuse of such material.
  - 2. The regular and lawful transporting as merchandise; or
  - 3. Acquisition by a person by operation of law such as by gift, devise or descent or in a fiduciary

capacity as a recipient of the property or former property of an insolvent, incapacitated or deceased person.

- F. Subsection A, paragraph 3 of this section shall not apply to the merchandise of an authorized manufacturer of or dealer in prohibited weapons, when such material is intended to be manufactured, possessed, transported, sold or transferred solely for or to a dealer, a regularly constituted or appointed state, county or municipal police department or police officer, a detention facility, the military service of this or another state or the United States, a museum or educational institution or a person specifically licensed or permitted pursuant to federal or state law.
- G. Subsection A, paragraph 10 of this section shall not apply to shooting ranges or shooting events, hunting areas or similar locations or activities.
- H. Subsection A, paragraph 3 of this section shall not apply to a weapon described in section 13-3101, subsection A, paragraph 8, subdivision (a), item (v), if such weapon is possessed for the purposes of preparing for, conducting or participating in lawful exhibitions, demonstrations, contests or athletic events involving the use of such weapon. Subsection A, paragraph 12 of this section shall not apply to a weapon if such weapon is possessed for the purposes of preparing for, conducting or participating in hunter or firearm safety courses.
- I. Subsection A, paragraph 12 of this section shall not apply to the possession of a:
  - 1. Firearm that is not loaded and that is carried within a means of transportation under the control of an adult provided that if the adult leaves the means of transportation the firearm shall not be visible from the outside of the means of transportation and the means of transportation shall be locked.
  - 2. Firearm for use on the school grounds in a program approved by a school.
  - 3. Firearm by a person who possesses a certificate of firearms proficiency pursuant to section 13-3112, subsection T and who is authorized to carry a concealed firearm pursuant to the law enforcement officers safety act of 2004 (P.L. 108-277; 118 Stat. 865; 18 United States Code sections 926B and 926C).
- J. Subsection A, paragraphs 2, 3, 7 and 13 of this section shall not apply to commercial nuclear generating station armed nuclear security guards during the performance of official duties or during any security training exercises sponsored by the commercial nuclear generating station or local, state or federal authorities.
- K. The operator of the establishment or the sponsor of the event or the employee of the operator or sponsor or the agent of the sponsor, including a public entity or public employee, is not liable for acts or omissions pursuant to subsection A, paragraph 10 of this section unless the operator, sponsor, employee or agent intended to cause injury or was grossly negligent.

- L. If a law enforcement officer contacts a person who is in possession of a firearm, the law enforcement officer may take temporary custody of the firearm for the duration of that contact.
- M. Misconduct involving weapons under subsection A, paragraph 15 of this section is a class 2 felony. Misconduct involving weapons under subsection A, paragraph 9, 14 or 16 of this section is a class 3 felony. Misconduct involving weapons under subsection A, paragraph 3, 4, 8 or 13 of this section is a class 4 felony. Misconduct involving weapons under subsection A, paragraph 12 of this section is a class 1 misdemeanor unless the violation occurs in connection with conduct that violates section 13-2308, subsection A, paragraph 5, section 13-2312, subsection C, section 13-3409 or section 13-3411, in which case the offense is a class 6 felony. Misconduct involving weapons under subsection A, paragraph 1, subdivision (a) of this section or subsection A, paragraph 5, 6 or 7 of this section is a class 6 felony. Misconduct involving weapons under subsection A, paragraph 1, subdivision (b) of this section or subsection A, paragraph 10 or 11 of this section is a class 1 misdemeanor. Misconduct involving weapons under subsection A, paragraph 2 of this section is a class 3 misdemeanor.
- N. For the purposes of this section:
  - 1. "Contacted by a law enforcement officer" means a lawful traffic or criminal investigation, arrest or detention or an investigatory stop by a law enforcement officer that is based on reasonable suspicion that an offense has been or is about to be committed.
  - 2. "Public establishment" means a structure, vehicle or craft that is owned, leased or operated by this state or a political subdivision of this state.
  - 3. "Public event" means a specifically named or sponsored event of limited duration that is either conducted by a public entity or conducted by a private entity with a permit or license granted by a public entity. Public event does not include an unsponsored gathering of people in a public place.
  - 4. "School" means a public or nonpublic kindergarten program, common school or high school.
  - 5. "School grounds" means in, or on the grounds of, a school.

**13-3107. Unlawful discharge of firearms; exceptions; classification; definitions**

- A. A person who with criminal negligence discharges a firearm within or into the limits of any municipality is guilty of a class 6 felony.
- B. Notwithstanding the fact that the offense involves the discharge of a deadly weapon, unless a dangerous offense is alleged and proven pursuant to section 13-704, subsection L, section 13-604 applies to this offense.
- C. This section does not apply if the firearm is discharged:
  - 1. As allowed pursuant to chapter 4 of this title.
  - 2. On a properly supervised range.

3. To lawfully take wildlife during an open season established by the Arizona game and fish commission and subject to the limitations prescribed by title 17 and Arizona game and fish commission rules and orders. This paragraph does not prevent a city, town or county from adopting an ordinance or rule restricting the discharge of a firearm within one-fourth mile of an occupied structure without the consent of the owner or occupant of the structure. For the purposes of this paragraph:
    - (a) "Occupied structure" means any building in which, at the time of the firearm's discharge, a reasonable person from the location where a firearm is discharged would expect a person to be present.
    - (b) "Take" has the same meaning prescribed in section 17-101.
  4. For the control of nuisance wildlife by permit from the Arizona game and fish department or the United States fish and wildlife service.
  5. By special permit of the chief of police of the municipality.
  6. As required by an animal control officer in the performance of duties as specified in section 9-499.04.
  7. Using blanks.
  8. More than one mile from any occupied structure as defined in section 13-3101.
  9. In self-defense or defense of another person against an animal attack if a reasonable person would believe that deadly physical force against the animal is immediately necessary and reasonable under the circumstances to protect oneself or the other person.
- D. For the purposes of this section:
1. "Municipality" means any city or town and includes any property that is fully enclosed within the city or town.
  2. "Properly supervised range" means a range that is any of the following:
    - (a) Operated by a club affiliated with the national rifle association of America, the amateur trapshooting association, the national skeet association or any other nationally recognized shooting organization, or by any public or private school.
    - (b) Approved by any agency of the federal government, this state or a county or city within which the range is located.
    - (c) Operated with adult supervision for shooting air or carbon dioxide gas operated guns, or for shooting in underground ranges on private or public property.

**13-3108. Firearms regulated by state; state preemption; violation; classification; definition**

- A. Except as provided in subsection G of this section, a political subdivision of this state shall not enact

any ordinance, rule or tax relating to the transportation, possession, carrying, sale, transfer, purchase, acquisition, gift, devise, storage, licensing, registration, discharge or use of firearms or ammunition or any firearm or ammunition components or related accessories in this state.

- B. A political subdivision of this state shall not require the licensing or registration of firearms or ammunition or any firearm or ammunition components or related accessories or prohibit the ownership, purchase, sale or transfer of firearms or ammunition or any firearm or ammunition components, or related accessories.
- C. A political subdivision of this state shall not require or maintain a record in any form, whether permanent or temporary, including a list, log or database, of any of the following:
  - 1. Any identifying information of a person who leaves a weapon in temporary storage at any public establishment or public event, except that the operator of the establishment or the sponsor of the event may require that a person provide a government issued identification or a reasonable copy of a government issued identification for the purpose of establishing ownership of the weapon. The operator or sponsor shall store any provided identification with the weapon and shall return the identification to the person when the weapon is retrieved. The operator or sponsor shall not retain records or copies of any identification provided pursuant to this paragraph after the weapon is retrieved.
  - 2. Except in the course of a law enforcement investigation, any identifying information of a person who owns, possesses, purchases, sells or transfers a firearm.
  - 3. The description, including the serial number, of a weapon that is left in temporary storage at any public establishment or public event.
- D. A political subdivision of this state shall not enact any rule or ordinance that relates to firearms and is more prohibitive than or that has a penalty that is greater than any state law penalty. A political subdivision's rule or ordinance that relates to firearms and that is inconsistent with or more restrictive than state law, whether enacted before or after July 29, 2010, is null and void.
- E. A political subdivision of this state shall not enact any ordinance, rule or regulation limiting the lawful taking of wildlife during an open season established by the Arizona game and fish commission unless the ordinance, rule or regulation is consistent with title 17 and rules and orders adopted by the Arizona game and fish commission. This subsection does not prevent a political subdivision from adopting an ordinance or rule restricting the discharge of a firearm within one-fourth mile of an occupied structure without the consent of the owner or occupant of the structure. For the purposes of this subsection:
  - 1. "Occupied structure" means any building in which, at the time of the firearm's discharge, a reasonable person from the location where a firearm is discharged would expect a person to be

present.

2. "Take" has the same meaning prescribed in section 17-101.
- F. This state, any agency or political subdivision of this state and any law enforcement agency in this state shall not facilitate the destruction of a firearm or purchase or otherwise acquire a firearm for the purpose of destroying the firearm except as authorized by section 13-3105 or 17-240.
- G. This section does not prohibit a political subdivision of this state from enacting and enforcing any ordinance or rule pursuant to state law or relating to any of the following:
1. Imposing any privilege or use tax on the retail sale, lease or rental of, or the gross proceeds or gross income from the sale, lease or rental of, firearms or ammunition or any firearm or ammunition components at a rate that applies generally to other items of tangible personal property.
  2. Prohibiting a minor who is unaccompanied by a parent, grandparent or guardian or a certified hunter safety instructor or certified firearms safety instructor acting with the consent of the minor's parent, grandparent or guardian from knowingly possessing or carrying on the minor's person, within the minor's immediate control or in or on a means of transportation a firearm in any place that is open to the public or on any street or highway or on any private property except private property that is owned or leased by the minor or the minor's parent, grandparent or guardian. Any ordinance or rule that is adopted pursuant to this paragraph shall not apply to a minor who is fourteen, fifteen, sixteen or seventeen years of age and who is engaged in any of the following:
    - (a) Lawful hunting or shooting events or marksmanship practice at established ranges or other areas where the discharge of a firearm is not prohibited.
    - (b) Lawful transportation of an unloaded firearm for the purpose of lawful hunting.
    - (c) Lawful transportation of an unloaded firearm for the purpose of attending shooting events or marksmanship practice at established ranges or other areas where the discharge of a firearm is not prohibited.
    - (d) Any activity that is related to the production of crops, livestock, poultry, livestock products, poultry products or ratites or storage of agricultural commodities.
  3. The regulation of commercial land and structures, including a business relating to firearms or ammunition or their components or a commercial shooting range in the same manner as other commercial businesses. Notwithstanding any other law, this paragraph does not:
    - (a) Authorize a political subdivision to regulate the sale or transfer of firearms on property it owns, leases, operates or controls in a manner that is different than or inconsistent with state law. For the purposes of this subdivision, a use permit or other contract that provides for the

use of property owned, leased, operated or controlled by a political subdivision shall not be considered a sale, conveyance or disposition of property.

- (b) Authorize a political subdivision through a zoning ordinance to prohibit or otherwise regulate the otherwise lawful discharge of a firearm or maintenance or improvements directly related to the discharge, on a private lot or parcel of land that is not open to the public on a commercial or membership basis.
  - (c) Authorize a political subdivision to regulate the otherwise lawful discharge of a firearm or maintenance or improvements directly related to the discharge, on land that is used for agriculture or other noncommercial purposes.
4. Regulating employees or independent contractors of the political subdivision who are acting within the course and scope of their employment or contract.
5. Limiting or prohibiting the discharge of firearms in parks and preserves except:
- (a) As allowed pursuant to chapter 4 of this title.
  - (b) On a properly supervised range as defined in section 13-3107.
  - (c) In an area approved as a hunting area by the Arizona game and fish department. Any such area may be closed when deemed unsafe by the director of the Arizona game and fish department.
  - (d) To control nuisance wildlife by permit from the Arizona game and fish department or the United States fish and wildlife service.
  - (e) By special permit of the chief law enforcement officer of the political subdivision.
  - (f) As required by an animal control officer in performing duties specified in section 9-499.04 and title 11, chapter 7, article 6.
  - (g) In self-defense or defense of another person against an animal attack if a reasonable person would believe that deadly physical force against the animal is immediately necessary and reasonable under the circumstances to protect oneself or the other person.
- H. A violation of any ordinance established pursuant to subsection G, paragraph 5 of this section is a class 2 misdemeanor unless the political subdivision designates a lesser classification by ordinance.
- I. For the purposes of this section, "political subdivision" includes a political subdivision acting in any capacity, including under police power, in a proprietary capacity or otherwise.

#### **17-102. Wildlife as state property; exceptions**

Wildlife, both resident and migratory, native or introduced, found in this state, except fish and bullfrogs impounded in private ponds or tanks or wildlife and birds reared or held in captivity under permit or license from the commission, are property of the state and may be taken at such times, in such places, in

such manner and with such devices as provided by law or rule of the commission.

**17-211. Director; selection; removal; powers and**

- A.** The commission shall appoint a director of the Arizona game and fish department, who shall be the chief administrative officer of the game and fish department. The director shall receive compensation as determined pursuant to section 38-611. The director shall be selected on the basis of administrative ability and general knowledge of wildlife management. The director shall act as secretary to the commission, and shall serve at the pleasure of the commission. The director shall not hold any other office, and shall devote the entire time to the duties of office.
- B.** The commission shall prepare an examination for the post of director to comply with the requirements of this title. The examination shall be conducted at the offices of the commission at the capital to establish an active list of eligible applicants. The director shall be selected from those scoring satisfactory grades and having other qualities deemed advisable by the commission. The commission may call for additional examinations from time to time for selection of a new list of eligible applicants to fill a vacancy.
- C.** Subject to title 41, chapter 4, article 4, the director may appoint employees necessary to carry out the purposes of this title, when funds for the payment of their salaries are appropriated. Department employees shall be located in different sections of the state where their services are most needed. Compensation for persons appointed shall be as determined pursuant to section 38-611.
- D.** The director shall:
  - 1. Have general supervision and control of all activities, functions and employees of the department.
  - 2. Enforce all provisions of this title, including all commission rules.
  - 3. Collaborate with the state forester in presentations to legislative committees on issues associated with forest management and wildfire prevention and suppression as provided by section 37-622, subsection B.
- E.** Game rangers and wildlife managers may, in addition to other duties:
  - 1. Execute all warrants issued for a violation of this title.
  - 2. Execute subpoenas issued in any matter arising under this title.
  - 3. Search without warrant any aircraft, boat, vehicle, box, game bag or other package where there is sufficient cause to believe that wildlife or parts of wildlife are possessed in violation of law.
  - 4. Inspect all wildlife taken or transported and seize all wildlife taken or possessed in violation of law, or showing evidence of illegal taking.
  - 5. Seize as evidence devices used illegally in taking wildlife and hold them subject to the provisions of section 17-240.

6. Generally exercise the powers of peace officers with primary duties the enforcement of this title.
7. Seize devices that cannot be lawfully used for the taking of wildlife and are being so used and hold and dispose of them pursuant to section 17-240.

**17-215. Fingerprint clearance card; employees; volunteers**

Each employee and volunteer who has contact with children or vulnerable adults as part of their regular duties must have a valid fingerprint clearance card issued pursuant to section 41-1758.07 or provide the department documentation of the person's application for a fingerprint clearance card.

**17-231. General powers and duties of the commission**

A. The commission shall:

1. Adopt rules and establish services it deems necessary to carry out the provisions and purposes of this title.
2. Establish broad policies and long-range programs for the management, preservation and harvest of wildlife.
3. Establish hunting, trapping and fishing rules and prescribe the manner and methods that may be used in taking wildlife, but the commission shall not limit or restrict the magazine capacity of any authorized firearm.
4. Be responsible for the enforcement of laws for the protection of wildlife.
5. Provide for the assembling and distribution of information to the public relating to wildlife and activities of the department.
6. Prescribe rules for the expenditure, by or under the control of the director, of all funds arising from appropriation, licenses, gifts or other sources.
7. Exercise such powers and duties necessary to carry out fully the provisions of this title and in general exercise powers and duties that relate to adopting and carrying out policies of the department and control of its financial affairs.
8. Prescribe procedures for use of department personnel, facilities, equipment, supplies and other resources in assisting search or rescue operations on request of the director of the division of emergency management.
9. 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 commission may:

1. Conduct investigations, inquiries or hearings in the performance of its powers and duties.
2. Establish game management units or refuges for the preservation and management of wildlife.
3. Construct and operate game farms, fish hatcheries, fishing lakes or other facilities for or relating to the preservation or propagation of wildlife.
4. Expend funds to provide training in the safe handling and use of firearms and safe hunting practices.
5. Remove or permit to be removed from public or private waters fish which hinder or prevent propagation of game or food fish and dispose of such fish in such manner as it may designate.
6. Purchase, sell or barter wildlife for the purpose of stocking public or private lands and waters and take at any time in any manner wildlife for research, propagation and restocking purposes or for use at a game farm or fish hatchery and declare wildlife salable when in the public interest or the interest of conservation.
7. Enter into agreements with the federal government, with other states or political subdivisions of the state and with private organizations for the construction and operation of facilities and for management studies, measures or procedures for or relating to the preservation and propagation of wildlife and expend funds for carrying out such agreements.
8. Prescribe rules for the sale, trade, importation, exportation or possession of wildlife.
9. Expend monies for the purpose of producing publications relating to wildlife and activities of the department for sale to the public and establish the price to be paid for annual subscriptions and single copies of such publications. All monies received from the sale of such publications shall be deposited in the game and fish publications revolving fund.
10. Contract with any person or entity to design and produce artwork on terms that, in the commission's judgment, will produce an original and valuable work of art relating to wildlife or wildlife habitat.
11. Sell or distribute the artwork authorized under paragraph 10 of this subsection on such terms and for such price as it deems acceptable.
12. Consider the adverse and beneficial short-term and long-term economic impacts on resource dependent communities, small businesses and the state of Arizona, of policies and programs for the management, preservation and harvest of wildlife by holding a public hearing to receive and consider written comments and public testimony from interested persons.
13. Adopt rules relating to range operations at public shooting ranges operated by and under the jurisdiction of the commission, including the hours of operation, the fees for the use of the range,

the regulation of groups and events, the operation of related range facilities, the type of firearms and ammunition that may be used at the range, the safe handling of firearms at the range, the required safety equipment for a person using the range, the sale of firearms, ammunition and shooting supplies at the range, and the authority of range officers to enforce these rules, to remove violators from the premises and to refuse entry for repeat violations.

14. Solicit and accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title.
- C. The commission shall confer and coordinate with the director of water resources with respect to the commission's activities, plans and negotiations relating to water development and use, restoration projects under the restoration acts pursuant to chapter 4, article 1 of this title, where water development and use are involved, the abatement of pollution injurious to wildlife and in the formulation of fish and wildlife aspects of the director of water resources' plans to develop and utilize water resources of the state and shall have jurisdiction over fish and wildlife resources and fish and wildlife activities of projects constructed for the state under or pursuant to the jurisdiction of the director of water resources.
- D. The commission may enter into one or more agreements with a multi-county water conservation district and other parties for participation in the lower Colorado river multispecies conservation program under section 48-3713.03, including the collection and payment of any monies authorized by law for the purposes of the lower Colorado river multispecies conservation program.

#### **17-232. Agreements with other states for reciprocal use of licenses**

The commission, subject to the approval of the governor and the attorney general, is authorized to enter into reciprocal agreements with corresponding state or county agencies of adjoining states pertaining to the establishment of a basis whereby licenses or permits issued by either of the parties may be used by the licensees within the jurisdiction of either party to the agreement.

#### **17-233. Acquisition and disposition of buffalo and buffalo meat**

The commission may purchase, sell, barter, or give away buffalo or buffalo meat provided the same may be given only to public institutions or charitable institutions and monies derived therefrom shall be deposited in the game and fish fund.

#### **17-234. Open or closed seasons; bag limits; possession limits**

The commission shall by order open, close or alter seasons and establish bag and possession limits for wildlife, but a commission order to open a season shall be issued not less than ten days prior to such

opening date. The order may apply statewide or to any portion of the state. Closed season shall be in effect unless opened by commission order.

#### **17-235. Migratory birds**

The commission shall prescribe seasons, bag limits, possession limits and other regulations pertaining to taking migratory birds in accordance with the migratory bird treaty act and regulations issued thereunder, but the commission may shorten or modify seasons, bag and possession limits and other regulations on migratory birds as it deems necessary.

#### **17-236. Taking birds; possession of raptors**

- A. It is unlawful to take or injure any bird or harass any bird upon its nest, or remove the nests or eggs of any bird, except as may occur in normal horticultural and agricultural practices and except as authorized by commission order. Nothing in this title shall be construed to prohibit the taking of such birds for scientific purposes under permits issued by the commission.
- B. The commission shall issue licenses to permit the possession and transportation of raptors for sport falconry consistent with the requirements of the migratory bird treaty act (40 Stat. 755; 16 United States Code sections 703 through 711) and the endangered species act of 1973 (P.L. 93-205; 87 Stat. 884; 16 United States Code sections 1531 through 1544).
- C. A person who has qualified to become a class II, general, or class III, master, falconer, as provided by commission rule, may possess, transport and use for sport falconry purposes, raptors not listed in the migratory bird treaty act (40 Stat. 755; 16 United States Code sections 703 through 711) without possessing a sport falconry license.

#### **17-239. Wildlife depredations; investigations; corrective measures; disposal; reports; judicial review**

- A. Any person suffering property damage from wildlife may exercise all reasonable measures to alleviate the damage, except that reasonable measures shall not include injuring or killing game mammals, game birds or wildlife protected by federal law or regulation unless authorized under subsection D of this section. A person may not retain or sell any portion of an animal taken pursuant to this subsection except as provided in section 3-2403.
- B. Any person suffering such property damage, after resorting to the relief as is provided in subsection A of this section, may file a written report with the director, advising the director of the damage suffered, and the species of animals causing the damage, and the director shall immediately order an investigation and report by an employee trained in the handling of wild animal depredation.

- C. The department shall provide technical advice and assist in the necessary anti-depredation measures recommended in the report, including trapping, capturing and relocating animals.
- D. If harvest of animals is found to be necessary to relieve damage, the commission may establish special seasons or special bag limits, and either set reduced fees or waive any or all license fees required by this title, to crop that wildlife. If the commission determines that this cropping by hunters is impractical, it may issue a special permit for taking that wildlife to the landowner, lessee, livestock operator or municipality suffering damage, provided that the edible portions, or other portions as prescribed by the commission, of all the wildlife taken by the person suffering damage are turned over to an agent of the department for delivery to a public institution or charitable organization.
- E. .Except as provided in section 41-1092.08, subsection H, in the event any person suffering property damage from wildlife is dissatisfied with the final decision of the commission, the person may seek judicial review pursuant to title 12, chapter 7, article 6.

**17-240. Disposition of wildlife; devices; unlawful devices; notice of intention to destroy; waiting period; destruction; jurisdiction of recovery actions; disposition of unclaimed property**

- A. Wildlife seized under this title may be disposed of in such manner as the commission or the court may prescribe, except that the edible portions shall be given to public institutions or charitable organizations. In consultation with the department of health services and the chief veterinary meat inspector, the commission shall adopt rules for the handling, transportation, processing and storing of game meat given to public institutions and charitable organizations.
- B. Devices, excepting firearms, which cannot be used lawfully for the taking of wildlife and being so used at the time seized may be destroyed. Notice of intention to destroy such devices as prescribed in this section must be sent by registered mail to the last known address of the person from whom seized if known and posted in three conspicuous places within the county wherein seized, two of said notices being posted in the customary place for posting public notices about the county courthouse of said county. Such device shall be held by the department for thirty days after such posting and mailing, and if no action is commenced to recover possession of such device within such time, the same shall be summarily destroyed by the department, or if such device shall be held by the court in any such action to have been used for the taking of wildlife, then such device shall be summarily destroyed by the department immediately after the decision of the court has become final. The justice court shall have jurisdiction of any such actions or proceedings commenced to recover the possession of such devices.
- C. Devices other than those referred to in subsection B, including firearms seized under this title shall, after final disposition of the case, be returned to the person from whom the device was seized. If the

person from whom the device was seized cannot be located or ascertained, the device seized shall be retained by the department at least ninety days after final disposition of the case, and all devices so held by the department may be:

1. Sold annually.
  2. Destroyed only if considered a prohibited or defaced weapon, as defined in section 13-3101, except that any seized firearm registered in the national firearms registry and transfer records of the United States treasury department or has been classified as a curio or relic by the United States treasury department shall not be destroyed.
- D. If no complaint is filed pursuant to this title, the device shall be returned to the person from whom seized within thirty days from the date seized.
- E. A complete report of all wildlife and devices seized by the department showing a description of the items, the person from whom it was seized, if known, and a record of the disposition shall be kept by the department. The money derived from the sale of any devices shall be deposited in the game and fish fund.

**17-250. Wildlife diseases; order of director; violation; classification; rule making exemption**

- A. If a wildlife disease is suspected or documented in freeranging or captive wildlife, the director may issue orders that are necessary to minimize or eliminate the threat from the disease. The director may also order or direct an employee of the department to:
1. After notification of and in coordination with the state veterinarian, establish quarantines and the boundary of the quarantine.
  2. Destroy wildlife as necessary to prevent the spread of any infectious, contagious or communicable disease.
  3. Control the movement of wildlife, wildlife carcasses or wildlife parts that may be directly related to spreading or disseminating diseases that pose a health threat to animals or humans.
  4. Require any individual who has taken wildlife, who is in possession of wildlife or who maintains wildlife under a license issued by the department to submit the wildlife or parts for disease testing.
- B. On finding there is reason to believe an infectious, contagious or communicable disease is present, the director may require an employee of the department to enter any place where wildlife may be located and take custody of the wildlife for purposes of disease testing. If search warrants are required by law, the director shall apply for and obtain warrants for entry to carry out the requirements of this subsection.
- C. A person who violates any lawful order issued under this section is guilty of a class 2 misdemeanor.

- D. An order issued under this section is exempt from title 41, chapter 6, article 3, except that the director shall promptly file a copy of the order with the secretary of state for publication in the Arizona administrative register pursuant to section 41-1013.

**17-251. Possession or use of a firearm silencer or muffler while hunting; definition**

- A. The commission shall not adopt or enforce any rule that prohibits the lawful possession or use of a firearm silencer or muffler, including for the taking of wildlife or while hunting.
- B. This section does not limit the authority of the commission to prescribe the type and caliber of firearm or ammunition that may be used for taking wildlife.
- C. For the purposes of this section, "firearm silencer or muffler" means any device that is designed, made or adapted to muffle the report of a firearm.

**17-301. Times when wildlife may be taken; exceptions; methods of taking**

- A. A person may take wildlife, except aquatic wildlife, only during daylight hours unless otherwise prescribed by the commission. A person shall not take any species of wildlife by the aid or with the use of a jacklight, other artificial light, or illegal device, except as provided by the commission.
- B. A person shall not take wildlife, except aquatic wildlife, or discharge a firearm or shoot any other device from a motor vehicle, including an automobile, aircraft, train or powerboat, or from a sailboat, boat under sail, or a floating object towed by powerboat or sailboat except as expressly permitted by the commission. No person may knowingly discharge any firearm or shoot any other device upon, from, across or into a road or railway.
- C. Fish may be taken only by angling unless otherwise provided by the commission. The line shall be constantly attended. In every case the hook, fly or lure shall be used in such manner that the fish voluntarily take or attempt to take it in their mouths.
- D. It shall be unlawful to take wildlife with any leghold trap, any instant kill body gripping design trap, or by a poison or a snare on any public land, including state owned or state leased land, lands administered by the United States forest service, the federal bureau of land management, the national park service, the United States department of defense, the state parks board and any county or municipality. This subsection shall not prohibit:
  - 1. The use of the devices prescribed in this subsection by federal, state, county, city, or other local departments of health which have jurisdiction in the geographic area of such use, for the purpose of protection from or surveillance for threats to human health or safety.
  - 2. The taking of wildlife with firearms, with fishing equipment, with archery equipment, or other implements in hand as may be defined or regulated by the Arizona game and fish commission,

including but not limited to the taking of wildlife pursuant to a hunting or fishing license issued by the Arizona game and fish department.

3. The use of snares, traps not designed to kill, or nets to take wildlife for scientific research projects, sport falconry, or for relocation of the wildlife as may be defined or regulated by the Arizona game and fish commission or the government of the United States or both.
4. The use of poisons or nets by the Arizona game and fish department to take or manage aquatic wildlife as determined and regulated by the Arizona game and fish commission.
5. The use of traps for rodent control or poisons for rodent control for the purpose of controlling wild and domestic rodents as otherwise allowed by the laws of the state of Arizona, excluding any fur-bearing animals as defined in section 17-101.

### **17-302. Taking of bear or mountain lion for protection of property; report**

- A. Other provisions of this title notwithstanding, a landowner or lessee, who is a livestock operator and who has recently had livestock attacked or killed by bear or mountain lion, may, if he complies with subsection B, lawfully exercise such measures as necessary to prevent further damage from the offending bear or lion, including the taking of such bear or mountain lion in the following manner:
  1. All traps shall be inspected within seventy-two hours and nontarget animals released without further injury. The department shall provide technical advice and assistance in the release of nontarget bears and lions. Nontarget animals seriously injured and unable to leave the scene upon release shall be humanely dispatched. Target bears and lions shall be humanely dispatched immediately.
  2. Bears and lions may be taken only by means of:
    - (a) Leg hold traps without teeth and with an open jaw spread not exceeding eight and one-half inches.
    - (b) Leg snares.
    - (c) Firearms.
    - (d) Other legal hunting weapons and devices.
  3. All traps and snares shall be identified as to the person or agency setting the trap or snare.
  4. A livestock operator taking a lion or bear pursuant to this section shall notify a department office within five days after setting traps or initiating pursuit in any manner. The notification for both bears and lions shall include information on the number and kind of livestock attacked or killed and the name and address of the livestock operator experiencing depredation. Such information shall not be public information.
  5. A livestock operator taking a bear or lion pursuant to this section shall provide reasonable

evidence of having livestock recently attacked or killed if a person authorized by the director requests such evidence within forty-eight hours of the department being notified pursuant to paragraph 4. Information shall include location description of sufficient detail to allow the site of depredation and traps set to be located. Such information shall not be public information.

6. Dogs may be used to facilitate the pursuit of depredating bears and lions.
- B. A license or tag shall not be required for the taking of a bear or mountain lion under this section, but within ten days after the taking, the livestock operator shall file a written report with the department. The location of the take, identity of the livestock operator filing the report and location and date of livestock depredation are not public information. Such report shall also contain the following information:
    1. Name and address of livestock operator experiencing depredation losses.
    2. Number, ages and kinds of livestock lost.
    3. Numbers and location of bears or lions taken.
    4. Sex and estimated age of each bear or lion taken.
    5. Location and date of livestock depredation.
  - C. No portion of an animal taken pursuant to this section shall be retained or sold by any person except as authorized by the commission.
  - D. No animal trapped or taken alive under this section shall be held in captivity.
  - E. In addition to other penalties provided by law, persons not in compliance with the provisions of this section may be ordered by the department to remove devices not in compliance with the requirements of this section and to cease and desist current pursuit activities intended to take the depredating bear or lion which the livestock operator has failed to comply with the provisions of this section.
  - F. A livestock operator entitled to take a bear or lion under the provisions of this section may contract with another person for the taking of the depredating bear or lion. The person under contract shall comply with all of the provisions of this section.

### **17-303. Taking or driving wildlife from closed areas**

It is unlawful for any person, except by commission order, to enter upon a game refuge or other area closed to hunting, trapping or fishing and take, drive or attempt to drive wildlife from such areas.

### **17-305. Possession of other weapons while hunting; violation; classification**

- A. The possession of legal weapons, devices, ammunition or magazines, which are not authorized to take wildlife, is not prohibited while hunting if the weapon or device is not used to take wildlife.
- B. Taking wildlife by using a weapon, device, ammunition or magazine that is not authorized to take

wildlife is a class 1 misdemeanor.

**17-306. Importation, transportation, release or possession of live wildlife; violations; classification**

- A. No person shall import or transport into this state or sell, trade or release within this state or have in the person's possession any live wildlife except as authorized by the commission or as defined in title 3, chapter 16.
- B. It is unlawful for a person to knowingly and without lawful authority under state or federal law import and transport into this state and release within this state a species of wildlife that is listed as a threatened, endangered or candidate species under the endangered species act of 1973 (P.L. 93-205; 87 Stat. 884; 16 United States Code sections 1531 through 1544).
- C. A person who violates subsection B of this section is guilty of a class 6 felony.
- D. A person who violates subsection B of this section with the intent to disrupt or interfere with the development or use of public natural resources to establish the presence of the species in an area not currently known to be occupied by that species is guilty of a class 4 felony.

**17-307. Possession, storage, sale and gift of the carcass or parts thereof of wildlife**

- A. The carcass or parts thereof of wildlife lawfully obtained in accordance with the provisions of this title and commission regulations may be possessed by the person taking such wildlife.
- B. The carcass or parts thereof of wildlife lawfully obtained may be placed in storage in accordance with the provisions of this title.
- C. The carcass or parts thereof of wildlife lawfully produced by or lawfully obtained from a commercial wildlife breeding or processing establishment may be sold in this state.
- D. A person may make a gift of the carcass or parts thereof of his lawfully obtained wildlife, or he may have it prepared in a public eating place and served to himself and his guests.

**17-309. Violations; classification**

- A. Unless otherwise prescribed by this title, it is unlawful for a person to:
  - 1. Violate any provision of this title or any rule adopted pursuant to this title.
  - 2. Take, possess, transport, release, buy, sell or offer or expose for sale wildlife except as expressly permitted by this title.
  - 3. Destroy, injure or molest livestock, growing crops, personal property, notices or signboards, or other improvements while hunting, trapping or fishing.
  - 4. Discharge a firearm while taking wildlife within one-fourth mile of an occupied farmhouse or other residence, cabin, lodge or building without permission of the owner or resident.

5. Take a game bird, game mammal or game fish and knowingly permit an edible portion thereof to go to waste, except as provided in section 17-302.
  6. Take big game, except bear or mountain lion, with the aid of dogs.
  7. Make more than one use of a shipping permit or coupon issued by the commission.
  8. Obtain a license or take wildlife during the period for which the person's license has been revoked or suspended or the person has been denied a license.
  9. Litter hunting and fishing areas while taking wildlife.
  10. Take wildlife during the closed season.
  11. Take wildlife in an area closed to the taking of that wildlife.
  12. Take wildlife with an unlawful device.
  13. Take wildlife by an unlawful method.
  14. Take wildlife in excess of the bag limit.
  15. Possess wildlife in excess of the possession limit.
  16. Possess or transport any wildlife or parts of the wildlife that was unlawfully taken.
  17. Possess or transport the carcass of big game without a valid tag being attached.
  18. Use the edible parts of any game mammal or any part of any game bird or nongame bird as bait.
  19. Possess or transport the carcass or parts of a carcass of any wildlife that cannot be identified as to species and legality.
  20. Take game animals, game birds and game fish with an explosive compound, poison or any other deleterious substances.
  21. Import into this state or export from this state the carcass or parts of a carcass of any wildlife unlawfully taken or possessed.
- B.** Unless a different or other penalty or punishment is specifically prescribed, a person who violates any provision of this title, or who violates or fails to comply with a lawful order or rule of the commission, is guilty of a class 2 misdemeanor.
- C.** A person who knowingly takes any big game during a closed season or who knowingly possesses, transports or buys any big game that was unlawfully taken during a closed season is guilty of a class 1 misdemeanor.
- D.** A person is guilty of a class 6 felony who knowingly:
1. Barter, sells or offers for sale any big game or parts of big game taken unlawfully.
  2. Barter, sells or offers for sale any wildlife or parts of wildlife unlawfully taken during a closed season.
  3. Barter, sells or offers for sale any wildlife or parts of wildlife imported or purchased in violation of this title or a lawful rule of the commission.

4. Assists another person for monetary gain with the unlawful taking of big game.
  5. Takes or possesses wildlife while under permanent revocation under section 17-340, subsection B, paragraph 3.
- E. A peace officer who knowingly fails to enforce a lawful rule of the commission or this title is guilty of a class 2 misdemeanor.

**17-331. License or proof of purchase required; violation of child support order**

- A. Except as provided by this title, rules prescribed by the commission or commission order, a person shall not take any wildlife in this state without a valid license or a commission approved proof of purchase. The person shall carry the license or proof of purchase and produce it on request to any game ranger, wildlife manager or peace officer.
- B. A certificate of noncompliance with a child support order issued pursuant to section 25-518 invalidates any license or proof of purchase issued to the support obligor for taking wildlife in this state and prohibits the support obligor from applying for any additional licenses issued by an automated drawing system under this title.
- C. On receipt of a certificate of compliance with a child support order from the court pursuant to section 25-518 and without further action:
1. Any license or proof of purchase issued to the support obligor for taking wildlife that was previously invalidated by a certificate of noncompliance and that has not otherwise expired shall be reinstated.
  2. Any ineligibility to apply for any license issued by an automated drawing system shall be removed.

**17-332. Form and contents of license; duplicate licenses; transfer or licenses prohibition; exemptions; period of validity**

- A. Licenses and license materials shall be prepared by the department and may be furnished and charged to dealers authorized to issue licenses. The license shall be issued in the name of the department. Except as provided by rule adopted by the commission, each license shall be signed by the licensee in ink on the face of the license and any license not signed is invalid. With each license authorizing the taking of big game the department shall provide such tags as the commission may prescribe, which the licensee shall attach to the big game animal in such manner as prescribed by the commission. The commission shall limit the number of big game permits issued to nonresidents in a random drawing to ten per cent or fewer of the total hunt permits, but in extraordinary circumstances, at a public meeting the commission may increase the number of permits issued to nonresidents in a random drawing if, on

separate roll call votes, the members of the commission unanimously:

1. Support the finding of a specifically described extraordinary circumstance.
  2. Adopt the increased number of nonresident permits for the hunt.
- B.** The commission shall issue with each license a shipping permit entitling the holder of the license to a shipment of game or fish as provided by article 4 of this chapter.
- C.** It is unlawful, except as provided by the commission, for any person to apply for or obtain in any one license year more than one original license permitting the taking of big game. A duplicate license or tag may be issued by the department or by a license dealer if the person requesting such license or tag furnishes the information deemed necessary by the commission.
- D.** No license or permit is transferable, nor shall such license or permit be used by anyone except the person to whom such license or permit was issued, except that:
1. The commission may prescribe the manner and conditions of transferring and using permits and tags under this paragraph, including an application process for a qualified organization, to allow a person to transfer the person's big game permit or tag to a qualified organization for use by:
    - (a) A minor child who has a life-threatening medical condition or by a minor child who has a permanent physical disability. If a child with a physical disability is under fourteen years of age, the child must satisfactorily complete the Arizona hunter education course or another comparable hunter education course that is approved by the director.
    - (b) A veteran of the armed forces of the United States who has a service-connected disability.  
For the purposes of this paragraph:
      - (i) "Disability" means a permanent physical impairment that substantially limits one or more major life activities requiring the assistance of another person or a mechanical device for physical mobility.
      - (ii) "Qualified organization" means a nonprofit organization that is qualified under section 501(c)(3) of the United States internal revenue code and that affords opportunities and experiences to children with life-threatening medical conditions or with physical disabilities or to veterans with service-connected disabilities.
  2. A parent, grandparent or legal guardian may allow the parent's, grandparent's or guardian's minor child or minor grandchild to use the parent's, grandparent's or guardian's big game permit or tag to take big game pursuant to the following requirements:
    - (a) The parent, grandparent or guardian must transfer the permit or tag to the child in a manner prescribed by the commission.
    - (b) The parent or guardian must accompany the child in the field or, if a grandparent allows a minor grandchild to use the grandparent's permit or tag, the grandparent, the parent or the

child's guardian must accompany the child in the field.

(c) The child must possess a valid hunting license and, if under fourteen years of age, must satisfactorily complete the Arizona hunter education course or another comparable hunter education course that is approved by the director.

(d) Any big game that is taken counts toward the child's bag limit.

E. No refunds may be made for the purchase of a license or permit.

F. Licenses are valid for a license year as prescribed in rule by the commission. Lifetime licenses and benefactor licenses are valid for the lifetime of the licensee.

### **17-333. License classifications; fees; annual report; review**

A. Through July 1, 2019, the commission shall prescribe by rule license classifications that are valid for the taking or handling of wildlife, fees for licenses, permits, tags and stamps and application fees.

B. The commission may temporarily reduce or waive any fee prescribed by rule under this title on the recommendation of the director.

C. All monies collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the game and fish fund established by section 17-261.

D. On or before December 31 of each year, the commission shall submit an annual report to the president of the senate, the speaker of the house of representatives, the chairperson of the senate natural resources and rural affairs committee and the chairperson of the house of representatives energy, environment and natural resources committee, or their successor committees, that includes information relating to license classifications, fees for licenses, permits, tags and stamps and any other fees that the commission prescribes by rule. On or before July 1, 2019 and each fifth year thereafter, the joint legislative audit committee shall assign a committee of reference to hold a public hearing and review the annual report submitted by the commission.

### **17-333.02. Trapping license; education; exemption**

A. A person applying for a trapping license must successfully complete a trapping education course conducted or approved by the department before being issued a trapping license. The department shall conduct or approve an educational course of instruction in responsible trapping and environmental ethics. The course shall include instruction on the history of trapping, trapping ethics, trapping laws, techniques in safely releasing nontarget animals, trapping equipment, wildlife management, proper catch handling, trapper health and safety and considerations and ethics intended to avoid conflicts with other public land users. A person must pass a written examination to successfully complete the course. The department shall not approve a trapping education course conducted by any person,

agency, corporation or other organization for which a fee is charged greater than an amount the commission determines per person.

- B. A person who is born before January 1, 1967 or who has completed, from and after December 31, 1987 and before March 1, 1993, the voluntary trapper education course on responsible trapping conducted in cooperation with the Arizona game and fish department is exempt from subsection A of this section.

#### **17-342. Colorado river special use permit**

- A. A person taking fish or amphibians for purposes other than for profit from or while on a boat or other floating device on all waters of the Colorado river south of the Nevada-Arizona boundary shall have in his possession a valid angling or fishing license issued by either the state of Arizona or the state of California. In addition to one of the above described licenses, such person shall have in his possession a valid California or Arizona-Colorado river special use permit, as provided by sections 17-343 and 17-344, which shall be obtained on payment of a fee to be fixed by the commission at not to exceed four dollars. Such a permit shall not be required to take fish or amphibians from canals, drains or ditches used to carry water from the Colorado river for irrigation or domestic purposes.
- B. A person having in his possession a valid Arizona fishing license must have a California-Colorado river special use permit to legally fish the waters described in subsection A of this section. A person having in his possession a valid California angling license must have an Arizona-Colorado river special use permit to legally fish the waters described in subsection A of this section. Such special use permit when accompanied by the proper license will allow the holder to fish in any portion of such waters and permit him to enter the waters from any point.
- C. Shore line fishing does not require a Colorado river special use permit as long as the fisherman remains on the shore of the state from which he holds a valid license and does not embark on the water.

#### **17-343. Reciprocal sale of licenses and special use permits**

The Arizona game and fish department and the California department of fish and game may enter into a reciprocal agreement to handle licenses and special use permits of either state and issue them to their authorized dealers. Arizona shall by April 30 of each year make an audit report together with remittance to California covering such sales. California shall by April 30 of each year make an audit report and remittance to Arizona covering such sales.

**17-344. Period of validity of special permits**

Arizona-Colorado river special use permits and California-Colorado river special use permits shall be valid from January 1 to December 31, inclusive, or as the commission prescribes by rule or order.

**17-346. Special big game license tags**

In addition to any license tags issued under section 17-333, the commission may issue special big game license tags in the name of an incorporated nonprofit organization that is dedicated to wildlife conservation. No more than three special big game license tags may be issued for each species of big game in a license year. Notwithstanding section 17-332, subsection D, an organization that receives special big game license tags issued under this section may sell and transfer them if all proceeds of the sale are used in this state for wildlife management.

**17-361. Trappers; licensing; restrictions; duties; reports**

- A. The holder of a trapping license, may trap predatory, nongame, and fur-bearing mammals under such restrictions as the commission may specify.
- B. All traps shall be plainly identified with the name, address, or registered number of the owner, and such markings of identification shall be filed with the department. All traps in use shall be inspected daily.
- C. It shall be unlawful for a person to disturb the trap of another unless authorized to do so by the owner.
- D. Pursuant to rules and regulations of the commission, each trapping licensee shall, on dates designated by the commission, submit on forms provided by the department, a legible report of the number of each kind of predatory, nongame and fur-bearing mammal taken and the names and addresses of the persons to whom they were shipped or sold or the wildlife management units where the animals were taken.

**17-371. Transportation, possession and sale of wildlife and wildlife parts**

- A. A person may transport in his possession his legally taken wildlife, or may authorize the transportation of his legally taken big game, provided such big game or any part thereof has attached thereto a valid transportation permit issued by the department. Such wildlife shall be transported in such manner that it may be inspected by authorized persons upon demand until the wildlife is packaged or stored. Species of wildlife, other than game species, may be transported in any manner unless otherwise specified by the commission. A person possessing a valid license may transport lawfully taken wildlife other than big game given to him but in no event shall any person possess more than one bag or possession limit.

- B. A holder of a resident license shall not transport from a point within to a point without the state any big game species or parts thereof without first having obtained a special permit issued by the department or its authorized agent.
- C. Migratory birds may be possessed and transported in accordance with the migratory bird treaty act (40 Stat. 755; 16 United States Code sections 703 through 711) and regulations under that act.
- D. A holder of a sport falconry license may transport one or more raptors that the person lawfully possesses under terms and conditions prescribed by the commission. Regardless of whether a person holds a sport falconry license and as provided by section 17-236, subsection C, the person may transport for sport falconry purposes one or more raptors that are not listed pursuant to the migratory bird treaty act.
- E. Heads, horns, antlers, hides, feet or skin of wildlife lawfully taken, or the treated or mounted specimens thereof, may be possessed, sold and transported at any time, except that migratory birds may be possessed and transported only in accordance with federal regulations.

**17-372. Shipment by common carrier**

- A. A common carrier shall not transport any wildlife except as provided for under this title or title 3, chapter 16.
- B. Wildlife may be shipped during the open season, or within five days thereafter, but such shipment shall not exceed the possession limit for any one species and no more than one such possession limit may be shipped in a period of seven consecutive days. When shipped a valid permit shall be firmly attached to such shipment and the specimens shall be clearly and conspicuously labeled with the name and address of the consignor and consignee and an accurate statement of the contents of package.
- C. A resident may ship wildlife as provided under this section, except that a holder of a resident license shall not ship or offer for shipment from a point within to a point without the state any big game species or parts thereof without first having obtained a special permit issued by the department or its authorized agent.

**ARTICLE 3. TAKING AND HANDLING OF WILDLIFE  
DEFINITIONS**

**17-101. Definitions**

**A.** In this title, unless the context otherwise requires:

1. "Angling" means the taking of fish by one line and not to exceed two hooks, by one line and one artificial lure, which may have attached more than one hook, or by one line and not to exceed two artificial flies or lures.
2. "Bag limit" means the maximum limit, in number or amount, of wildlife that may lawfully be taken by any one person during a specified period of time.
3. "Closed season" means the time during which wildlife may not be lawfully taken.
4. "Commission" means the Arizona game and fish commission.
5. "Department" means the Arizona game and fish department.
6. "Device" means any net, trap, snare, salt lick, scaffold, deadfall, pit, explosive, poison or stupefying substance, crossbow, firearm, bow and arrow, or other implement used for taking wildlife. Device does not include a raptor or any equipment used in the sport of falconry.
7. "Domicile" means a person's true, fixed and permanent home and principal residence. Proof of domicile in this state may be shown as prescribed by rule by the commission.
8. "Falconry" means the sport of hunting or taking quarry with a trained raptor.
9. "Fishing" means to lure, attract or pursue aquatic wildlife in such a manner that the wildlife may be captured or killed.
10. "Fur dealer" means any person engaged in the business of buying for resale the raw pelts or furs of wild mammals.
11. "Guide" means a person who does any of the following:
  - (a) Advertises for guiding services.
  - (b) Holds himself out to the public for hire as a guide.
  - (c) Is employed by a commercial enterprise as a guide.
  - (d) Accepts compensation in any form commensurate with the market value in this state for guiding services in exchange for aiding, assisting, directing, leading or instructing a person in the field to locate and take wildlife.
  - (e) Is not a landowner or lessee who, without full fair market compensation, allows access to the landowner's or lessee's property and directs and advises a person in taking wildlife.
12. "License classification" means a type of license, permit, tag or stamp authorized under this title and prescribed by the commission by rule to take, handle or possess wildlife.
13. "License year" means the twelve-month period between January 1 and December 31, inclusive, or a different twelve-month period as prescribed by the commission by rule.
14. "Nonresident", for the purposes of applying for a license, permit, tag or stamp, means a citizen of the United States or an alien who is not a resident.
15. "Open season" means the time during which wildlife may be lawfully taken.

16. "Possession limit" means the maximum limit, in number or amount of wildlife, that may be possessed at one time by any one person.
  17. "Resident", for the purposes of applying for a license, permit, tag or stamp, means a person who is:
    - (a) A member of the armed forces of the United States on active duty and who is stationed in:
      - (i) This state for a period of thirty days immediately preceding the date of applying for a license, permit, tag or stamp.
      - (ii) Another state or country but who lists this state as the person's home of record at the time of applying for a license, permit, tag or stamp.
    - (b) Domiciled in this state for six months immediately preceding the date of applying for a license, permit, tag or stamp and who does not claim residency privileges for any purpose in any other state or jurisdiction.
  18. "Road" means any maintained right-of-way for public conveyance.
  19. "Statewide" means all lands except those areas lying within the boundaries of state and federal refuges, parks and monuments, unless specifically provided differently by commission order.
  20. "Take" means pursuing, shooting, hunting, fishing, trapping, killing, capturing, snaring or netting wildlife or the placing or using of any net or other device or trap in a manner that may result in the capturing or killing of wildlife.
  21. "Taxidermist" means any person who engages for hire in the mounting, refurbishing, maintaining, restoring or preserving of any display specimen.
  22. "Traps" or "trapping" means taking wildlife in any manner except with a gun or other implement in hand.
  23. "Wild" means, in reference to mammals and birds, those species that are normally found in a state of nature.
  24. "Wildlife" means all wild mammals, wild birds and the nests or eggs thereof, reptiles, amphibians, mollusks, crustaceans and fish, including their eggs or spawn.
  25. "Youth" means a person who is under eighteen years of age.
  26. "Zoo" means a commercial facility open to the public where the principal business is holding wildlife in captivity for exhibition purposes.
- B.** The following definitions of wildlife shall apply:
1. Aquatic wildlife are all fish, amphibians, mollusks, crustaceans and soft-shelled turtles.
  2. Game mammals are deer, elk, bear, pronghorn (antelope), bighorn sheep, bison (buffalo), peccary (javelina), mountain lion, tree squirrel and cottontail rabbit.
  3. Big game are wild turkey, deer, elk, pronghorn (antelope), bighorn sheep, bison (buffalo), peccary (javelina), bear and mountain lion.
  4. "Trophy" means:
    - (a) A mule deer buck with at least four points on one antler, not including the eye-guard point.
    - (b) A whitetail deer buck with at least three points on one antler, not including the eye-guard point.
    - (c) A bull elk with at least six points on one antler, including the eye-guard point and the brow tine point.

- (d) A pronghorn (antelope) buck with at least one horn exceeding or equal to fourteen inches in total length.
  - (e) Any bighorn sheep.
  - (f) Any bison (buffalo).
5. Small game are cottontail rabbits, tree squirrels, upland game birds and migratory game birds.
  6. Fur-bearing animals are muskrats, raccoons, otters, weasels, bobcats, beavers, badgers and ringtail cats.
  7. Predatory animals are foxes, skunks, coyotes and bobcats.
  8. Nongame animals are all wildlife except game mammals, game birds, fur-bearing animals, predatory animals and aquatic wildlife.
  9. Upland game birds are quail, partridge, grouse and pheasants.
  10. Migratory game birds are wild waterfowl, including ducks, geese and swans; sandhill cranes; all coots, all gallinules, common snipe, wild doves and bandtail pigeons.
  11. Nongame birds are all birds except upland game birds and migratory game birds.
  12. Raptors are birds that are members of the order of falconiformes or strigiformes and include falcons, hawks, owls, eagles and other birds that the commission may classify as raptors.
  13. Game fish are trout of all species, bass of all species, catfish of all species, sunfish of all species, northern pike, walleye and yellow perch.
  14. Nongame fish are all the species of fish except game fish.
  15. Trout means all species of the family salmonidae, including grayling.

**R12-4-101. Definitions**

- A. In addition to the definitions provided under A.R.S. § 17-101, R12-4-301, R12-4-401, and R12-4-501, the following definitions apply to this Chapter, unless otherwise specified:

“Bobcat seal” means the tag a person is required to attach to the raw pelt or unskinned carcass of any bobcat taken by trapping in Arizona or exported out of Arizona regardless of the method of take.

“Bonus point” means a credit that authorizes the Department to issue an applicant an additional computer-generated random number.

“Certificate of insurance” means an official document issued by the sponsor's and sponsor's vendors or subcontractors insurance carrier providing insurance against claims for injury to persons or damage to property which may arise from or in connection with the solicitation or event as determined by the Department.

“Commission Order” means a document adopted by the Commission that does one or more of the following:

Open, close, or alter seasons,

Open areas for taking wildlife,

Set bag or possession limits for wildlife,

Set the number of permits available for limited hunts, or

Specify wildlife that may or may not be taken.

“Day-long” means the 24-hour period from one midnight to the following midnight.

“Department property” means those buildings or real property and wildlife areas under the jurisdiction of the Arizona Game and Fish Commission.

“Firearm” means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun, or other weapon that will discharge, is designed to discharge, or may readily be converted to discharge a projectile by the action of an explosion caused by the burning of smokeless powder, black powder, or black powder substitute.

“Hunt area” means a management unit, portion of a management unit, or group of management units, or any portion of Arizona described in a Commission Order and not included in a management unit, opened to hunting.

“Hunt number” means the number assigned by Commission Order to any hunt area where a limited number of hunt permits are available.

“Hunt permits” means the number of hunt permit-tags made available to the public as a result of a Commission Order.

“Hunt permit-tag” means a tag for a hunt for which a Commission Order has assigned a hunt number.

“Identification number” means the number assigned to each applicant or license holder by the Department, as established under R12-4-111.

“License dealer” means a business authorized to sell hunting, fishing, and other licenses as established under ~~to~~ R12-4-105.

“Live baitfish” means any species of live freshwater fish designated by Commission Order as lawful for use in taking aquatic wildlife under R12-4-317.

“Management unit” means an area established by the Commission for management purposes.

“Nonpermit-tag” means a tag for a hunt for which a Commission Order does not assign a hunt number and the number of tags is not limited.

“Person” has the meaning as provided under A.R.S. § 1-215.

“Proof of purchase,” for the purposes of A.R.S. § 17-331, means an original, or any authentic and verifiable form of the original, of any Department-issued license, permit, or stamp that establishes proof of actual purchase.

“Restricted nonpermit-tag” means a tag issued for a supplemental hunt as established under R12-4-115.

“Solicitation” means any activity that may be considered or interpreted as promoting, selling, or transferring products, services, memberships, or causes, or participation in an event or activity of any kind, including organizational, educational, public affairs, or protest activities, including the distribution or posting of advertising, handbills, leaflets, circulars, posters, or other printed materials for these purposes.

“Solicitation material” means advertising, circulars, flyers, handbills, leaflets, posters, or other printed information.

“Sponsor” means the person or persons conducting a solicitation or event.

“Stamp” means a form of authorization in addition to a license that authorizes the license holder to take wildlife specified by the stamp.

“Tag” means the Department authorization a person is required to obtain before taking certain wildlife as established under A.R.S. Title 17 and 12 A.A.C. 4.

“Waterdog” means the larval or metamorphosing stage of a salamander.

“Wildlife area” means an area established under 12 A.A.C. 4, Article 8.

**B.** If the following terms are used in a Commission Order, the following definitions apply:

“Antlered” means having an antler fully erupted through the skin and capable of being shed.

“Antlerless” means not having an antler, antlers, or any part of an antler erupted through the skin.

“Bearded turkey” means a turkey with a beard that extends beyond the contour feathers of the breast.

“Buck antelope” means a male pronghorn antelope.

“Adult bull buffalo” means a male buffalo any age or any buffalo designated by a Department employee during an adult bull buffalo hunt.

“Adult cow buffalo” means a female buffalo any age or any buffalo designated by a Department employee during an adult cow buffalo hunt.

“Bull elk” means an antlered elk.

“Designated” means the gender, age, or species of an animal or the specifically identified animal the Department authorizes to be taken and possessed with a valid tag.

“Ram” means any male bighorn sheep.

“Rooster” means a male pheasant.

“Yearling buffalo” means any buffalo less than three years of age or any buffalo designated by a Department employee during a yearling buffalo hunt.

**DEPARTMENT OF ENVIRONMENTAL QUALITY (R-19-0204)**

Title 18, Chapter 2, Article 10, Motor Vehicles; Inspections and Maintenance

**Amend:** R18-2-1001; R18-2-1003; R18-2-1005; R18-2-1006; R18-2-1007;  
R18-2-1008; R18-2-1009; R18-2-1010; R18-2-1011; R18-2-1012;  
R18-2-1016; R18-2-1017; R18-2-1018; R18-2-1019; R18-2-1020;  
R18-2-1022; R18-2-1023; R18-2-1025; R18-2-1026; Table 5

**New Section:** R18-2-1002

**Repeal:** R18-2-1013; R18-2-1027; R18-2-1028; R18-2-1031

# GOVERNOR'S REGULATORY REVIEW COUNCIL

## STAFF MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** February 5, 2019

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

**FROM:** Council Staff

**DATE:** January 22, 2019

**SUBJECT: DEPARTMENT OF ENVIRONMENTAL QUALITY (R-19-0204)**  
Title 18, Chapter 2, Article 10, Motor Vehicles; Inspections and Maintenance

**Amend:** R18-2-1001; R18-2-1003; R18-2-1005; R18-2-1006; R18-2-1007;  
R18-2-1008; R18-2-1009; R18-2-1010; R18-2-1011; R18-2-1012;  
R18-2-1016; R18-2-1017; R18-2-1018; R18-2-1019; R18-2-1020;  
R18-2-1022; R18-2-1023; R18-2-1025; R18-2-1026; Table 5

**New Section:** R18-2-1002

**Repeal:** R18-2-1013; R18-2-1027; R18-2-1028; R18-2-1031

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This rulemaking, from the Arizona Department of Environmental Quality (Department or ADEQ), seeks to amend 20 rules, repeal four rules, and create one new rule in A.A.C. Title 18, Chapter 2, related to air pollution control.

The Department is amending its rules related to the Arizona Vehicle Emissions Inspection Program (VEIP), to bring the rules in line with federal regulations and to implement legislation from 2005, 2007, and 2014. The Department believes that the updated rules codify simplified practices and leverage new technology. The Department provides a comprehensive summary of its proposed actions on pages 2-12 of the Notice of Final Rulemaking.

**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 the rules. Under A.R.S. § 49-447, the Department must "adopt rules setting forth standards controlling the release into the atmosphere of air contaminants from motor vehicles and combustion engines." A.R.S. § 49-447 requires such rules to be consistent with provisions of federal law relating to the control of emissions from motor vehicles or combustion engines.

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

ADEQ believes that the proposed changes will have a minimal economic impact on the different Arizona entities and citizens, but ADEQ believes that the overall impact will be slightly positive.

The provisions that are likely to have an economic impact by this rulemaking are:

1. Vehicle exemptions;
2. Exemptions for military personnel on active duty;
3. Fleet agent and fleet inspector licenses increased from 1 year to 2 years;
4. Transferable certificates of inspection (COIs) for dealer fleets;
5. Elimination of the liquid fuel leak test;
6. OBD testing expansion;
7. Reduced ADEQ auditing;
8. MyDEQ launch for Fleet Emissions Testing Permits (MyDEQ Fleet); and
9. MyDEQ launch for Out of State Exemptions (My DEQ OOS).

The stakeholders according to ADEQ are:

1. Arizona businesses, primarily used motor vehicle dealers.
2. Arizona citizens, specifically owners of diesel powered vehicles and individuals seeking out of state exemptions (military members, individuals who live in Arizona part-time, college students).
3. Emissions inspectors and fleet agents.
4. The Department of Environmental Quality.
5. Other State agencies, jurisdictions, and quasi-governmental entities.
6. The contractor running the emissions testing stations, currently Gordon-Darby.

**4. 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?**

ADEQ was not able to identify any less intrusive or costly alternative methods for achieving the purpose of the rulemaking.

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

This rulemaking will have minimal economic impact on the different Arizona entities and citizens, but ADEQ believes that the overall impact will be slightly positive. This rulemaking creates no additional burdens on Arizona agencies, businesses, or citizens.

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

The Department indicates that it received public comments from Gordon-Darby Arizona Testing and from the Arizona Department of Transportation. The comments, along with the Department's responses, have been provided as an attachment to the Notice of Final Rulemaking. As a result of the comments, the Department made minor conforming changes to the rules. Council staff believes that the Department has adequately addressed the public comments.

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

No. Only non-substantive technical and clarifying changes have been made between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

**8. 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 federal law does not expressly direct states with respect to implementation of emissions testing programs. The Department notes that Arizona's testing program has been approved by the EPA.

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

Yes. The fleet emissions inspection station permits issued under Article 10 are not general permits, but are issued consistent with A.R.S. § 41-1037(A)(1) as specific permit requirements are enumerated in A.R.S. § 49-546(A).

**10. 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?**

No. The Department indicates that it did not review or rely on any study for this rulemaking.

**11. Conclusion**

The Department requests a June 1, 2019 effective date for the rulemaking, in order to give fleet emissions testing permittees with additional time to move their permit to the Department's online portal. Council staff recommends approval of the rulemaking.



Douglas A. Ducey  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Misael Cabrera  
Director

December 18, 2018

*Via electronic submission*

Ms. Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 N. 15<sup>th</sup> Avenue, Suite 305  
Phoenix, Arizona 85007

Re: Notice of Final Rulemaking - Arizona Administrative Code Title 18, Chapter 2, Article 10.

Ms. Sornsin:

The "Vehicle Emissions Inspection (VEI) Modernization Rulemaking" is a comprehensive revision of Title 18, Chapter 2, Article 10 of the Arizona Administrative Code. This rulemaking will:

- Affect 24/25 of the rules in Article 10.
- Improve 19 rules.
- Repeal 4 rules.
- Add 1 rule.
- Implement all pending legislation that affects VEI.

The rulemaking includes a number of business friendly changes that have been implemented as a result of stakeholder input. This rulemaking will:

- Allow certificates of inspection (COIs) to travel with the vehicle instead of being tied to a specific address.
- Reduce the number of inspections ADEQ does on fleet emissions inspection stations by approximately 50%.
- Launch myDEQ for fleet emissions inspection stations. MyDEQ is a digital solution that allows our permittees to meet their environmental priorities and responsibilities with an easy online tool that is available 24/7 to meet their business needs.
- Once approved by the EPA, enable fleets to perform on-board diagnostics (OBD) testing.

The rulemaking includes changes to the emissions inspector licensing to ensure that this barrier to employment is simple to meet while still rising to federal requirements.

- Inspector licenses have been extended from 1 year to 2 years.
- Testing subjects have been changed to match federal requirements.

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This rulemaking will immediately benefit the citizens of Arizona in the following ways:

- Providing immediate air quality benefits. This rulemaking will immediately mandate OBD testing for lightweight diesel vehicles in Area A. OBD testing is a quicker, more efficient, and cheaper way to test vehicles than the current method of opacity testing. OBD testing takes advantage of a vehicle's onboard computer, which is continuously monitoring the pollutants the vehicle is emitting.
- Once approved by the EPA, mandating that all OBD certified vehicles in Arizona be tested using this technology.
- Making Article 10 more user friendly. The Department has made a concerted effort to simplify our regulations to make sure a layman can understand them. The entirety of R18-2-1006 has been transformed from a technical text into test applicability tables.
- Simplifying the out of state exemption process. ADEQ has launched an additional online portal for individuals who need to renew their vehicle registration while they are out of state.
- Ensuring that VEI regulations perfectly match enabling statutes. There are no longer any confusing discrepancies between law and rule.

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The following information is provided for your use in reviewing the enclosed rules for approval pursuant to A.R.S. § 41-1052 and A.A.C. R1-6-201:

I. Information Required by R1-6-201(A)(1)

- The public record closed for all rules on November 15<sup>th</sup>, 2018 at 5:00 p.m.
- The rulemaking activity was discussed in the last three five-year review reports for Article 10. ADEQ is finally making good on a promise made 15 years ago to do a comprehensive rewrite of Article 10.
- The rules do not contain a new fee.
- The rules do not contain a fee increase.
- The Department is not seeking an immediate effective date for these rules, but is requesting the specific effective date of June 1st, 2018.
- I certify that the preamble discloses a reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.
- A full-time employee will not be required to implement and enforce the rule.
- A list of all documents enclosed is provided in Sections II and III.

II. List of Documents Enclosed under R1-6-201(A)

- One electronic copy of the following is enclosed:
  1. This cover letter.

2. The Notice of Final Rulemaking (NFRM), including the preamble, table of contents, and text of each rule.
3. A complete economic, small business and consumer impact statement.
4. Written comments on the Notice of Proposed Rulemaking (NPRM) received by ADEQ.
  - There was no testimony offered at the November 15th, 2018 public hearing. All written comments are addressed in the responsiveness summary.
  - ADEQ received no analysis regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states, therefore, no such analysis is included in this submittal.

III. List of Documents Enclosed under A.A.C. R1-6-201(B)

- All documents that have been incorporated by reference are included in this submission.
- One electronic copy of the general and specific statutes authorizing the rule, including relevant statutory definitions, is included in this submission.
- One electronic copy of each of the existing rules being amended is included as well.

Thank you for your timely review and approval. Please contact Jonathan Quinsey at 602-771-8193 or [quinsey.jonathan@azdeq.gov](mailto:quinsey.jonathan@azdeq.gov) if you have any questions.

Sincerely,



Misael Cabrera  
Director

Enclosure

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY –

AIR POLLUTION CONTROL

PREAMBLE

<u>1.</u>	<u>Section Affected</u>	<u>Rulemaking Action</u>
	R18-2-1001	Amend
	R18-2-1002	New Section
	R18-2-1003	Amend
	R18-2-1005	Amend
	R18-2-1006	Amend
	R18-2-1007	Amend
	R18-2-1008	Amend
	R18-2-1009	Amend
	R18-2-1010	Amend
	R18-2-1011	Amend
	R18-2-1012	Amend
	R18-2-1013	Repeal
	R18-2-1016	Amend
	R18-2-1017	Amend
	R18-2-1018	Amend
	R18-2-1019	Amend
	R18-2-1020	Amend
	R18-2-1022	Amend
	R18-2-1023	Amend
	R18-2-1025	Amend
	R18-2-1026	Amend
	R18-2-1027	Repeal
	R18-2-1028	Repeal
	R18-2-1031	Repeal
	Table 5	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. §§49-104, 49-404, 49-425, 49-447

Implementing statutes: A.R.S. §§49-541, 49-542, 49-542.02, 49-542.03, 49-542.05, 49-542.06, 49-542.07, 49-543, 49-544, 49-545, 49-546, 49-547, 49-548, 49-549, 49-550, 49-551

3. The effective date of the rule:

The effective date for this rule will be 6/1/2019. ADEQ has selected a date outside of the normal 60 day period to give fleet emissions testing permittees an extended opportunity to move their permit to myDEQ. ADEQ has been holding stakeholder meetings since January 2018 to inform permittees of this upcoming change, but we remain sensitive to interrupting any business opera-

tions. This extended date will ensure that businesses have more than enough time to move their permit online before the rules take effect.

**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 Docket Opening: 24 A.A.R. 2867, October 12, 2018.

Notice of Proposed Rulemaking: 24 A.A.R. 2801, October 12, 2018.

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

Name: Jonathan Quinsey  
Address: Arizona Department of Environmental Quality  
1110 W. Washington St.  
Phoenix, AZ 85007  
Telephone: (602) 771-8193  
Fax: (602) 771-2366  
E-mail: [quinsey.jonathan@azdeq.gov](mailto:quinsey.jonathan@azdeq.gov)  
Website: <http://azdeq.gov/node/4928>

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

**A. Summary**

This rulemaking will bring the Arizona Vehicle Emissions Inspection Program (VEIP) in line with federal regulations, implement HB 2357 (2005), HB1531(2007), and HB 2226 (2014) into rule, allow the VEIP to leverage new technology, and codify VEIP practices that have been simplified as a result of ADEQ's adoption of the LEAN Management System.

The VEIP is an esoteric Clean Air Act control program, an integral part of the Arizona State Implementation Plan (SIP), and a key cog in the state's ability to meet National Ambient Air Quality Standards (NAAQS). The Act specifically requires inclusion of the VEIP in the ozone nonattainment area SIP for Phoenix, and the program is also a key element of the carbon monoxide (CO) maintenance SIPs for Phoenix and Tucson. Because of the necessity of the program and its impact on pollutants, it is imperative that ADEQ bring this program up to date with current requirements.

ADEQ is proposing to amend current rules to implement more than a decade of enabling legislation, reduce redundant processes, bring the program in line with federal regulations, simplify and clarify rule language, and update the program to reflect technological innovation. While developing the language for these rules, ADEQ repeatedly reached out to motorists and industry stakeholders. By conducting a robust stakeholder process, the Department has ensured that the updated rules will not create any unforeseen burdens on Arizona citizens or businesses while still protecting and enhancing public health and the environment in the state.

As part of the process to update VEI regulations, ADEQ must also update the Arizona State Implementation Plan (SIP). This rulemaking will require the Department to model the effectiveness of the program and submit the modeling results for approval to the Environmental Protection Agency (EPA). This is reflected in the contingent nature of some of the rule changes. In the interim, ADEQ will maintain a website

at <http://azdeq.gov/VECS/Rulemaking> that stakeholders and members of the public can visit to see the status of the SIP revision.

Arizona's VEIP is authorized by A.R.S. Title 49, Chapter 3, Article 5. The Inspection and Maintenance (I/M) Program has been approved by the Environmental Protection Agency (EPA) as a part of Arizona's SIP, with the most recent revisions being approved in 2003. ADEQ has been granted general rulemaking authority under A.R.S. §49-104.

## **B. Background**

I/M programs are required in areas that do not meet the National Ambient Air Quality Standards (NAAQS). These programs help identify vehicles with excess emissions, provide information to assist with diagnosing malfunctions that cause excess emissions, and require repair of vehicles to bring them into compliance with emissions standards. Arizona established a mandatory vehicle emissions inspection and maintenance program in Maricopa and Pima Counties in 1975. Since establishment of the mandatory program, there have been several improvements designed to further reduce carbon monoxide and ozone precursors - volatile organic compounds (VOC), and oxides of nitrogen (NOx) from vehicle emissions. The resulting emissions reduction benefits have helped the Phoenix area meet the 1-hour ozone and 1997 8-hour ozone air quality standards, and both the Phoenix and Tucson areas meet the carbon monoxide air quality standards.

Among program improvements was the passage of 1993 legislation that authorized the implementation of an enhanced I/M program in the Phoenix area. On November 14, 1994, the Arizona Department of Environmental Quality (ADEQ) submitted to the U.S. Environmental Protection Agency (EPA) Final State Implementation Plan Revision – Arizona Basic and Enhanced Vehicle Inspection/Maintenance Program. The Enhanced Program and the Basic Program, operated in the Tucson area, were approved by EPA as elements of the Arizona SIP effective July 7, 1995 (60 FR 22518; May 8, 1995). Subsequent revisions in June 2001, and February 2002, included an increase in the vehicle emissions inspection program area to incorporate high-growth areas adjacent to metropolitan Phoenix, adoption of onboard diagnostic testing to include current technology and improve customer convenience, and provisions for a one time only waiver from meeting applicable emissions standards for the life of a vehicle. These changes were approved by EPA effective February 21, 2003 (68 FR 2912; January 22, 2003).

At the time of the 1994 submittal, the Maricopa County carbon monoxide and 1-hour ozone planning areas were both classified as “moderate” nonattainment areas. Under the 1990 CAA amendments, moderate classifications for either pollutant require a basic I/M program. Due to rapid population growth in the Phoenix metropolitan area and the difficulty of demonstrating attainment for CO and ozone, the State legislature authorized an enhanced I/M program for the Maricopa County nonattainment area. This action implemented measures to aid the State in meeting federal requirements for demonstrating reasonable further progress to reduce emissions of volatile organic compounds by 15 percent (63 FR 28898; May 27, 1998). Because the Maricopa County carbon monoxide and 1-hour ozone nonattainment areas had not attained the air quality standards by the applicable attainment date, both areas were subsequently reclassified to “serious” on August 28, 1996 (61 FR 39343; July 29, 1996) and February 13, 1998 (62 FR 60001; November 6, 1997, and 63 FR 7290; February 13, 1998), respectively. These actions triggered a federal requirement for the already implemented enhanced I/M program.

After this initial implementation, there has only been a few changes made to Arizona's VEIP. These changes have been limited to implementing on-board diagnostic testing as part of the program and making conforming changes within the regulations. In current day, the enhanced I/M program is operated in the expanded Phoenix metropolitan area, known as Area A, located in portions of Maricopa, Pinal, and Yavapai Counties, and requires periodic emissions inspection of motor vehicles registered or regularly

operated within the area. This program is among the primary control measures used to help the Phoenix area attain and maintain the ozone and carbon monoxide air quality standards. ADEQ also operates a basic I/M program in Area B, located in portions of Pima County.

### **C. Explanation of the Proposed Rules:**

#### **1. Vehicle Types Updated to Reflect Current Technology and Regulatory Schemes.**

This rulemaking adds or updates definitions for all-terrain vehicles, collectible vehicles, alternative fuel vehicles, reconstructed vehicles, and specially constructed vehicles. These definitions are necessary to reduce confusion and delineate between different types of vehicles that are exempt from emissions testing. This rulemaking also removes unnecessary definitions from Article 10 and adds additional clarifying definitions for user-friendliness.

Reconstructed and specially constructed vehicles do not receive a grace period where they are exempt from emissions testing. This is because these vehicles may have been modified in a way that could increase the amount of pollutants they produce. This rulemaking clarifies the difference between these types of vehicles and original equipment manufacturer (OEM) vehicles.

Currently, Article 10 doesn't include definitions for many types of OEM alternative fuel vehicles. The last time these regulations were updated, battery electric vehicles (BEVs) and zero emissions vehicles (ZEVs) were not manufactured for public purchase in nearly the same volume as they are today. This rulemaking adopts many of the definitions ADOT uses for these vehicles to ensure that they fit within our emissions testing exemptions.

All-terrain vehicles (ATVs) are currently exempt from emissions testing, but there has been some confusion about what type of vehicles qualify for this exemption. The definition has been updated to be more precise. Additionally, a definition for motorcycles, which are exempt from emissions testing, has been updated to match ADOT definitions to reduce confusion.

#### **2. Exemptions for Certain Classes of Vehicles.**

The Arizona Legislature has exempted certain classes of vehicles from emissions testing. These exemptions will be codified into rule through this rulemaking. This rulemaking exempts brand new cars from emissions testing for 5 years, even if they are last model year's vehicle. Currently, if a 2017 model year vehicle is purchased in 2018, the vehicle will only receive a 4 year exemption. This exemption extends to OEM alternative fuel vehicles. However, vehicles converted to run on alternative fuels will not be exempt from emissions testing.

This rulemaking will also exempt vehicles that meet the definition of a collectible vehicle. The legislation that exempted motorcycles and ATV's will be codified into rule. Cranes and oversized vehicles that receive permits pursuant to A.R.S. §§ 28-1100, 28-1103, and 28-1144 will be exempted. Currently, vehicles that are permitted by ADOT pursuant to these statutes do not receive emissions testing, and this rulemaking will match regulation to practice. These vehicles include cranes, earthmovers, and other massively oversized vehicles that receive special permits for traveling on the highway.

#### **3. Exemption for Military Personnel on Out of State Active Duty.**

To streamline vehicle testing and registration procedures for military personnel, R18-2-1023 is being revised to allow our men and women at arms to more easily manage their vehicle registration when they are

on active duty outside of the state. The rules are applicable to military personnel whose vehicles require emissions testing prior to registration but will not be available for inspection within the state during the 90-day period before the emissions compliance expiration date. Our men and women at arms will be exempt from emissions testing while they are on duty and out of state. Additionally, filing for the exemption will be free of charge.

ADEQ will also be launching an online process to streamline out-of-state vehicle registration for all parties. Soldiers on duty will be able to manage their vehicle registration from wherever they are in the world, absolutely free of charge.

#### **4. Emissions Inspector and Fleet Agent Licenses Timeframe Expanded**

This rulemaking expands the length of emissions inspector licenses and fleet agent licenses from 1 to 2 years. Additionally, the subjects included on the licensing test have been changed to accurately reflect the subjects that need to be tested according to regulations adopted pursuant to the Clean Air Act. Emissions inspectors must pass an overt audit from ADEQ twice a year in order to maintain their license.

#### **5. Transferable Certificate of Inspection for Dealer Fleets.**

A.R.S. § 49-542 (D) mandates that every motor vehicle sold in the state must pass an emissions test before being delivered to a retail purchaser. To ensure motor vehicle dealerships meet this requirement quickly and efficiently, ADEQ runs the fleet emissions testing program under a statutory grant of authority at A.R.S. § 49-546. The fleet emissions station program is part of Arizona's larger Vehicle Emissions Control (VEC) program that was implemented pursuant to the requirements of the Clean Air Act (CAA). The fleet program has been reviewed, and approved, by the Environmental Protection Agency (EPA) as part of Arizona's CAA State Implementation Plan (SIP).

Currently, ADEQ's fleet emissions testing program grants permits to conduct decentralized emissions testing to physical locations. ADEQ issues certificates of inspection (COI), the emissions compliance document that is required to register the vehicle, to those specific, physical addresses. When the vehicle is re-located, the COI is no longer valid, even if the vehicle is owned by the same business entity and has been assigned a valid COI. If the vehicle stayed on the same lot, the COI would be good for either 12 or 24 months depending on the type of test that was performed. Since the COI is issued to the physical location, when the vehicle is sold at another address, dealerships are forced to retest the vehicle before delivering to a customer regardless of the date the vehicle last passed an emissions test. This additional testing requirement has no positive impact on public health or the environment.

This rulemaking will amend current rules so that COIs are issued to vehicles instead of physical locations. The upshot of the change is that a dealership will be allowed to test cars at one location, and sell them at another without retesting. This rulemaking will have no effect on Arizona's ability to meet federal requirements, it is simply a process change to reduce the regulatory burden on businesses while still ensuring protection of public health and the environment. Every car in Arizona will still be required to pass an emissions test before it is sold to a retail customer.

#### **6. Removed Liquid Fuel Leak Test Requirement.**

The requirement to perform this test was removed from the Arizona Revised Statutes in 2014 by HB 2226. The liquid fuel leak test proved to be dangerous and costly to perform, and the legislature directed ADEQ to stop requiring that it be performed with the previously mentioned bill. This update to Article 10 matches regulations with to implementing statutes so there is no confusion.

**7. Removed Requirement for ADEQ to Keep a List of Aftermarket Catalytic Converters.**

The rulemaking removes a rule that required ADEQ to keep and maintain a list of acceptable aftermarket catalytic converters. There are numerous aftermarket catalytic converter models for numerous models and makes of vehicles. Nearly all of these catalytic converters would allow the car to meet emissions standards if used to replace a broken, stolen, or tampered part. Keeping an up-to-date list is nearly impossible, and it restricts the options of Arizonans who need to perform this type of repair in order to pass emissions.

**8. User Friendliness Updates.**

This rulemaking incorporates numerous changes to make Article 10 easier to read, navigate, and use for Arizona motorists. Confusing language has been removed from Article 10 and rule language is now consistent throughout the entirety of the regulations. R18-2-1006, the home of Arizona emissions testing requirements and procedures, has been completely redesigned to be more intuitive. R18-2-1013, R18-2-1027, R18-2-1028, and R18-2-1031 have been repealed and the relevant language incorporated into other rules.

This rulemaking also clarifies the emissions testing requirements for students who attend either community colleges or state universities. By referencing specific statutes and providing context for what those statutes mean in rule, ADEQ hopes that this rulemaking makes understanding emissions testing requirements easier for Arizona citizens, institutions, and businesses.

**9. OBD Testing Expansion.**

Emissions testing using the on-board diagnostic system or OBD testing is a quick, efficient, and effective way to conduct an emissions test. Nearly all 1996 and later vehicles have an internal computer which continuously monitors the engine, transmission, and other emissions control systems. The OBD test is, in effect, an “early warning system” that alerts the driver or vehicle owner about the need for repairs that can reduce air pollution and ensure that your vehicle keeps running as cleanly as it was designed to run. To do an OBD inspection, the inspector connects a communication cable from the emissions testing equipment to the vehicle’s diagnostic link connector (DLC). Through the cable, the emissions testing equipment will request specific communication protocols from the vehicle, allowing the testing equipment to verify whether or not the vehicle emissions control system is in compliance.

This rulemaking will expand OBD testing in Arizona to include any vehicle that is OBDII certified by the EPA. Previously, OBD testing was not done for fleets and certain weight classes of vehicles in the state. Specifically, in 2005, OBD systems became mandatory for heavy-duty vehicles and engines up to 14,000 lbs GVWR. Then, in December 2008, EPA finalized OBD regulations for 2010 and later heavy-duty engines used in highway vehicles over 14,000 lbs GVWR and made changes to the OBD requirements for heavy-duty applications up to 14,000 lbs GVWR to align them with requirements for applications over 14,000 lbs GVWR. This rulemaking will ensure that any vehicle equipped with a certified OBDII system is getting this quick and efficient emissions test.

**a. Diesel Vehicles**

Diesel vehicles in Arizona currently do not undergo OBD testing. Beyond that, the test procedures for Diesel vehicles vary dramatically between Area A and Area B. This rulemaking will immediately prescribe OBD testing for diesel vehicles 8500 lbs or less in Area A. After the additional provisions of this rulemaking have been approved into the SIP by the EPA Administrator, diesel testing procedures between

Area A and Area B will be standardized, and any diesel vehicle that is OBDII certified by the EPA will receive an OBD test instead of opacity testing.

**b. OBD testing for dealer fleet vehicles**

A.R.S. § 49-542 (D) mandates that every motor vehicle sold in the state must pass an emissions test before being delivered to a retail purchaser. To ensure dealerships meet this requirement quickly and efficiently, ADEQ runs the fleet emissions testing program under a statutory grant of authority at A.R.S. § 49-546. The fleet program grants permits to businesses, governments, state agencies, and cities to perform decentralized emissions testing on the vehicles they own and operate.

Currently, motor vehicle dealer fleets in Arizona are not licensed to perform OBD testing. Instead, they still perform curb idle testing and 2500 RPM testing as prescribed by state law at A.R.S. § 49-542 (F)(4) and (F)(6). Governments and non-dealer fleets are allowed to perform OBD testing, but only on non-diesel vehicles. Government diesel vehicles will be allowed to receive OBD testing after the change. This change will affect the testing method for around 70,000 cars a year.

Additionally, all gasoline vehicles that would receive an OBD test at a state station will now receive OBD tests at facilities that are licensed as fleet emissions testing stations. This will allow dealerships to perform more accurate, cheaper, and quicker emissions testing.

**10. Certificate of Exemption for Out-Of-State Vehicles.**

This rulemaking will modify the process for exempting out of state vehicles from emissions testing. ADEQ is mandated to have a process for out of state exemptions by A.R.S. § 49-542(J)(2)(E). Currently, ADEQ requires individuals who are in areas where corresponding emissions testing is not available to submit a vehicle verification form signed by a law enforcement officer from the area in order to be granted this exemption.

In theory, this was a good way for ADEQ to verify that the vehicle was, in fact, in another state. However, an overwhelming majority of individuals seeking to take advantage of this process have run into trouble when attempting to get a signature from a law enforcement officer. Most law enforcement officers in other states are unfamiliar with Arizona's emissions testing procedures. Therefore, when an individual needs to obtain an out of state exemption and is in an area without a corresponding emissions testing program, they often cannot meet Arizona's requirement to register their vehicle.

The new version of this rule will still require verification that the vehicle is in another state. Instead of requiring the signature of a law enforcement official, ADEQ will require a signed affidavit from the customer stating where the vehicle is located. ADEQ hopes that this will allow customers to take advantage of a statutorily mandated exemption when they qualify for it.

ADEQ is also leveraging technology to move the out-of-state exemption process online. This will eliminate the necessity of mailing registration documents. ADEQ can also perform additional online checks to ensure this process isn't being taken advantage of by individuals looking to avoid having to pass emissions in the state.

**11. Overt Audits of Emissions Testing Facilities Modified to Meet Federal Guidelines.**

ADEQ conducts quality assurance checks subject to 40 CFR § 51.363. The EPA's regulations and guidelines require two overt performance audits to be performed at least twice per year for each lane or test

bay. Currently, ADEQ conducts significantly more overt inspections than required by federal regulations. This rulemaking will reduce the amount of overt inspections performed by ADEQ to fall in line with federal rules. The impact on the number of over inspections is displayed in the tables below.

ADEQ does not believe that the reduction in inspections will result in additional noncompliance by either state stations or fleet station permittees. Evolving technology has made it possible to review emissions testing results remotely in real time. The proliferation of OBD vehicles has also dramatically reduced the emission testing programs reliance on IM147 and curb idle tests. The reduction in frequency of these tests combined with gas analyzers that self-calibrate every day has made the amount of auditing done by ADEQ unnecessary.

A. Area A State Stations

Currently, ADEQ performs 3,308 audits per year on Area A state stations.

<b>AUDIT TYPE</b>	<b>ACTUAL AUDIT TIME IN MINUTES</b>	<b>AUDIT RELATED PAPER-WORK TIME IN MINUTES</b>	<b>TOTAL ELAPSED TIME IN HOURS</b>	<b>UNITS TO BE INSPECTED</b>	<b>AUDIT FREQUENCY PER YEAR</b>	<b>TOTAL NUMBER OF AUDITS PER YEAR</b>
Span Gas Audit	20	40	1.00	34	6	204
Traffic and Inspector Audit	20	40	1.00	52	12	624
Evap Integrity Audit	30	40	1.17	34	2	68
Gas Analyzer Audit	30	60	1.50	170	6	1020
Opacity Meter Audit	20	40	1.00	33	12	396
Inspector Audit	30	40	1.17	52	2	104
State Station VIR Audit	30	40	1.17	15	12	180
Gas Cap Integrity Audit	20	50	1.17	108	2	216
Propane Injection Audit	60	120	3.00	34	2	68
VIR Accuracy Audit	15	40	0.92	30	12	360
Ambient Sensor Audit	15	40	0.92	34	2	68

After this rule change goes into effect, ADEQ will conduct 1,192 audits per year on Area A state stations.

<b>AUDIT TYPE</b>	<b>ACTUAL AUDIT TIME IN MINUTES</b>	<b>AUDIT RELATED PAPER-WORK TIME IN MINUTES</b>	<b>TOTAL ELAPSED TIME IN HOURS</b>	<b>UNITS TO BE INSPECTED</b>	<b>AUDIT FREQUENCY PER YEAR</b>	<b>TOTAL NUMBER OF AUDITS PER YEAR</b>
Span Gas Audit	20	40	1.00	34	2	68
Traffic and Inspector Audit	20	40	1.00	52	2	104
Evap Integrity Audit	30	40	1.17	34	2	68
Gas Analyzer Audit	30	60	1.50	170	2	340
Opacity Meter Audit	20	40	1.00	33	2	66
Inspector Audit	30	40	1.17	52	2	104
State Station VIR Audit	30	40	1.17	15	12	180
Gas Cap Integrity Audit	20	50	1.17	108	2	216
Propane Injection Audit	60	120	3.00	34	2	68
VIR Accuracy Audit	15	40	0.92	30	2	60
Ambient Sensor Audit	15	40	0.92	34	2	68

B. Area B State Stations

Currently, ADEQ performs 740 audits per year on Area B state stations.

<b>AUDIT TYPE</b>	<b>ACTUAL AUDIT TIME IN MINUTES</b>	<b>AUDIT RELATED PAPER-WORK TIME IN MINUTES</b>	<b>TOTAL ELAPSED TIME IN HOURS</b>	<b>UNITS TO BE INSPECTED</b>	<b>AUDIT FREQUENCY PER YEAR</b>	<b>TOTAL NUMBER OF AUDITS PER YEAR</b>
Dyno Load Cell Audit	15	60	1.25	8	4	32
Traffic and Inspector Audit	20	40	1.00	12	12	144
Gas Analyzer Audit	30	60	1.50	8	24	192
Opacity Meter Audit	20	40	1.00	8	24	192
Inspector Audit	30	40	1.17	12	2	24
State Station VIR Audit	30	40	1.17	3	12	36
Gas Cap Integrity Audit	20	50	1.17	24	2	48
VIR Accuracy and Fraud Detection Audit	15	40	0.92	6	12	72

After this rule change, ADEQ will conduct 190 audits per year on Area B state stations.

AUDIT TYPE	ACTUAL AUDIT TIME IN MINUTES	AUDIT RELATED PAPERWORK TIME IN MINUTES	TOTAL ELAPSED TIME IN HOURS	UNITS TO BE INSPECTED	AUDIT FREQUENCY PER YEAR	TOTAL NUMBER OF AUDITS PER YEAR
Dyno Load Cell Audit	15	30	1.25	8	2	16
Traffic and Inspector Audit	20	30	1.00	12	2	24
Gas Analyzer Audit	30	30	1.50	8	2	16
Opacity Meter Audit	20	30	1.00	8	2	16
Inspector Audit	30	30	1.17	12	2	24
State Station VIR Audit	30	30	1.17	3	12	36
Gas Cap Integrity Audit	20	30	1.17	24	2	48
VIR Accuracy and Fraud Detection Audit	15	30	0.92	6	2	12

C. Area A Fleet Station

Currently, ADEQ performs 2,119 audits per year on Area A fleet stations.

AUDIT TYPE	PRE AUDIT PAPERWORK TIME IN MINUTES	ACTUAL AUDIT TIME IN MINUTES	POST AUDIT PAPERWORK TIME IN MINUTES	TOTAL ELAPSED TIME IN HOURS	UNITS TO BE INSPECTED	AUDIT FREQUENCY PER YEAR	TOTAL NUMBER OF AUDITS PER YEAR
Gas Analyzer Audit	15	20	15	0.83	148	4	592
Opacity Meter Audit	15	15	15	0.75	61	4	244
Inspector Audit	15	25	15	0.92	430	2	860
Scan Tool Audit	10	20	10	0.67	59	4	236
Annual Fleet Audit	50	120	20	3.17	187	1	187

After this rule change goes into effect, ADEQ will perform 1,583 audits per year on Area A fleet stations.

<b>AUDIT TYPE</b>	<b>PRE AUDIT PAPERWORK TIME IN MINUTES</b>	<b>ACTUAL AUDIT TIME IN MINUTES</b>	<b>POST AUDIT PAPERWORK TIME IN MINUTES</b>	<b>TOTAL ELAPSED TIME IN HOURS</b>	<b>UNITS TO BE INSPECTED</b>	<b>AUDIT FREQUENCY PER YEAR</b>	<b>TOTAL NUMBER OF AU- DITS PER YEAR</b>
Gas Analyzer Audit	15	20	15	0.83	148	2	296
Opacity Meter Audit	15	15	15	0.75	61	2	122
Inspector Audit	15	25	15	0.92	430	2	860
Scan Tool Audit	10	20	10	0.67	59	2	118
Annual Fleet Audit	50	120	20	3.17	187	1	187

D. Area B Fleet Station

Currently, ADEQ performs 567 audits per year on Area B Fleet Stations.

<b>AUDIT TYPE</b>	<b>ACTUAL AUDIT TIME IN MINUTES</b>	<b>AUDIT RELATED PAPER- WORK TIME IN MINUTES</b>	<b>TOTAL ELAPSED TIME IN HOURS</b>	<b>UNITS TO BE INSPECTED</b>	<b>AUDIT FREQUENCY PER YEAR</b>	<b>TOTAL NUMBER OF AUDITS PER YEAR</b>
Span Gas Audit	20	35	0.83	26	4	104
Traffic and Inspector Audit	15	30	0.75	21	4	84
Evap Integrity Audit	25	40	0.92	135	2	270
Gas Analyzer Audit	20	30	0.67	17	4	68
Opacity Meter Audit	120	170	3.17	41	1	41

After this rule change goes into effect, ADEQ will perform 439 audits per year on Area B fleet stations.

AUDIT TYPE	ACTUAL AUDIT TIME IN MINUTES	AUDIT RELATED PAPER-WORK TIME IN MINUTES	TOTAL ELAPSED TIME IN HOURS	UNITS TO BE INSPECTED	AUDIT FREQUENCY PER YEAR	TOTAL NUMBER OF AUDITS PER YEAR
Span Gas Audit	20	35	0.83	26	2	52
Traffic and Inspector Audit	15	30	0.75	21	2	42
Evap Integrity Audit	25	40	0.92	135	2	270
Gas Analyzer Audit	20	30	0.67	17	2	34
Opacity Meter Audit	120	170	3.17	41	1	41

## 12. State Registration of Equipment.

This rule change will eliminate the method in which ADEQ registers equipment to fleet emissions testing permits. Currently, emissions testing equipment is registered separately from a permit, and then linked to the permit itself. One of the modifications in these rule changes is that equipment will no longer be registered separately. Instead, it will be registered as part of an emissions testing permit and modifiable with the myDEQ web portal.

ADEQ expects this change to simplify the process of getting a fleet emissions inspection permit.

## 13. Removed Licenses for Analyzer Repair Persons.

ADEQ previously granted licenses for analyzer repair persons. There are currently only two people in the state who take advantage of this program. ADEQ is ending this licensing program because of a lack of participation.

With the proliferation of OBD testing, ADEQ expects less and less fleets with use gas analyzers for emissions testing. Therefore, the number of licensed individuals will likely dwindle.

**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:**

This rulemaking should result in cost savings for all involved stakeholders. An economic, small business, and consumer impact statement has been attached to this docket as an independent document for GRRC and public review.

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

After receiving comments from stakeholders, ADEQ has made minor conforming changes to the published rules. These changes are non-substantive in nature, and have generally been made to ensure that definitions of certain classes of vehicles are consistent between the Arizona Department of Transportation and ADEQ. Additionally, minor typographical errors have been corrected.

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

ADEQ received comments from both Gordon-Darby Arizona Testing and the Arizona Department of Transportation during this rulemaking. These comments were largely based on definitions in the document. Most comments asked for additional clarification with regards to changes in the rule. ADOT specifically provided comments on the definition of vehicles included in the ADEQ ruleset. Each individual comment is listed below along with ADEQ's response. These comments and all of ADEQ's responses are listed in the attached document to the docket labeled "Responsiveness summary."

**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:**

This rule affects current fleet emissions testing permittees, a permit issued under the authority enumerated at § 49-546 and the corresponding ADEQ regulations at R18-2-1017, R18-2-1018, and R18-2-1019. Although the rulemaking affects permittees, it makes no changes to the requirements for the permit.

Permit management is changed with the rollout of myDEQ - ADEQ's online permit management application. MyDEQ is the new application ADEQ offers the regulated community. MyDEQ is a digital solution to better assist them in meeting their environmental priorities and responsibilities with an easy online tool, available 24/7 to meet business needs

**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:**

40 CFR §51.353 and 40 CFR §51.356 guide states in the administration of decentralized emissions testing solutions. Arizona's fleet emissions testing program has been approved by the EPA and implemented in to Arizona's SIP. ADEQ runs the program pursuant to a grant of authority at A.R.S. § 49-546.

Federal law gives states the ability to design programs, but does not direct states in the implementation of those programs. There are no federal laws on point in regards to certificates of inspection, so this rule-making will not exceed the requirements of 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 persons 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:**

*Performing Onboard Diagnostic System Checks as Part of a Vehicle Inspection and Maintenance Program," EPA420-R-01-015, EPA, June 2001.*

R18-2-1006(C)(4)(b)

*IM240 & Evap Technical Guidance," EPA420-R-00-007, EPA, April 2000.*

R18-2-1006(C)(5)(a)(vii)

R18-2-1006(C)(5)(b)(iii)

R18-2-1006(C)(6)(c)(i)

*Society of Automotive Engineers Recommended Practice J1667, February 1996*

R18-2-1006(C)(10)(a)(i)

*40 CFR 51, Subpart S, Appendix B, Section III, amended as of July 1, 2017*

R18-2-1006(C)(6)(b)

*40 CFR 51, Subpart S, Appendix A, Section I, amended as of July 1, 2017*

R18-2-1006(C)(6)(c)(ii)

R18-2-1006(C)(7)(b)

R18-2-1006(C)(8)(b)

R18-2-1019(D)(2)(a)

*40 CFR 51, Subpart S, Appendix B, Section II, amended as of July 1, 2017*

R18-2-1006(C)(7)(a)

40 CFR 85.1703

R18-2-1017(B)

**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:**

There has been no substantive changes in between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking. All changes that have been made have been made in response to stakeholder comments, which have been addressed in the responsiveness summary that is included in the docket for this rulemaking. Changes that have been made were made to provide additional clarity and consistency to the rules. Additionally, some typos in the NPRM have been corrected.

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

**TITLE 18. ENVIRONMENTAL QUALITY**

**CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL**

**ARTICLE 10. MOTOR VEHICLES; INSPECTIONS AND MAINTENANCE**

Section

- R18-2-1001. Definitions
- R18-2-1002. ~~Reserved~~ Applicable Implementation Plan
- R18-2-1003. Vehicles to be Inspected by the Mandatory Vehicle Emissions Inspection Program
- R18-2-1005. Time of Inspection
- R18-2-1006. Emissions Test Procedures
- R18-2-1007. Evidence of Meeting State Inspection Requirements
- R18-2-1008. Procedure for Issuing Certificates of Waiver
- R18-2-1009. Tampering Repair Requirements
- R18-2-1010. Low Emissions Tune up, Emissions and Evaporative System Repair
- R18-2-1011. Vehicle Inspection Report
- R18-2-1012. Inspection and Reinspections; Procedures and Fee
- R18-2-1013. ~~Reinspections~~ Repealed
- R18-2-1016. Licensing of Inspectors and Fleet Agents
- R18-2-1017. Inspection of Government Vehicles
- R18-2-1018. Certificate of Inspection
- R18-2-1019. Fleet Station Procedures and Permits
- R18-2-1020. ~~Licensing of Third Party Agents~~; Department Issuance of ~~Issuing~~ Alternative Fuel Certificates
- R18-2-1022. Procedure for Waiving Inspections Due to Technical Difficulties
- R18-2-1023. Certificate of Exemption for Out-of-State Vehicles
- R18-2-1025. Inspection of Contractor's Equipment and Personnel
- R18-2-1026. Inspection of Fleet Stations
- R18-2-1027. ~~Registration and Inspection of Emissions Analyzers and Opacity Meters~~ Repealed
- R18-2-1028. ~~Certification of Users of Registered Analyzers and Analyzer Repair Persons~~ Repealed

## ARTICLE 10. MOTOR VEHICLES; INSPECTIONS AND MAINTENANCE

### R18-2-1001. Definitions

~~In this Article, unless the context otherwise requires:~~ The following definitions apply to this Article:

1. Abbreviations and symbols are defined as follows:
  - a. "A/F" means air/fuel,
  - b. "CO" means carbon monoxide.
  - c. "CO<sub>2</sub>" means carbon dioxide.
  - d. "EGR" means exhaust gas recirculation.
  - e. "GVWR" means gross vehicle weight rating.
  - f. "HC" means hydrocarbon.
  - g. "HP" means horsepower.
  - h. "LNG" means liquefied natural gas.
  - i. "LPG" means liquid petroleum gas.
  - j. "MIL" means ~~Malfunction Indicator Lamp~~ malfunction indicator lamp.
  - k. "MPH" means miles per hour.
  - l. "MVD" means the Motor Vehicle Division of the Arizona Department of Transportation.
  - m. "NDIR" means nondispersive infrared.
  - n. "NO<sub>x</sub>" means the sum of nitrogen oxide and nitrogen dioxide.
  - o. "%" means percent.
  - p. "OEM" means original equipment manufacturer.
  - q. "OBD" means ~~On Board Diagnostics~~ on-board diagnostics.
  - r. "PCV" means positive crankcase ventilation.
  - s. "PPM" means parts per million by volume.
  - t. "RPM" means revolutions per minute.
  - u. "VIN" means vehicle identification number.
2. "All-terrain vehicle" (ATV) means a vehicle that is defined as an "all-terrain vehicle" in A.R.S. § 28-101.
3. "Alternative fuel vehicle" means a vehicle powered by an alternative fuel as defined in A.R.S. § 1-215(4).
- ~~2.4.~~ "Annual test" means any vehicle emissions test that is not a biennial test a test for which an annual frequency is specified in the applicable table in R18-2-1006(B).
- ~~3.5.~~ "AppORTioned vehicle" means a vehicle that is subject to the proportional registration provisions of A.R.S. § 28-2233.
- ~~4.6.~~ "Area A" has the meaning in A.R.S. § 49-541.
5. "Area A vehicle" means a motor vehicle subject to emissions inspection and that is:
  - a. ~~Registered or to be registered within area A;~~
  - b. ~~Owned by or leased to a person having a valid fleet permit and customarily kept in area A;~~
  - c. ~~A government vehicle customarily kept in area A;~~
  - d. ~~Used to commute to the driver's principal place of employment located in area A; or~~
  - e. ~~Parked, will be parked, or is the subject of a parking permit application at an institution located in area A and subject to the requirements of A.R.S. §§ 15-1444(C) or 15-1627(G).~~

- ~~6.7.~~ “Area B” has the meaning in A.R.S. § 49-541.
- ~~7.~~ “Area B vehicle” means a motor vehicle subject to emissions inspection and that is:
  - ~~a.~~ Registered or to be registered within area B;
  - ~~b.~~ Owned by or leased to a person having a valid fleet permit and customarily kept in area B;
  - ~~c.~~ A government vehicle customarily kept in area B;
  - ~~d.~~ Used to commute to the driver’s principal place of employment located in area B; or
  - ~~e.~~ Parked, will be parked, or is the subject of a parking permit application at an institution located in area B and subject to the requirements of A.R.S. §§ ~~15-1444(C) or 15-1627(G).~~
8. “Biennial test” means ~~the transient loaded emissions test and evaporative system tests required under R18-2-1006(E)(2), or the OBD test for area A vehicles under R18-1006(E)(3).~~ a test for which a biennial frequency is specified in the applicable table in R18-2-1006(B).
9. “Calibration gas” means a reference gas or gas mixture with assigned concentrations ~~of CO, hexane, or CO<sub>2</sub>~~ that is used ~~by a state inspector~~ to check the accuracy of emissions analyzers.
10. “Certificate of compliance” means a serially uniquely numbered document issued as part of the vehicle inspection report by a state station at the time of a vehicle inspection indicating that the vehicle has met the emissions standards.
11. “Certificate of exemption” means a serially uniquely numbered document issued by the Director exempting providing an exemption from the testing requirements of this Article for a vehicle from inspection that is not available within the state for an inspection during the 90 days before that is outside of the state on the emissions compliance expiration date.
12. “Certificate of inspection” means a serially uniquely numbered document issued by the Director indicating that a vehicle has been inspected under A.R.S. § 49-546 and has passed inspection.
13. “Certificate of waiver” means a serially uniquely numbered document issued by the Department ~~or a fleet inspector other than an auto dealer licensed to sell used motor vehicles under A.R.S. Title 28,~~ indicating that the requirement of passing reinspection has been waived for a vehicle under A.R.S. § 49-542.
- ~~14.~~ “CFR” means the Code of Federal Regulations, with standard reference in this Chapter by Title and Part, so that “40 CFR 280” means Title 40 of the Code of Federal Regulations, Part 280.
- ~~14.~~ “Conditioning mode” means either a fast idle condition or a loaded condition as defined in this Section.
- ~~15.~~ “Collectible vehicle” has the meaning in A.R.S. § 49-542(Z).
- ~~15-16.~~ “Constant 4-wheel drive vehicle” means any 4-wheel drive vehicle that cannot be converted to 2-wheel drive except by disconnecting one of the vehicle’s drive shafts, or any vehicle equipped with non-disengageable traction control which cannot be safely tested on conventional 2-wheel drive dynamometers.
- ~~16-17.~~ “Constant volume sampler” means a system that dilutes engine exhaust to be sampled with ambient air so that the total combined flow rate of exhaust and dilution air mix is nearly constant for all engine operating conditions.
- ~~17-18.~~ “Contractor” means a person, business, firm, partnership, or corporation with whom the Director has a contract that provides for the operation of one or more official emissions inspection stations.

- ~~18.~~ “Curb idle test” means an exhaust emissions test conducted with the engine of the vehicle running at the manufacturer’s idle speed  $\pm$  100 RPM but without pressure exerted on the accelerator.
- ~~19.~~ “Curb weight” means a vehicle’s unloaded weight without fuel and oil plus 300 pounds.
- ~~20.~~19. “Dealer” means a person or organization licensed by the Arizona Department of Transportation as a new motor vehicle dealer; or used motor vehicle dealer; or motorcycle dealer.
- ~~21.~~20. “Department” means the Department of Environmental Quality.
21. “Diagnostic Trouble Code” (DTC) means an alphanumeric code which is set in a vehicle’s on-board diagnostic system when the OBD system detects an emissions control device or system failure.
22. “Diesel” or “Diesel Fuel” has the same meaning as in A.R.S. § 3-3401.
- ~~22.~~23. “Director” means the Director of the Department of Environmental Quality.
- ~~23.~~24. “Director’s certificate” means a serially uniquely numbered document issued by the Director in certain circumstances for the vehicle to show evidence of meeting the minimum standards for registration or reregistration under R18-2-1019 or R18-2-1022.
- ~~24.~~25. “Electrically-powered vehicle” means a vehicle that uses electricity as the means of propulsion and does not require the combustion of fossil fuel within the confines of the vehicle to generate electricity.
- ~~25.~~26. “Emissions compliance expiration date” means:
- a. Each registration expiration date for a vehicle subject to an annual test; and
  - b. The registration expiration date in the second year after the initial biennial test required under this Article or R18-2-1005(B) for a vehicle subject to a biennial test.
- ~~26.~~27. “Emissions inspection station permit” means a certificate issued by the Director authorizing the holder to perform vehicle emissions inspections under this Article.
- ~~27.~~28. “Exhaust emissions” means products of combustion emitted into the atmosphere from any opening in the exhaust system downstream of the exhaust ports of a motor vehicle engine.
- ~~28.~~29. “Exhaust pipe” means the pipe that attaches to the muffler and exits the vehicle.
- ~~29.~~ “Fast idle condition” means to operate a vehicle by running the engine at 2,500 RPM,  $\pm$  300 RPM, for up to 30 seconds, with the transmission in neutral, to prepare the vehicle for a subsequent curb idle test.
- ~~30.~~ “Fast pass or fast fail algorithm” means a procedure in a vehicle emissions testing system that logically determines whether a vehicle will pass or fail the transient loaded emissions test under R18-2-1006(E)(2) before the test is over.
- ~~31.~~30. “Fleet emissions inspection station” or “fleet station” means any vehicle emissions inspection facility operated under a permit issued under pursuant to A.R.S. § 49-546.
- ~~29.~~ “Fleet vehicle” means any vehicle owned, leased, or operated by an individual or entity granted a vehicle emissions testing license under A.R.S. § 49-546.
- ~~32.~~31. “Fuel” means any material that is burned within the confines of a vehicle to propel the vehicle.
32. “Fuel Cell Electric Vehicle” or “FCEV” means a zero-emission vehicle that runs on compressed hydrogen fed into a fuel cell stack that produces electricity to power the vehicle.
- ~~33.~~ “Four stroke vehicle” means a vehicle equipped with an engine that requires two revolutions of the crankshaft for each piston power stroke.
- ~~34.~~33. “Golf cart” means a motor vehicle that has not less than three wheels in contact with the ground, has an unladen weight less than 1,300 pounds, is designed to be and is operated at not more than 15 MPH, and is designed to carry golf equipment and persons that is defined as a “golf cart” in A.R.S. § 28-101.

- 35.34. “Government vehicle” means a registered motor vehicle exempt from the payment of a registration fee, or a federally owned or leased vehicle.
- 36.35. “Gross vehicle weight rating” (GVWR) means the maximum vehicle weight that a vehicle is designed for as established by the manufacturer.
36. “Idle test” means an exhaust emissions test conducted with the engine of the vehicle running at the manufacturer’s idle speed  $\pm$  100 RPM but without pressure exerted on the accelerator.
- 37.37. “Inspection” means the mandatory vehicle emissions inspection including the tampering inspection.
38. ~~“Inspection sticker” means a self adhesive, serially numbered rectangular sticker indicating a government vehicle has met Arizona emissions inspection requirements.~~
39. ~~“Loaded condition” means to condition a vehicle by running the vehicle on a chassis dynamometer at a specified speed and load for no more than 30 seconds to prepare the vehicle for a subsequent curb idle test.~~
40. ~~“Loaded cruise test” means an exhaust emissions test conducted on a chassis dynamometer under R18-2-1006(E)(1)(a) and (F)(2)(a).~~
- 41.38. “Mass emissions measurement” means measurement of a vehicle’s exhaust in mass units such as grams.
39. “Maximum required repair cost” means the applicable maximum required repair cost under R18-2-1010(F) or (G) for a vehicle that has failed inspection.
- 42.40. “Model year” means the date of manufacture of the original vehicle within the annual production period of the vehicle as designated by the manufacturer or, if a reconstructed vehicle, the first year of titling.
43. ~~“MOL percent” means the percent, by volume, that a particular gas occupies in a mixture of gases at a uniform temperature.~~
- 44.41. ~~“Motorcycle” means a motor vehicle, other than a tractor, having a seat or saddle for use of the rider and designed to travel on not more than three wheels in contact with the ground that is defined as a “motorcycle” as in A.R.S. § 28-101.~~
45. ~~“Motorhome” means a vehicle built on a truck or bus chassis and equipped as a self-contained traveling home.~~
- 46.42. ~~“New aftermarket catalytic converter” or “new aftermarket converter” means a new catalytic converter, except for an OEM, manufactured as an OEM part that meets the standards under 40 CFR 86.~~
47. ~~“Official emissions inspection station” means an inspection facility, other than a fleet emissions inspection station, whether placed in a permanent structure or in a mobile unit for conveyance to various locations within the state, for the purpose of conducting inspections under A.R.S. § 49-542.~~
- 48.43. “On-board diagnostics test” or “OBD” means a method of emissions testing using the on-board computer systems of a 1996 or newer vehicle, to diagnose and report on the status of the engine’s emissions systems by connecting a scan tool to the vehicle’s data link connector means an on-board diagnostic system required by Section 202(m) of the Clean Air Act. For the purposes of the Article, OBD certification refers to United States Environmental Protection Agency OBD certification.
- 49.44. “Opacity” means the degree of absorption of transmitted light.
50. ~~“Operational air pump” means an air injection system to supply additional air into the exhaust system to promote further oxidation of HC and CO gases and to assist in catalytic reaction.~~
51. ~~“Person” means the federal government, state, or any federal or state agency or institution, any municipality, political subdivision, public or private corporation, individual, partnership, association, or other entity, and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation.~~

- ~~52.45.~~ “Reconditioned OEM catalytic converter” or “reconditioned OEM converter” means a used OEM reconditioned equivalent or an OEM converter that has had the pellets replaced with new or used OEM equivalent pellets and that also meets the standards under 40 CFR 86 catalytic converter remanufactured, as a non-OEM part, with new catalytic material housed in the original catalyst casing.
- ~~53.46.~~ “Recognized repair facility” means a business with an Arizona Department of Revenue transaction privilege tax license pursuant to Title 15, Chapter 5 of the Arizona Revised Statutes whose primary purpose is vehicle repair, and who has at least one employee with a nationally recognized certification for emissions-related diagnosis and repair.
- ~~54.47.~~ “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.
- a. ~~— A reconstructed special as identified by the code letters “SP” on the section of the vehicle’s Arizona registration card or Arizona certificate of title reserved for identification of the vehicle’s style; or~~
- b. ~~— A vehicle in which the vehicle style is not shown on the Arizona registration card or certificate of title, and the original manufacturer of the complete vehicle can not be identified from the body.~~
- ~~48.~~ “Specially constructed vehicle” means any vehicle not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles.
- ~~55.~~ “Standard gases” means gases maintained as a primary standard for determining the composition of working gases, calibration gases, or the accuracy of an emissions analyzer.
- ~~56.49.~~ “State inspector” means an employee of the Department designated to perform quality assurance or waiver functions under this Article.
- ~~57.50.~~ “State station” means an official emissions inspection station operated by a contractor a facility, other than a fleet emissions inspection station, established for the purpose of conducting inspections under A.R.S. § 49-542.
- ~~58.51.~~ “Tampering” means removing, defeating, or altering an emissions control device that was installed on a vehicle at the time the vehicle was manufactured. For the purposes of this Article, defeating includes failure to repair any malfunctioning emission control system or device.
- ~~59.52.~~ “Two-stroke vehicle” means a vehicle equipped with an engine that requires one revolution of the crankshaft for each power stroke.
- ~~60.~~ “Unloaded fast idle test” means an exhaust emissions test conducted with the engine of the vehicle running at 2,500 RPM.
- ~~61.53.~~ “Vehicle” or "Motor Vehicle" means any automobile, truck, truck tractor, motor bus, or self-propelled or motor-driven vehicle registered or to be registered in this state and used upon the public highways of this state for the purpose of transporting persons or property, except implements of husbandry, roadrollers, or road machinery temporarily operated upon the highway.
- ~~62.54.~~ “Vehicle emissions inspector” means an individual who is licensed by the Director to perform vehicle emissions inspections under this Article.
- ~~55.~~ “Waiver inspector” means an employee of the contractor or the Department who is authorized to issue waivers under R18-2-1008.

63. ~~“Working gases” means gases maintained to perform periodic calibration of an emissions analyzer.~~
56. “Zero Emissions Vehicle” means a battery electric vehicle that runs on electricity stored in the batteries and has only an electric motor rather than an internal combustion engine, or a fuel cell electric vehicle that produces no emissions from the on-board source of power.

**R18-2-1002. Reserved Applicable Implementation Plan**

- A. Substantive revisions to the rules in this article that are included in the Arizona State Clean Air Act Implementation Plan cannot become effective until approved by the Administrator of the United States Environmental Protection Agency. Amendments adopted by the Department but not yet approved as of the date of the latest amendments are therefore identified in this Article as not applying until the Administrator approves them.
- B. The Administrator’s approvals of revisions to an applicable implementation plan are published as final rules in the Federal Register, which is available online at <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>. The Department publishes a list of Article 10 provisions approved since the last revisions to the Article at: <http://azdeq.gov/VECS/Rulemaking>.

**R18-2-1003. Vehicles to be Inspected by the Mandatory Vehicle Emissions Inspection Program**

- A. ~~The following vehicles shall be inspected according to this Article at a state station or a fleet station unless exempted by subsection (B):~~
1. ~~A vehicle to be registered or reregistered within area Area A or area Area B; for highway use. For the purposes of this Article, registration or reregistration within area Area A or area Area B shall be determined by the vehicle owner’s permanent and actual residence. The permanent address in the MVD database shall be presumed to be the owner’s permanent and actual residence. A post office box address listed on a title or registration document under A.R.S. § 28-2051(C) is not evidence of the owner’s permanent and actual residence;~~
  2. ~~Each vehicle delivered to a retail purchaser by a dealer licensed to sell used motor vehicles for highway use under A.R.S. Title 28 and whose place of business is located in area Area A or area Area B;~~
  3. ~~Each vehicle registered outside area Area A and area Area B but used to commute to the driver’s principal place of employment located within area Area A or area Area B;~~
  4. ~~Each vehicle owned by a person who is subject to A.R.S. §§ 15-1444(C) or 15-1627(G); and~~
  5. ~~An area Area A or area Area B vehicle located out of state for more than 90 days before vehicle registration expiration shall be emissions tested at an official emissions inspection testing center in the area where it is located. If no official emissions testing program is available in the area for that vehicle, the vehicle shall meet the testing requirements under this Article within 15 calendar days of returning to Arizona owned or operated by the United States, this state, or a political subdivision of this state without regard to whether those vehicles are required to be registered in this state.~~
- B. The following vehicles are exempt from the inspection requirements of this Article:
1. A vehicle manufactured in or before the 1966 model year;
  2. A vehicle leased to a person residing outside area Area A and area Area B by a leasing company whose place of business is in area Area A or area Area B, except as provided in subsection (A)(3);
  3. A vehicle sold between motor vehicle dealers;
  4. An electrically powered vehicle A zero-emissions vehicle;

5. An apportioned vehicle;
  6. A golf cart;
  7. A vehicle with an engine displacement of less than 90 cubic centimeters;
  8. A vehicle registered at the time of change of name of ownership if an emissions test is current and valid, except when:
    - a. ~~The change in registration is accompanied by the required fee for the year following expiration of the prior registration, or~~
    - b. ~~The change results from the sale by a dealership whose place of business is located in area Area A or area Area B;~~
  9. A vehicle for which a current certificate of exemption or Director's certificate is issued;
  10. ~~A vehicle of a model year the same as, or newer than, the current calendar year and a vehicle of the prior four model years~~ new vehicle before the sixth registration year after initial purchase or lease; except that:
    - a. ~~A reconstructed vehicle or specially constructed vehicle is not exempt;~~
    - b. ~~An alternative fuel vehicle, as defined in A.R.S. § 43-1086~~ A vehicle converted to operate on an alternative fuel, as defined in A.R.S. § 1-215, and is not exempt.
    - c. A vehicle failing an emissions inspection the owner chooses to have under A.R.S. § 49-543 is not exempt for the current registration year.
  11. A vehicle designed to operate exclusively on hydrogen, as defined in A.R.S. § 1-215-;
  12. A collectible vehicle;
  13. A motorcycle;
  14. An all-terrain vehicle (ATV);
  15. These exemptions apply after the Administrator approves this subsection, (B)(15), into the applicable implementation plan:
    - a. Cranes and oversized vehicles that require permits pursuant to A.R.S. §§ 28-1100, 28-1103, and 28-1144;
    - b. A vehicle not in use and owned by a resident of this state while on active military duty outside of this state.
- C. Government vehicles operated in ~~area Area A or area Area B~~ and not exempted by this Article shall be emissions inspected according to R18-2-1017.

**R18-2-1004. Repealed**

**R18-2-1005. Time of Inspection**

- A. ~~Area A vehicles~~ All Area A and Area B vehicles subject to an annual test; ~~all area B vehicles, and vehicles sold or offered for sale by dealers required to be inspected under R18-2-1003,~~ shall be inspected at the following times:
1. For a non-fleet vehicle not covered by a fleet station permit, within 90 days before each registration expiration date;
  2. For a fleet vehicle sold by a dealer inspected at a licensed fleet station, to sell used motor vehicles under A.R.S. Title 28, whose place of business is located in area A or area B, before delivery of the vehicle to the retail purchaser; at least once within each 12 month period following any initial registration.
  3. ~~For a consignment vehicle offered for sale by a dealer licensed to sell used motor vehicles under A.R.S. Title 28 whose place of business is located in area A or area B, before delivery of the vehicle to the retail purchaser. The consignment vehicle shall be inspected at a state station according to R18-2-1006;~~
  - 4.3. For a government vehicles vehicle:
    - a. For a vehicle not exempt under R18-2-1003(B)(10), within 12 months after acquisition by the operating entity and then annually on or before the anniversary date of the previous inspection;

- b. For a vehicle exempt under R18-2-1003(B)(10), within 90 days after the vehicle becomes subject to testing, and then annually on or before the anniversary date of the previous inspection; and;
  - c. A government vehicle is subject to testing on the anniversary of its date of acquisition;
- ~~5. For a vehicle owned by or leased to a person having a valid fleet station permit, at least once within each 12-month period following any original registration or reregistration;~~
- ~~6. For a vehicle to be registered in area A or area B under conditions not specified in subsection (1) through (5), within 90 days before registration;~~
- ~~7.4.~~ For a vehicle registered outside ~~area~~ Area A and ~~area~~ Area B and used to commute to the driver's principal place of work located in ~~area~~ Area A or ~~area~~ Area B, upon vehicle registration ~~or reregistration;~~ and annually thereafter.
- ~~8.5.~~ For a vehicle owned by a person subject to A.R.S. §§ ~~15-1444(C)~~ 15-1444(D) or 15-1627(G), within 30 calendar days following the date of initial registration at the institution located in ~~area~~ Area A or ~~area~~ Area B and annually thereafter; ~~and.~~
- ~~9. For a vehicle issued a certificate of exemption under R18-2-1023, within 15 calendar days after returning to Arizona, unless an official emissions inspection document from the out-of-state emissions inspection station is submitted with the request for exemption.~~
- B. ~~An~~ All ~~area~~ Area A and Area B ~~vehicle~~ vehicles subject to a biennial test shall be inspected at the following times:
- 1. For a non-fleet vehicle ~~not covered by a fleet station permit,~~ within 90 days before the vehicle's emissions compliance expiration date.
  - 2. For a fleet vehicle inspected at a fleet station, at least once within each successive 24 month period following initial registration.
  - ~~2.3.~~ For a government vehicle;
    - a. For a vehicle not exempt under R18-2-1003(B)(10), within 12 months after acquisition by the operating entity, and biennially thereafter, on or before the anniversary date of the previous inspection; or
    - b. For a vehicle exempt under R18-2-1003(B)(10), within 90 days after the vehicle becomes subject to testing, and biennially thereafter, on or before the anniversary date of the previous inspection; ~~and.~~
    - c. ~~The vehicle becomes subject to testing on the anniversary of its date of acquisition;~~
  - ~~3. For a vehicle owned by or leased to a person having a valid fleet station permit, at least once within each successive 24-month period following original registration;~~
  - 4. For a vehicle registered outside ~~area~~ Area A or Area B but used to commute to the driver's principal place of ~~work~~ employment located in ~~area~~ Area A or Area B, upon vehicle registration and biennially thereafter;
  - 5. For a vehicle owned by a person subject to A.R.S. §§ ~~15-1444(C)~~ 15-1444(D) or 15-1627(G), within 30 days following the date of initial registration at the institution located in ~~area~~ Area A or ~~area~~ Area B and biennially thereafter;
  - ~~6. For a vehicle to be registered as area A vehicles under conditions not specified in subsections (1) through (5), upon initial registration and within 90 days before the vehicle's emissions compliance expiration date thereafter and;~~
  - ~~7. For a vehicle issued a certificate of exemption under R18-2-1023, within 15 calendar days after returning to Arizona, unless an official emissions inspection document indicating compliance with the emissions requirements from the out-of-state emissions inspection station is submitted with the request for exemption.~~
- C. A used vehicle not registered as an area A or area B vehicle shall be inspected according to this Article before registration as an area A or area B vehicle unless exempted by R18-2-1003(B). All vehicles sold by a dealer licensed to sell used motor vehicles under A.R.S. Title 28, whose place

of business is located in Area A or Area B, shall pass the applicable emissions test prescribed by R18-2-1006 before delivery of the vehicle to a retail purchaser.

- D. An ~~area~~ Area B vehicle being registered in ~~area~~ Area A is subject to the appropriate annual or biennial test from ~~area~~ Area A before registration ~~even if the emissions compliance period for area B has not yet expired~~ if the Area A test, or test period, is different from the test required for the same vehicle in Area B.
- ~~E.~~ A new vehicle that is exempt from emissions testing under R18-2-1003(B)(10), and subject to either an annual or biennial test, shall be tested before registration in the calendar year that exceeds the vehicle's model year by five years.
- ~~EE.~~ Nothing in this Section shall be construed to waive a late registration fee because of failure to meet inspection requirements by the registration deadline, except that a motor vehicle that fails the initial or subsequent test shall not be subject to a penalty fee for late registration renewal if:
1. The initial test is accomplished before the emissions compliance expiration date; and
  2. The registration renewal is received by MVD within 30 days of the initial test.
- ~~GF.~~ An owner of a vehicle ~~subject to subsection (A)(1), (A)(6), (B)(1), or (B)(6)~~ may submit the vehicle for emissions inspection more than 90 days before the emissions compliance expiration date but the inspection does not satisfy the registration ~~or reregistration~~ testing requirement under R18-2-1003.

#### **R18-2-1006. Emissions Test Procedures**

- ~~A.~~ Each vehicle inspected at a state station shall be visually inspected before the emissions test for the following unsafe or untestable conditions:
1. ~~A fuel leak that causes wetness or pooling of fuel;~~
  2. ~~A continuous engine or transmission oil leak onto the floor;~~
  3. ~~A continuous engine coolant leak onto the floor such that the engine is overheating or may overheat within a short time;~~
  4. ~~A vehicle with a tire on a driving wheel with less than 2/32 inch tread, with metal protruberances, unmatched tire size, with obviously low tire pressure as determined by visual inspection, or any other condition that precludes a loaded test for reasons of personnel, equipment, or vehicle safety;~~
  5. ~~An exhaust pipe that does not exit the rear or side of the vehicle to allow for safe exhaust probe insertion;~~
  6. ~~An exhaust pipe on a diesel-powered vehicle that does not allow for safe exhaust probe insertion and attachment of opacity meter sensor units;~~
  7. ~~Improperly operating brakes;~~
  8. ~~Any vehicle modification or mechanical condition that prevents dynamometer operation; and~~
  9. ~~Any other condition deemed unsafe or untestable by the inspector, including loud internal engine noise or an obvious exhaust leak.~~
- ~~B.~~ A vehicle emissions inspection shall not be performed by an official emissions inspection station on any vehicle towing a heavily loaded trailer, carrying a heavy load, loaded with explosives, or loaded with any hazardous material not used as fuel for the vehicle.
- ~~C.~~ Any vehicle unsafe or otherwise untestable as determined by the visual inspection shall be rejected without an emissions test. The inspector shall notify the vehicle owner or operator of all unsafe conditions found on rejected vehicles. The state station shall not charge a fee if the vehicle is rejected. The contractor shall not conduct an emissions test on a vehicle rejected for a safety reason or any other untestable condition until the cause for rejection is repaired.
- ~~D.~~ When conducting the emissions test required by this Section, the vehicle emissions inspector shall meet all of the following requirements:

1. ~~The vehicle shall be tested in the condition presented, unless rejected under subsection (A), (B), or (C). The vehicle's engine shall be operating at normal temperature and not be overheating as indicated by a gauge, warning light, or boiling radiator. All of the vehicle's accessories shall be turned off during testing.~~
  2. ~~A vehicle designed to operate with more than one fuel shall be tested on the fuel in use when the vehicle is presented for inspection, except alternative fuel vehicles, as defined in A.R.S. § 43-1086. The inspector shall test the alternative fuel vehicle on each fuel for which it is intended to operate, using the appropriate emissions test procedure and standards for that vehicle. The alternative fuel vehicle shall:
 
    - a. ~~Be operated a minimum of 30 seconds before testing, after switching fuels;~~
    - b. ~~Be rejected if it is not able to operate on both fuels; and~~
    - c. ~~Be rejected if the vehicle operator cannot switch fuels.~~~~
  3. ~~A vehicle operated exclusively on propane or natural gas, as defined in A.R.S. § 1-215, shall be exempt from the gas cap and evaporative pressure testing described in subsection (E)(6)(b)(ii), (E)(7)(a), and (F)(7)(a).~~
- E. ~~In area A, the inspection test procedures for a vehicle other than a diesel powered vehicle or a vehicle held for resale by a fleet licensed motor vehicle dealer shall consist of the following:~~
1. ~~A vehicle manufactured with a model year of 1967 through 1980, a nonexempt vehicle with a GVWR greater than 8,500 pounds, and a reconstructed vehicle, except a motorcycle and a constant 4 wheel drive vehicle, is required to annually take and pass a loaded cruise test and a curb idle test, as follows:
 
    - a. ~~Loaded cruise test. The vehicle's drive wheels shall be placed on a dynamometer and the vehicle shall be operated according to Table 1 of this Article, in drive for automatic transmission or second or higher gear for manual transmission. Overdrive shall not be used for testing. All vehicles shall be driven by the inspector during testing. HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized, or at the end of 90 seconds, whichever occurs first. After exhaust emissions are recorded, engine speed shall be returned to idle for a curb idle test.~~
    - b. ~~Curb idle test. The test shall be performed with the vehicle in neutral for 1981 and newer vehicles. For 1980 and older vehicles, the test shall be performed in neutral, except that if the vehicle has an automatic transmission, drive shall be used. Engine RPM shall be within  $\pm 100$  RPM of the manufacturer's specified idle RPM. HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized, or at the end of 90 seconds, whichever occurs first. A CO<sub>2</sub> plus CO reading of 6% or greater shall be registered to establish test validity. A CO<sub>2</sub> plus CO reading of less than 6% shall be proof of exhaust sample dilution and the vehicle shall be rejected from further emissions inspection until repaired, except when tested at a fleet emissions inspection station.~~
    - c. ~~Exhaust sampling for a vehicle required to take an annual emissions test under subsection (E)(1) shall comply with subsection (F)(8).~~~~
  2. ~~A vehicle with a 1981 or newer model year and a GVWR of 8,500 pounds or less, except a motorcycle, a reconstructed vehicle, a 1996 or newer OBD equipped vehicle or a constant 4 wheel drive vehicle, is required to biennially take and pass a transient loaded emissions test and an evaporative system pressure test as follows:
 
    - a. ~~The transient loaded emissions test shall consist of 147 seconds of mass emissions measurement using a constant volume sampler while the vehicle is driven by an inspector through a computer monitored driving cycle on a dynamometer with inertial weight settings appropriate for the weight of the vehicle. The driving cycle shall include the acceleration, deceleration, and idle operating modes described in Table 4. The 147 second sequence may be ended earlier using a fast~~~~

- pass or fast fail algorithm. A retest algorithm shall be used to determine if a test failure is due to insufficient vehicle preconditioning. As determined by the retest algorithm, up to two additional tests may be performed on a failing vehicle. Drive shall be used for automatic transmissions and first gear shall be used to begin for manual transmissions. Exhaust emissions concentrations in grams per mile for HC, CO, NO<sub>x</sub> and CO<sub>2</sub> shall be recorded continuously beginning with the first second. The inspector shall reject a vehicle with an audible or visible exhaust leak from emissions testing.
- b. The evaporative system pressure test shall consist of the following steps in sequence:
- i. Connect the test equipment to either the fuel tank vent hose at the canister or the fuel tank filler neck. The gas cap shall be checked to determine that cap leakage does not exceed 60 cubic centimeters of air per minute at a pressure of 30 inches of water gauge;
  - ii. Pressurize the system to  $14 \pm 0.5$  inches of water without exceeding 26 inches of water system pressure;
  - iii. Close off the pressure source, seal the evaporative system, and monitor pressure decay for no more than two minutes.
- e. For a vehicle requiring a transient loaded emissions test under subsection (E)(2)(a), all testing and test equipment shall conform to "IM240 & Evap Technical Guidance," EPA420-R-98-010, EPA, August 1998, incorporated by reference, and no future editions or amendments, except that the transient driving cycle in Table 4 of this Article shall be used. A copy of the incorporated material is on file with the Department and the Secretary of State, and may be obtained at EPA's National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105-2498.
3. A vehicle with a 1996 or newer model year and a GVWR of 8500 pounds or less, except a motorcycle or a reconstructed vehicle, is required to biennially take and pass an OBD test and a functional gas cap test as follows:
- a. The OBD test shall consist of:
    - i. A visual inspection of the MIL function; and
    - ii. An electronic examination of the OBD computer by connecting a scan tool to the data link connector and interrogating the OBD system to determine vehicle readiness status, MIL status, and presence of diagnostic trouble codes.
  - b. The OBD test and test equipment shall conform to "Performing Onboard Diagnostic System Checks as Part of a Vehicle Inspection and Maintenance Program," EPA420-R-01-015, EPA, June 2001, incorporated by reference, and no future editions or amendments. A copy of this incorporated material is on file with the Department and the Secretary of State, and may be obtained at the EPA's National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI, 48105-2498; and
  - c. The functional gas cap test shall comply with subsection (E)(7)(a).
4. A motorcycle, or a constant 4 wheel drive vehicle except one requiring an OBD emissions test under subsection (E)(3), shall take and pass only a curb idle test according to subsection (F)(1). An all terrain vehicle (ATV), as defined in A.R.S. § 28-101, shall be tested as a motorcycle.
5. A vehicle with a 1975 or newer model year is required to take and pass a liquid fuel leak inspection annually or biennially according to subsections (E)(1) or (2) as follows:
- a. For purposes of this subsection, "liquid fuel leak" means any fuel emanating from a vehicle's fuel delivery, metering or evaporation systems in liquid form

- that has created a visible drop or more of fuel on, around, or under a component of a vehicle's fuel delivery, metering, or evaporation system.
- b. ~~With the engine running, the vehicle emissions inspector shall visually inspect the following components of the vehicle, if they are exposed and visually accessible, for liquid fuel leaks:
    - i. ~~Gasoline fuel tanks;~~
    - ii. ~~Gasoline fill pipes, associated hoses and fuel tank connections;~~
    - iii. ~~Gas caps;~~
    - iv. ~~External fuel pumps;~~
    - v. ~~Fuel delivery and return lines and hoses;~~
    - vi. ~~Fuel filters;~~
    - vii. ~~Carburetors;~~
    - viii. ~~Fuel injectors;~~
    - ix. ~~Fuel pressure regulators;~~
    - x. ~~Charcoal canisters; and~~
    - xi. ~~Fuel vapor hoses.~~
    - xii. ~~Any valves connected to any other fuel evaporative component.~~~~
  - c. ~~The liquid fuel leak inspection required by this subsection is a visual inspection only. The vehicle emissions inspector is not required to perform any disassembly of the vehicle to inspect for liquid fuel leaks. No special tools or equipment, other than a flashlight and mirror, are required and no raising, hoisting, or lifting of the vehicle is required.~~
  - d. ~~The vehicle emissions inspector shall indicate on the vehicle inspection report the location of any liquid fuel leak.~~
  - e. ~~Nothing in this subsection shall prohibit a vehicle emissions inspector from refusing to inspect a vehicle under subsections (A), (B), or (C) or from terminating an inspection if a liquid fuel leak presents a safety hazard.~~
  - f. ~~A vehicle operated exclusively by compressed natural gas (CNG), liquid natural gas (LNG), or liquid petroleum gas (LPG) shall be exempt from the liquid fuel leak inspection.~~
6. ~~The emissions pass-fail determination for a vehicle tested under subsection (E) shall be made as follows:~~
- a. ~~A vehicle tested under subsection (E)(1), that does not exceed the loaded cruise-mode or curb idle mode HC and CO emissions standards listed in Table 2 for the vehicle, complies with the emissions standards in Table 2. The loaded-cruise test standards in Table 2 apply to a fleet vehicle tested with the 2,500 RPM unloaded fast idle test under R18-2-1019(E).~~
  - b. ~~A vehicle tested under subsection (E)(2) shall meet the standards in Table 3 and pass the evaporative system pressure test as follows:
    - i. ~~Table 3 Standards. A vehicle shall meet either the composite standard for the whole test or the phase 2 standard for seconds 65 to 146. The Department may implement a testing algorithm for fast pass, fast fail, or both, provided that the algorithm is reliable in accurately predicting the final outcome of the entire cycle. A vehicle not meeting either the composite or phase 2 standard shall fail the emissions test.~~
    - ii. ~~Evaporative System Pressure Test. A vehicle fails the emissions test if the evaporative system cannot maintain a system pressure above eight inches of water for at least two minutes after being pressurized to  $14 \pm 0.5$  inches of water. Additionally, a vehicle fails the evaporative test if the canister is missing or damaged, if a hose or electrical connection is~~~~

- ~~missing, routed incorrectly, or disconnected, according to the vehicle emissions control information label, or if the gas cap is missing.~~
- e. ~~A vehicle that operates on natural gas complies with HC emissions standards if the HC emissions value does not exceed the applicable standard in subsection (E)(6)(a) or (b), if:
 
    - i. ~~Multiplied by 0.19, when using an analyzer with a flame ionization detector, or~~
    - ii. ~~Multiplied by 0.61, when using an NDIR analyzer.~~~~
  - d. ~~A motorcycle or a constant 4 wheel drive vehicle, except one requiring an OBD emissions test under subsection (E)(3), that does not exceed the curb idle mode HC and CO emissions standards listed in Table 2 on either the first curb idle test or the second curb idle test passes the emissions test.~~
  - e. ~~A vehicle tested under subsection (E)(3) shall:
 
    - i. ~~Fail if the data link connector is missing, tampered, or otherwise inoperable during any OBD test;~~
    - ii. ~~Fail if the MIL does not illuminate at all when the ignition key is turned to the key on, engine off position, or does not illuminate briefly during engine start during any OBD test;~~
    - iii. ~~Fail if the MIL illuminates continuously or flashes after the engine has been started during any OBD test;~~
    - iv. ~~Fail if a diagnostic trouble code is present and the MIL status, as indicated by the scan tool, is commanded on during any OBD test.~~
    - v. ~~Be rejected from an initial OBD test and required to take and pass a transient loaded test under subsection (E)(2) if the number of unset readiness indicators, excluding continuous indicators, is three or more for a model year 1996-2000 vehicle, or two or more for a model year 2001 and newer vehicle.~~
    - vi. ~~Be rejected from an OBD retest if the number of unset readiness indicators, excluding continuous indicators, exceeds the number allowed in subsection (v).~~
    - vii. ~~Fail the functional gas cap test if the gas cap does not comply with subsection (E)(7)(a).~~~~
  - f. ~~A vehicle tested under subsection (E)(5) shall fail the inspection if a vehicle emissions inspector detects a liquid fuel leak.~~
  - g. ~~A vehicle that exceeds the applicable emissions standards for the tests described in subsections (E)(1) and (E)(2)(a), or fails the OBD test described in subsection (E)(3), fails the emissions test and shall not be reinspected until a low emissions tune up is performed as described in R18-2-1010. A vehicle that fails the evaporative system pressure test described in subsection (E)(2)(b) shall not be reinspected until repaired as required in R18-2-1010(D)(1) and (2). A vehicle that fails the functional gas cap test described in subsection (E)(7)(a) shall not be reinspected until repaired as required in R18-2-1009(B). A vehicle that fails the liquid fuel leak test described in subsection (E)(5) shall not be reinspected until repaired as required in R18-2-1010(E).~~
7. ~~A vehicle required to take an annual emissions test in area A shall, at the time of the test, undergo a tampering inspection based on the original configuration of the vehicle as manufactured. The applicable emissions system requirements shall be verified by the "VEHICLE EMISSION CONTROL INFORMATION" label. A vehicle that fails any portion of the tampering inspection shall be repaired according to R18-2-1009 before reinspection unless the owner provides the written statement required in R18-2-1008(B). "Original configuration" for a foreign manufactured vehicle means the design and con-~~

struction of a vehicle produced by the manufacturer for original entry and sale in the United States. The tampering inspection shall consist of the following:

- a. Any vehicle emissions tested, except one with a vented fuel system, shall have a functional test of the gas cap to determine that cap leakage does not exceed 60 cubic centimeters of air per minute at a pressure of 30 inches of water gauge. A vehicle with a vented fuel system shall be checked for the presence of a properly fitting fuel cap.
- b. For a 1975 and newer model year vehicle:
  - i. A visual inspection to determine the presence and proper installation of each required catalytic converter, if applicable;
  - ii. An examination to determine the presence of an operational air pump, if applicable; and
  - iii. A visual inspection to determine the presence of an operational positive crankcase ventilation system and evaporative control system, if applicable.

F. In area B, the inspection test procedures for a vehicle other than a diesel powered vehicle shall consist of the following:

1. An area B vehicle with a model year of 1967 through 1980 shall take and pass only a curb idle test. The curb idle test shall be performed with the vehicle in drive for automatic transmissions or in neutral for manual transmissions. Engine RPM shall be within  $\pm 100$  RPM of the manufacturer's specified idle RPM. HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized, or at the end of 30 seconds, whichever occurs first. A CO<sub>2</sub> plus CO reading of 6% or greater shall be registered to establish test validity. A CO<sub>2</sub> plus CO reading less than 6% shall be proof of exhaust sample dilution and the vehicle shall be rejected from further emissions inspection until repaired, except when tested at a fleet emissions inspection station. If the vehicle fails the curb idle test, and if permitted by the vehicle operator, the vehicle shall be conditioned according to one of the following conditioning procedures:
  - a. Fast idle conditioning procedure. The vehicle shall be conditioned by increasing engine speed to 2,500,  $\pm 300$  RPM, for up to 30 seconds with the transmission in neutral. HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized, or at the end of 30 seconds, whichever occurs first. The conditioning procedure standards in Table 2 are for diagnostic and advisory information only. After exhaust emissions are recorded, the engine speed shall be returned to curb idle for a second idle test. The fast idle conditioning procedure may be used on a vehicle at a state station instead of the loaded conditioning procedure if any of the following occurs:
    - i. The vehicle has a tire on a driving wheel with less than 2/32 inch tread, with metal protuberances, with visibly low tire pressure as determined by visual inspection, or any other condition that precludes loaded conditioning for reasons of personnel, equipment, or vehicle safety;
    - ii. The vehicle is driven by a person who, because of physical incapacity, is unable to yield the driver's seat to the vehicle emissions inspector;
    - iii. The driver refuses to yield the driver's seat to the vehicle emissions inspector; or
    - iv. The vehicle cannot be tested according to Table 1 because of the vehicle's inability to attain the speeds specified.
  - b. Loaded conditioning procedure. For a vehicle other than a motorcycle or a constant 4 wheel drive vehicle, the vehicle's drive wheels shall be placed on a dynamometer and the vehicle shall be operated according to Table 1, in drive for automatic transmission, or second or higher gear for manual transmission. All

front wheel drive vehicles shall be driven by the inspector. HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized, or at the end of 30 seconds, whichever occurs first. The conditioning procedure standards in Table 2 are for diagnostic and advisory information only. After exhaust emissions are recorded, engine speed shall be returned to curb idle for a second idle test.

- e. Following one of the conditioning procedures in subsection (F)(1)(a) or (b), the vehicle shall be retested according to the curb idle test procedure in subsection (F)(1).
2. An area B vehicle with a 1981 or newer model year, except a motorcycle, a constant 4-wheel drive vehicle, or a 1996 and newer vehicle equipped with OBD, shall take and pass a loaded cruise test and curb idle test, as follows:
    - a. Loaded Cruise Test. The vehicle's drive wheels shall be placed on a dynamometer and the vehicle shall be operated according to Table 1, in drive for automatic transmission or second or higher gear for manual transmission. Overdrive shall not be used. All front wheel drive vehicles shall be driven by the inspector. HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized, or at the end of 90 seconds, whichever occurs first. After exhaust emissions are recorded, engine speed shall be returned to idle for a curb idle test.
    - b. Curb Idle Test. The test shall be performed with the vehicle in neutral. Engine RPM shall be within  $\pm 100$  RPM of the manufacturer's specified idle RPM. HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized, or at the end of 90 seconds, whichever occurs first. A CO<sub>2</sub> plus CO reading of 6% or greater shall be registered to establish test validity, except when tested at a fleet inspection station. A CO<sub>2</sub> plus CO reading less than 6% shall be proof of exhaust sample dilution and the vehicle shall be rejected from further emissions inspection until repaired.
  3. A vehicle with a model year of 1996 or newer and a GVWR of 8500 pounds or less, except a motorcycle or a reconstructed vehicle, is required to annually take and pass an OBD test and a functional gas cap test as follows:
    - a. The OBD test shall consist of:
      - i. A visual inspection of the MIL function; and
      - ii. An electronic examination of the OBD computer by connecting a scan tool to the data link connector and interrogating the OBD system to determine vehicle readiness status, MIL status, and presence of diagnostic trouble codes;
    - b. The OBD test and test equipment shall conform to "Performing Onboard Diagnostic System Checks as Part of a Vehicle Inspection and Maintenance Program," EPA420-R-01-015, EPA, June 2001, incorporated by reference, and no future editions or amendments. A copy of this incorporated material is on file with the Department and the Secretary of State and may be obtained at the EPA's National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI, 48105-2498; and
    - c. The functional gas cap test shall comply with subsection (F)(7)(a).
  4. A motorcycle or a constant 4-wheel drive vehicle, except one requiring an OBD emissions test under subsection (F)(3), shall take and pass only a curb idle test according to subsection (F)(1). An all terrain vehicle (ATV), as defined in A.R.S. § 28-101, shall be tested as a motorcycle. If the vehicle fails the curb idle test, and if permitted by the vehicle operator, the vehicle shall be conditioned according to the fast idle conditioning procedure required in subsection (F)(1)(a). Following conditioning, the vehicle shall be retested according to the curb idle test procedure in subsection (F)(1).

5. ~~A vehicle with a 1975 or newer model year and annually tested under subsections (F)(1) or (2) is required to take and pass a liquid fuel leak inspection according to subsections (E)(5)(a) through (f).~~
6. ~~The emissions pass-fail determination shall be made as follows:~~
  - a. ~~A vehicle with a model year of 1967 through 1980, except a motorcycle or a constant 4-wheel drive vehicle, that does not exceed the curb idle mode HC and CO emissions standards in Table 2 on either the first or second curb idle test, complies with the minimum emissions standards contained in Table 2.~~
  - b. ~~A vehicle with a 1981 or newer model year, except a motorcycle or a constant 4-wheel drive vehicle, that does not exceed the loaded cruise mode or curb idle mode HC and CO emissions standards listed in Table 2, complies with the minimum emissions standards in Table 2. The loaded cruise test standards specified in Table 2 shall apply to fleet vehicles tested with the 2,500 RPM unloaded fast idle test.~~
  - c. ~~A vehicle that operates on natural gas complies with HC emissions standards if the HC emissions value, as determined by an NDIR analyzer, multiplied by 0.61 does not exceed the applicable standard in subsection (F)(6)(a) or (b).~~
  - d. ~~A motorcycle or a constant 4-wheel drive vehicle, except one requiring an OBD emissions test under subsection (F)(3), that does not exceed the curb idle mode HC and CO emissions standards in Table 2 on either the first or second curb idle test complies with the minimum emissions standards in Table 2.~~
  - e. ~~A vehicle that exceeds the applicable emissions standards, or fails the OBD test described in subsection (F)(3), fails the emissions test and shall have a low emissions tune-up as described in R18-2-1010 before reinspection. A vehicle that fails the functional gas cap test described in subsection (F)(3)(c) shall not be reinspected until repaired as required in R18-2-1009(B).~~
  - f. ~~A vehicle tested under subsection (F)(3) shall:~~
    - i. ~~Fail if the data link connector is missing, tampered, or otherwise inoperable during any OBD test;~~
    - ii. ~~Fail if the MIL does not illuminate at all when the ignition key is turned to the key on, engine off position, or does not illuminate briefly during engine start during any OBD test;~~
    - iii. ~~Fail if the MIL illuminates continuously or flashes after the engine has been started during any OBD test;~~
    - iv. ~~Fail if a diagnostic trouble code is present and the MIL status, as indicated by the scan tool, is commanded on during any OBD test;~~
    - v. ~~Be rejected from an initial OBD test and required to take and pass a loaded cruise test and curb idle test under subsection (F)(2) if the number of unset readiness indicators, excluding continuous indicators, is three or more for a model year 1996-2000 vehicle, or two or more for a model year 2001 and newer vehicle;~~
    - vi. ~~Be rejected from an OBD retest if the number of unset readiness indicators, excluding continuous indicators, exceeds the number allowed in subsection (v); and~~
    - vii. ~~Fail the functional gas cap test if the gas cap does not comply with subsection (F)(7)(a).~~
  - g. ~~A vehicle tested under subsection (F)(5) shall fail the inspection if a vehicle emissions inspector detects a liquid fuel leak. A vehicle that fails the liquid fuel leak test shall not be reinspected until repaired as required in R18-2-1010(E).~~
7. ~~A vehicle required to take an emissions test in area B, except a vehicle required to take an OBD test as described in subsection (F)(3), shall at the time of the test, undergo a tamper-~~

ing inspection based on the original configuration of the vehicle as manufactured. The applicable emissions system requirements shall be verified by the "VEHICLE EMISSION CONTROL INFORMATION" label. A vehicle that fails any portion of the tampering inspection shall be repaired according to R18-2-1009 before reinspection unless the owner provides the written statement required in R18-2-1008(B). "Original configuration" for a foreign manufactured vehicle means the design and construction of a vehicle produced by the manufacturer for original entry and sale in the United States. The tampering inspection shall consist of the following:

- a. Any vehicle emissions tested, except one with a vented fuel system, shall have a functional test of the gas cap to determine that cap leakage does not exceed 60 cubic centimeters of air per minute at a pressure of 30 inches of water gauge. A vehicle with a non-sealing gas cap shall be checked for the presence of a properly fitting gas cap.
- b. For a 1975 or newer model year vehicle:
  - i. A visual inspection to determine the presence and proper installation of each required catalytic converter, if applicable; and
  - ii. An examination to determine the presence of an operational air pump, if applicable.

8. Exhaust sampling in area B shall comply with the following:

- a. All CO and HC emissions analyzers shall have water traps incorporated in the sampling lines. Sampling probes shall be capable of taking undiluted exhaust samples from a vehicle exhaust system.
- b. A vehicle, other than a diesel powered vehicle, shall be inspected with a NDIR analyzer capable of determining concentrations of CO and HC within the ranges and tolerances specified in Table 5.
- c. A vehicle with multiple exhaust pipes shall be inspected by collecting and averaging samples by one of the following methods:
  - i. Collect separate samples from each exhaust pipe and use the average concentration to determine the test result;
  - ii. Use manifold exhaust probes to simultaneously sample approximately equal volumes from each pipe; or
  - iii. Use manifold exhaust pipe adapters to collect approximately equal volume samples from each pipe.

G. The following apply to all testing under subsection (E) or (F):

1. A rotary piston engine shall be inspected as a 4-stroke engine with four cylinders or less;
2. A turbine engine shall be inspected as a 4-stroke engine with more than four cylinders; and
3. A vehicle in which a diesel engine has been replaced with a gas engine shall be inspected as a gas-powered vehicle of the same vehicle model year. The vehicle shall not pass the inspection unless each catalytic converter, air pump, gas cap, and other emissions control device applicable to the vehicle model year and the same or more recent year engine configuration is properly installed and in operating condition.

H. In area A, the inspection test procedure for a diesel powered vehicle is as follows:

1. A diesel powered vehicle with a GVWR greater than 8,500 pounds shall be tested with a procedure that conforms to Society of Automotive Engineers standard J1667, February 1996, incorporated by reference and on file with the Department and the Secretary of State. This incorporation by reference contains no future editions or amendments. A copy of this referenced material may be obtained at Society of Automotive Engineers, 400 Commonwealth Dr., Warrendale, PA 15096-0001. The procedure shall utilize the corrections for ambient test conditions in Appendix B of J1667 for all tests. The test results

shall be reported as the percentage of smoke opacity. Emissions pass-fail determinations are as follows:

- a. ~~A vehicle powered by a 1991 or later model year diesel engine fails if the J1667 final test result is greater than 40%, unless the engine family is exempted from the 40% standard under subsection (H)(1)(e);~~
  - b. ~~A vehicle powered by a pre-1991 model year diesel engine fails if the J1667 final test result is greater than 55%, unless the engine family is exempted from the 55% standard under subsection (H)(1)(e);~~
  - c. ~~The engine model year is determined by the emission control label. If the emission control label is missing, illegible, or incorrect, the test standard shall be 40%, unless a correct, legible, emission control label replacement is attached to the vehicle within 30 days of the inspection;~~
  - d. ~~A vehicle that exceeds the opacity standard in subsection (H)(1)(a) or (b) fails the emissions test. Before reinspection, the vehicle shall have a low emissions tune-up as described in R18-2-1010(H);~~
  - e. ~~The Director shall exempt any engine family from the standards in subsections (H)(1)(a) or (b) if the engine manufacturer demonstrates either of the following:~~
    - i. ~~The engine family exhibits smoke opacity greater than the standard when in good operating condition and adjusted to the manufacturer's specifications. The Director shall identify a technologically appropriate less stringent standard based on a review of data obtained from engines in good operating condition and adjusted to manufacturer's specifications; or~~
    - ii. ~~The engine family is exempted from an equivalent standard based on J1667 by the executive officer of the California Air Resources Board (CARB). The Director shall allow the engine family to comply with any technologically appropriate less stringent standard identified by the executive officer of CARB; and~~
  - f. ~~A demonstration under subsection (H)(1)(e)(i) shall be based on data from at least three vehicles. Data from official inspections under subsection (H)(1) showing that vehicles in the engine family meet the standard may be used to rebut the demonstration. The Director shall implement any new standard resulting from each exemption as soon as practicable for all subsequent tests and provide notice at all affected test stations and fleets.~~
2. ~~A diesel powered vehicle with a GVWR greater than 4,000 pounds and less than or equal to 8,500 pounds shall be tested by a loaded dynamometer test by applying a single load of 30 HP,  $\pm$  2 HP, while operated at 50 MPH. A diesel powered vehicle with a GVWR of 4,000 pounds or less shall be tested by a loaded dynamometer test by applying a single load of between 6.4 – 8.4 HP while operated at 30 MPH. For all diesel powered vehicles with a GVWR less than or equal to 8,500 pounds:~~
- a. ~~The emissions pass-fail determination shall be made as follows:~~
    - i. ~~The opacity reading for a period of 10 consecutive seconds with the engine under applicable loading shall be compared to the opacity standard in R18-2-1030(B). A vehicle that does not exceed the applicable opacity standard in R18-2-1030(B) complies with the minimum emissions standards.~~
    - ii. ~~A vehicle that exceeds the applicable opacity standard fails the emissions test. Before reinspection, the vehicle shall have a low emissions tune-up as described in R18-2-1010.~~
  - b. ~~Exhaust sampling shall comply with the following:~~
    - i. ~~For a diesel powered vehicle equipped with multiple pipes, separate measurements shall be made on each exhaust pipe. The reading taken~~

from the exhaust pipe that has the highest opacity reading shall be used for comparison with the applicable emissions standard.

- ii. A vehicle shall be inspected with either a full flow or sampling type opacity meter. The opacity meter shall be a direct reading, continuous reading light extinction type using a collimated light source and photoelectric cell, accurate to a value within  $\pm 5\%$  of filter value.

I. In area B, the inspection test procedure for a diesel powered vehicle is as follows:

1. A diesel powered vehicle with a GVWR greater than 26,000 pounds or having tandem axles shall be tested according to one of the following methods:
  - a. The vehicle shall be tested on a chassis dynamometer beginning with no power absorption by selecting a gear ratio that produces a maximum vehicle speed of 30-35 MPH at governed or maximum rated RPM. If the vehicle has a manual transmission or an automatic transmission with individual gear selection, the engine shall be operated at governed or maximum rated engine RPM, at normal operating temperature under a power absorption load applied to the dynamometer until the loading reduces the engine RPM to 80% of the governed speed at wide open throttle position. If the vehicle has an automatic transmission and automatic gear kickdown, the engine shall be loaded to a speed just above the kickdown speed or 80% of the governed speed, whichever is greater. If the chassis dynamometer does not have enough horsepower absorption capability to lug the engine down to these speeds, the vehicle's brakes may be used to assist the dynamometer.
  - b. If a chassis dynamometer is not available, the vehicle shall be tested by being lugged by its own brakes by selecting a gear ratio that produces a maximum speed of 10-15 MPH at governed engine RPM or maximum rated RPM and then loading the engine by applying the brakes until the engine RPM is lugged down to 80% of the governed or maximum rated RPM at wide open throttle position. If the vehicle does not have a tachometer, the vehicle may be loaded to 80% of governed or maximum rated speed.
2. A diesel powered vehicle without tandem axles and having a GVWR greater than 10,500 pounds and less than or equal to 26,000 pounds shall be tested according to one of the following methods:
  - a. The vehicle shall be tested on a chassis dynamometer beginning with no power absorption by selecting a gear ratio that produces a maximum vehicle speed of 30-35 MPH at governed or maximum rated RPM. If the vehicle has a manual transmission or an automatic transmission with individual gear selection, the engine shall be operated at governed or maximum rated engine RPM, at normal operating temperature under a power absorption load applied to the dynamometer until such loading reduces the engine RPM to 80% of the governed speed at wide open throttle position. If the vehicle has an automatic transmission and automatic gear kickdown, the engine shall be loaded to a speed just above the kickdown speed or 80% of governed speed, whichever is greater. If the chassis dynamometer does not have enough horsepower absorption capability to lug the engine down to these speeds, the vehicle's brakes may be used to assist the dynamometer;
  - b. The vehicle shall be tested by applying a single load of 30 HP,  $\pm 2$  HP, while operated at 50 MPH; or
  - c. The vehicle shall be tested by being lugged by its own brakes by selecting a gear ratio that produces a maximum speed of 10-15 MPH at governed engine RPM or maximum rated RPM and then loading the engine by applying the brakes until the engine RPM is lugged down to 80% of the governed or maximum rated RPM

at wide open throttle position. If the vehicle does not have a tachometer, the vehicle may be loaded to 80% of governed or maximum rated speed.

3. ~~A diesel powered vehicle with a GVWR of greater than 4,000 pounds and less than or equal to 10,500 pounds shall be tested by a loaded dynamometer test by applying a single load of 30 HP,  $\pm$  2 HP, while operated at 50 MPH.~~
  4. ~~A diesel powered vehicle with a GVWR of 4,000 pounds or less shall be tested by a loaded dynamometer test by applying a single load of between 6.4 — 8.4 HP while operated at 30 MPH.~~
  5. ~~The emissions pass fail determination shall be performed:~~
    - a. ~~The opacity reading during a period of 10 consecutive seconds with the engine under applicable loading specified in subsections (I)(1) through (4) shall be compared to the opacity standard specified in R18-2-1030(B). A vehicle that does not exceed the opacity standard in R18-2-1030(B) complies with the minimum emissions standards.~~
    - b. ~~A vehicle that exceeds the standard in R18-2-1030(B) fails the emissions test. Before reinspection, the vehicle shall have a low emissions tune up as described in R18-2-1010.~~
  6. ~~Exhaust sampling shall comply with the following:~~
    - a. ~~For a diesel powered vehicle equipped with multiple exhaust pipes, separate measurements shall be made on each exhaust pipe. The reading taken from the exhaust pipe that has the highest opacity reading shall be used for comparison with the standard in R18-2-1030(B).~~
    - b. ~~A vehicle shall be inspected with either a full flow or sampling type opacity meter. The opacity meter shall be a direct reading, continuous reading light extinction type using a collimated light source and photo electric cell, accurate to a value within  $\pm$  5% of filter value.~~
- J. ~~All diesel powered vehicles shall undergo a tampering inspection under subsection (E)(7).~~
- A. This Section establishes the testing requirements for vehicles in the State of Arizona. Subsection (B) identifies which tests apply to a particular type and model year of vehicle. Subsection (C) establishes the procedures and criteria for, passing, failing, or being rejected from each test.
- B. Test applicability.
1. Area A and Area B non-diesel. The following general requirements govern test applicability for non-diesel vehicles in both Area A and Area B:
    - a. A rotary engine shall be inspected as a 4-stroke engine with four cylinders or less.
    - b. For a vehicle in which an engine has been replaced:
      - i. A vehicle owner shall not install a heavy-duty engine in a light-duty chassis.
      - ii. A vehicle owner shall not install a light-duty engine in a heavy-duty chassis.
      - iii. The replacement engine package shall include all emissions control equipment and devices that were required by the manufacturer for an engine-chassis certification. All emissions control equipment and devices shall be properly installed and in operating condition, and the resulting engine-chassis configuration shall be equivalent to a verified configuration of the same, or newer, model year as that of the vehicle chassis.
      - iv. The Department shall inspect the vehicle according to the model year of the vehicle chassis.
  2. Area A Non-Diesel. Non-diesel vehicles in Area A are subject to the test procedures identified in this subsection:

- a. Vehicles other than alternative fuel vehicles operated by a school district in Area A, heavy duty alternative fuel vehicles, reconstructed vehicles, and constant 4-wheel-drive vehicles that are not equipped with OBD, are subject to the following test procedures until the Administrator approves subsection (B)(2)(a)(i) into the applicable implementation plan:

<b><u>Area A Non-Diesel Testing Procedures Until SIP Revision is Approved</u></b>				
<b><u>Model Year</u></b>	<b><u>GVWR</u></b>	<b><u>Test Frequency</u></b>	<b><u>Tests Applicable</u></b>	<b><u>Test Subsection</u></b>
<u>1996 or later</u>	<u>8,500 pounds or less</u>	<u>Biennial</u>	<u>OBD</u> <u>Functional gas cap</u> <u>Tampering</u>	<u>C.4</u> <u>C.16</u> <u>C.17</u>
<u>1981 through 1995</u>	<u>8,500 pounds or less</u>	<u>Biennial</u>	<u>Transient loaded and evaporative system pressure</u> <u>Functional gas cap</u> <u>Tampering</u>	<u>C.5</u> <u>C.16</u> <u>C.17</u>
<u>1975 through 1980</u>	<u>8,500 pounds or less</u>	<u>Annual</u>	<u>Loaded test</u> <u>Functional gas cap</u> <u>Tampering</u>	<u>C.6</u> <u>C.16</u> <u>C.17</u>
<u>1975 or later</u>	<u>More than 8,500 pounds</u>	<u>Annual</u>	<u>Loaded test</u> <u>Functional gas cap</u> <u>Tampering</u>	<u>C.6</u> <u>C.16</u> <u>C.17</u>
<u>1967 through 1974</u>	<u>Any</u>	<u>Annual</u>	<u>Loaded test</u> <u>Functional gas cap</u>	<u>C.6</u> <u>C.16</u>

- i. Test procedures that apply after the Administrator approves this subsection, (B)(2)(a)(i), into the applicable implementation plan:

**Area A Non-Diesel Testing Procedures After SIP Revision is Approved**

<b><u>Model Year</u></b>	<b><u>GVWR</u></b>	<b><u>OBD Certified?</u></b>	<b><u>Test Frequency</u></b>	<b><u>Tests Applicable</u></b>	<b><u>Test Subsection</u></b>
<u>1996 or Later</u>	<u>Any</u>	<u>Yes</u>	<u>Biennial</u>	<u>OBD</u> <u>Functional gas cap</u> <u>Tampering</u>	<u>C.4</u> <u>C.16</u> <u>C.17</u>
<u>1981 or later</u>	<u>8,500 pounds or less</u>	<u>No</u>	<u>Biennial</u>	<u>Transient loaded and evaporative system pressure</u> <u>Functional gas cap</u> <u>Tampering</u>	<u>C.5</u> <u>C.16</u> <u>C.17</u>
<u>1975 through 1980</u>	<u>8,500 pounds or less</u>	<u>No</u>	<u>Annual</u>	<u>Loaded test</u> <u>Functional gas cap</u> <u>Tampering</u>	<u>C.6</u> <u>C.16</u> <u>C.17</u>
<u>1975 or later</u>	<u>More than 8,500 pounds</u>	<u>No</u>	<u>Annual</u>	<u>Loaded test</u> <u>Functional gas cap</u> <u>Tampering</u>	<u>C.6</u> <u>C.16</u> <u>C.17</u>
<u>1967 through 1974</u>	<u>Any</u>	<u>No</u>	<u>Annual</u>	<u>Loaded test</u> <u>Functional gas cap</u>	<u>C.6</u> <u>C.16</u>

- b. Alternative fuel vehicles operated by a school district in Area A are subject to the following testing procedures until the Administrator approves subsection (B)(2)(b)(i) into the applicable implementation plan. After section (B)(2)(b)(i) has been approved into the applicable implementation plan, alternative fuel vehicles operated by a school district in Area A will be subject to subsection (B)(2)(b)(i).

**Area A Alt. Fuel Vehicles Operated by a School District Testing Procedures Until SIP Revision is Approved**

<b><u>Model Year</u></b>	<b><u>OBD Certified?</u></b>	<b><u>Test Frequency</u></b>	<b><u>Tests Applicable</u></b>	<b><u>Test Subsection</u></b>
<u>1975 or later</u>	<u>No</u>	<u>Annual</u>	<u>Loaded test</u> <u>Functional gas cap</u> <u>Tampering</u>	<u>C.6</u> <u>C.16</u> <u>C.17</u>
<u>1967 through 1974</u>	<u>No</u>	<u>Annual</u>	<u>Loaded test</u> <u>Functional gas cap</u>	<u>C.8</u> <u>C.16</u>

- i. Test procedures that apply after the Administrator approves this subsection, (B)(2)(b)(i), into the applicable implementation plan.

<b>Area A Alt. Fuel Vehicles Operated by a School District Testing Procedures After SIP Revision is Approved</b>				
<b><u>Model Year</u></b>	<b><u>OBD Certified?</u></b>	<b><u>Test Frequency</u></b>	<b><u>Tests Applicable</u></b>	<b><u>Test Subsection</u></b>
<u>Any</u>	<u>Yes</u>	<u>Biennial</u>	<u>OBD</u> <u>Functional gas cap</u> <u>Tampering</u>	<u>C.4</u> <u>C.16</u> <u>C.17</u>
<u>1975 or later</u>	<u>No</u>	<u>Annual</u>	<u>Loaded test</u> <u>Functional gas cap</u> <u>Tampering</u>	<u>C.6</u> <u>C.16</u> <u>C.17</u>
<u>1967 through 1974</u>	<u>No</u>	<u>Annual</u>	<u>Loaded test</u> <u>Functional gas cap</u>	<u>C.6</u> <u>C.16</u>

- c. Heavy duty alternative fuel vehicles in Area A that are not owned by a school district are subject to the following testing procedures.

<b><u>Model Year</u></b>	<b><u>GVWR</u></b>	<b><u>OBD Certified?</u></b>	<b><u>Test Frequency</u></b>	<b><u>Tests Applicable</u></b>	<b><u>Test Subsection</u></b>
<u>Any</u>	<u>More than 14,500 pounds</u>	<u>Yes</u>	<u>Biennial</u>	<u>OBD</u> <u>Functional gas cap</u> <u>Tampering</u>	<u>C.4</u> <u>C.16</u> <u>C.17</u>
<u>1975 or later</u>	<u>More than 14,500 pounds</u>	<u>No</u>	<u>Annual</u>	<u>Idle test</u> <u>Functional gas cap</u> <u>Tampering</u>	<u>C.8</u> <u>C.16</u> <u>C.17</u>
<u>1967 through 1974</u>	<u>More than 14,500 pounds</u>	<u>No</u>	<u>Annual</u>	<u>Idle test</u> <u>Functional gas cap</u>	<u>C.8</u> <u>C.16</u>

3. Area B Non-Diesel. Non-diesel vehicles in Area B are subject to the test procedures identified in this subsection:
- a. Vehicles other than reconstructed vehicles and constant 4-wheel-drive vehicles that are not equipped with OBD shall be subject to the following test procedures until the Administrator approves subsection (B)(2)(a)(i) into the applicable implementation plan:

<b>Area B Non-Diesel Testing Procedures Until SIP Revision is Approved</b>				
<b><u>Model Year</u></b>	<b><u>GVWR</u></b>	<b><u>Test Frequency</u></b>	<b><u>Tests Applicable</u></b>	<b><u>Test Subsection</u></b>
<u>1996 or later</u>	<u>8,500 pounds or less</u>	<u>Annual</u>	<u>OBD</u> <u>Functional gas cap</u> <u>Tampering</u>	<u>C.4</u> <u>C.16</u> <u>C.17</u>
<u>1981 through 1995</u>	<u>8,500 pounds or less</u>	<u>Annual</u>	<u>Loaded test</u> <u>Functional gas cap</u> <u>Tampering</u>	<u>C.6</u> <u>C.16</u> <u>C.17</u>

<u>1975 through 1980</u>	<u>8,500 pounds or less</u>	<u>Annual</u>	<u>Idle test</u> <u>Functional gas cap</u> <u>Tampering</u>	<u>C.8</u> <u>C.16</u> <u>C.17</u>
<u>1975 or later</u>	<u>More than 8,500 pounds</u>	<u>Annual</u>	<u>Idle test</u> <u>Functional gas cap</u> <u>Tampering</u>	<u>C.8</u> <u>C.16</u> <u>C.17</u>
<u>1967 through 1974</u>	<u>Any</u>	<u>Annual</u>	<u>Idle test</u> <u>Functional gas cap</u>	<u>C.8</u> <u>C.16</u>

- i. Test procedures that apply after the Administrator approves this subsection (B)(2)(a)(i) into the applicable implementation plan:

<b>Area B Non-Diesel Testing Procedures After SIP Revision is Approved</b>					
<b><u>Model Year</u></b>	<b><u>GVWR</u></b>	<b><u>OBD Certified?</u></b>	<b><u>Test Frequency</u></b>	<b><u>Tests Applicable</u></b>	<b><u>Test Subsection</u></b>
<u>Any</u>	<u>Any</u>	<u>Yes</u>	<u>Biennial</u>	<u>OBD</u> <u>Functional gas cap</u> <u>Tampering</u>	<u>C.4</u> <u>C.16</u> <u>C.17</u>
<u>1981 or later</u>	<u>8,500 pounds or less</u>	<u>No</u>	<u>Annual</u>	<u>Loaded test</u> <u>Functional gas cap</u> <u>Tampering</u>	<u>C.6</u> <u>C.16</u> <u>C.17</u>
<u>1975 through 1980</u>	<u>8,500 pounds or less</u>	<u>No</u>	<u>Annual</u>	<u>Loaded Test</u> <u>Functional gas cap</u> <u>Tampering</u>	<u>C.6</u> <u>C.16</u> <u>C.17</u>
<u>1975 or later</u>	<u>More than 8,500 pounds</u>	<u>No</u>	<u>Annual</u>	<u>Idle test</u> <u>Functional gas cap</u> <u>Tampering</u>	<u>C.8</u> <u>C.16</u> <u>C.17</u>
<u>1967 through 1974</u>	<u>Any</u>	<u>No</u>	<u>Annual</u>	<u>Idle test</u> <u>Functional gas cap</u>	<u>C.9</u> <u>C.16</u>

4. Reconstructed non-diesel vehicles. Reconstructed non-diesel vehicles in both Area A and Area B are subject to the tests specified in the following table:

<b><u>Model Year</u></b>	<b><u>Test Frequency</u></b>	<b><u>Tests Applicable</u></b>	<b><u>Test Subsection</u></b>
<u>1967 or later</u>	<u>Annual</u>	<u>Loaded test</u> <u>Visual gas cap</u>	<u>C.6</u> <u>C.18</u>

5. Constant 4-wheel-drive vehicles. Constant 4-wheel-drive vehicles in both Area A and Area B that are not equipped with OBD are subject to the tests specified in the following table:

<b><u>Model Year</u></b>	<b><u>Test Frequency</u></b>	<b><u>Tests Applicable</u></b>	<b><u>Test Subsection</u></b>
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<u>1975 or later</u>	<u>Annual</u>	<u>Idle Test</u> <u>Functional gas cap</u> <u>Tampering</u>	<u>C.8</u> <u>C.16</u> <u>C.17</u>
<u>1967 through 1974</u>	<u>Annual</u>	<u>Idle Test</u> <u>Functional gas cap</u>	<u>C.8</u> <u>C.16</u>

6. Area A diesel. Diesel vehicles that require inspection in Area A are subject to the test procedures specified in this subsection until the Administrator approves subsection (B)(8) into the applicable implementation plan:

<b>Area A Diesel Testing Procedures Until SIP Revision is Approved</b>					
<u>GVWR</u>	<u>OBD Certified?</u>	<u>Model Year</u>	<u>Test Frequency</u>	<u>Tests Applicable</u>	<u>Test Subsection</u>
<u>8,500 and less</u>	<u>Yes</u>	<u>Any</u>	<u>Annual</u>	<u>OBD</u> <u>Tampering</u>	<u>C.4</u> <u>C.17</u>
<u>More than 8,500 pounds</u>	<u>No</u>	<u>1975 or later</u>	<u>Annual</u>	<u>Snap idle</u> <u>Tampering</u>	<u>C.10</u> <u>C.17</u>
<u>More than 8,500 pounds</u>	<u>No</u>	<u>1967 through 1974</u>	<u>Annual</u>	<u>Snap idle</u>	<u>C.10</u>
<u>More than 4,000 and less than or equal to 8,500 pounds</u>	<u>No</u>	<u>1975 or later</u>	<u>Annual</u>	<u>Loaded opacity B</u> <u>Tampering</u>	<u>C.12</u> <u>C.17</u>
<u>More than 4,000 and less than or equal to 8,500 pounds</u>	<u>No</u>	<u>1967 through 1974</u>	<u>Annual</u>	<u>Loaded opacity B</u>	<u>C.12</u>
<u>4,000 pounds or less</u>	<u>No</u>	<u>1975 or later</u>	<u>Annual</u>	<u>Loaded opacity C</u> <u>Tampering</u>	<u>C.13</u> <u>C.17</u>
<u>4,000 pounds or less</u>	<u>No</u>	<u>1967 through 1974</u>	<u>Annual</u>	<u>Loaded opacity C</u>	<u>C.13</u>

7. Area B Diesel. Diesel vehicles that require inspection in Area B are subject to the test procedures specified in this subsection until the Administrator approves subsection (B)(8) into the applicable implementation plan:

<b>Area B Diesel Testing Procedures Until SIP Revision is Approved</b>				
<u>GVWR</u>	<u>Model Year</u>	<u>Test Frequency</u>	<u>Tests Applicable</u>	<u>Test Subsection</u>
<u>More than 26,000 pounds</u>	<u>1975 or later</u>	<u>Annual</u>	<u>Loaded opacity A</u> <u>Tampering</u>	<u>C.12</u> <u>C.18</u>
<u>More than 26,000 pounds</u>	<u>1967 through 1974</u>	<u>Annual</u>	<u>Loaded opacity A</u>	<u>C.12</u>

<u>More than 10,500 and less than or equal to 26,000 pounds</u>	<u>1975 or later</u>	<u>Annual</u>	<u>Any of the following:</u> <u>Loaded opacity A</u> <u>Loaded opacity B</u> <u>Tampering</u>	<u>C.12</u> <u>C.13</u> <u>C.18</u>
<u>More than 10,500 and less than or equal to 26,000 pounds</u>	<u>1967 through 1974</u>	<u>Annual</u>	<u>Any of the following:</u> <u>Loaded opacity A</u> <u>Loaded opacity B</u>	<u>C.12</u> <u>C.13</u>
<u>More than 4,000 and less than or equal to 10,500</u>	<u>1975 or later</u>	<u>Annual</u>	<u>Loaded opacity B</u> <u>Tampering</u>	<u>C.13</u> <u>C.18</u>
<u>More than 4,000 and less than or equal to 10,500</u>	<u>1967 through 1974</u>	<u>Annual</u>	<u>Loaded opacity B</u>	<u>C.13</u>
<u>4,000 pounds or less</u>	<u>1975 or later</u>	<u>Annual</u>	<u>Loaded opacity C</u> <u>Tampering</u>	<u>C.14</u> <u>C.18</u>
<u>4,000 pounds or less</u>	<u>1967 through 1974</u>	<u>Annual</u>	<u>Loaded opacity C</u>	<u>C.14</u>

8. Test procedures that apply for diesel vehicles in both Area A and Area B after the Administrator approves this subsection (B)(8) into the applicable implementation plan:

<b>Area A and Area B Diesel Testing Procedures After SIP Revision is Approved</b>					
<b><u>GVWR</u></b>	<b><u>OBD Certified?</u></b>	<b><u>Model Year</u></b>	<b><u>Test Frequency</u></b>	<b><u>Tests Applicable</u></b>	<b><u>Test Subsection</u></b>
<u>Any</u>	<u>Yes</u>	<u>Any</u>	<u>Biennial</u>	<u>OBD</u> <u>Tampering</u>	<u>C.4</u> <u>C.17</u>
<u>More than 8,500 pounds</u>	<u>No</u>	<u>1975 or later</u>	<u>Annual</u>	<u>Snap idle</u> <u>Tampering</u>	<u>C.10</u> <u>C.17</u>
<u>More than 8,500 pounds</u>	<u>No</u>	<u>1967 through 1974</u>	<u>Annual</u>	<u>Snap idle</u>	<u>C.10</u>
<u>More than 4,000 and less than or equal to 8,500 pounds</u>	<u>No</u>	<u>1975 or later</u>	<u>Annual</u>	<u>Loaded opacity B</u> <u>Tampering</u>	<u>C.12</u> <u>C.17</u>
<u>More than 4,000 and less than or equal to 8,500 pounds</u>	<u>No</u>	<u>1967 through 1974</u>	<u>Annual</u>	<u>Loaded opacity B</u>	<u>C.12</u>
<u>4,000 pounds or less</u>	<u>No</u>	<u>1975 or later</u>	<u>Annual</u>	<u>Loaded opacity C</u> <u>Tampering</u>	<u>C.13</u> <u>C.17</u>
<u>4,000 pounds or less</u>	<u>No</u>	<u>1967 through 1974</u>	<u>Annual</u>	<u>Loaded opacity C</u>	<u>C.13</u>

9. Dealer Fleet Testing Procedures. The test procedures in the table in this section apply until the administrator approves sections (B)(2)(a)(i), (B)(3)(a)(i), and (B)(8) into the applicable implementation plan for used vehicles sold by a motor vehicle dealer who is a fleet

operator and who has been issued a permit pursuant to A.R.S. § 49-546. After those sections are approved into the applicable implementation plan, used vehicles sold by a motor vehicle dealer who is a fleet operator and who has been issued a permit pursuant to A.R.S. § 49-546 will be subject to the same testing procedures as vehicles tested at state stations and the table in this section will no longer be applicable.

<b>Area A and Area B Dealer Fleet Testing Procedures Until SIP Revision is Approved</b>			
<u>Model Year</u>	<u>Test Frequency</u>	<u>Tests Applicable</u>	<u>Test Subsection</u>
1981 or later	Annual	Two speed idle test Functional gas cap Tampering	C.6 C.16 C.17
1975 through 1980	Annual	Idle Test Functional gas cap Tampering	C.7 C.16 C.17
1967 through 1974	Annual	Idle Test Functional gas cap	C.8 C.16

C. Test Requirements

1. Conditions for Pass. A vehicle passes inspection if the vehicle:
  - a. Is subjected to all applicable tests required by Subsection (B);
  - b. Is not rejected from any of the tests for any of the reasons specified in (C)(2) or (C)(3) of this subsection; and
  - c. Does not fail any of the applicable tests for any of the reasons specified in this subsection.
2. Pre-Test Safety Inspection
  - a. The Department shall inspect each vehicle visually before the emissions test for any of the following unsafe or untestable conditions:
    - i. A fuel leak that causes wetness or pooling of fuel;
    - ii. A continuous engine or transmission oil leak onto the floor;
    - iii. A continuous engine coolant leak onto the floor such that the engine is overheating or may overheat within a short time;
    - iv. A tire on a driving wheel with less than 2/32-inch tread, metal protruberances, unmatched tire size, obviously low tire pressure as determined by visual inspection;
    - v. An exhaust pipe that does not allow for safe exhaust probe insertion;
    - vi. An exhaust pipe on a diesel-powered vehicle that does not allow for safe exhaust probe insertion and attachment of opacity meter sensor units;
    - vii. Improperly operating brakes;
    - viii. Any vehicle modification or mechanical condition that prevents dynamometer operation;
    - ix. Loud internal engine noise;
    - x. An obvious exhaust leak;
    - xi. Towing a trailer or carrying a heavy load;
    - xii. Carrying explosives or any hazardous material not used as a fuel for the vehicle; or
    - xiii. Any other condition that in the judgment of the inspector makes testing unsafe or the vehicle untestable.

- b. If the inspector determines that a vehicle is unsafe or otherwise untestable by the visual inspection the following shall apply:
    - i. The vehicle shall be rejected without an emissions test;
    - ii. The inspector shall notify the vehicle owner or operator of all untestable or unsafe conditions found;
    - iii. A state station shall not charge a fee; and
    - iv. A state station shall not test the vehicle until the cause for rejection is repaired.
3. Test Operating Conditions. When conducting the emissions test required by this Section, the vehicle emissions inspector shall ensure that all of the following requirements are satisfied:
- a. The vehicle shall be tested in the condition presented, unless rejected under 18-2-1006(C)(2);
  - b. The vehicle's engine shall be operating at normal temperature and not be overheating as indicated by a gauge, warning light, or boiling radiator; and
  - c. All vehicle accessories shall be turned off during testing.
4. OBD Test.
- a. Test Procedure. The OBD test shall consist of:
    - i. A visual inspection of the MIL function; and
    - ii. An electronic examination of the OBD computer by connecting a scan tool to the data link connector and interrogating the OBD system to determine vehicle readiness status, MIL status, and the presence of diagnostic trouble codes.
  - b. Equipment Specifications. The OBD equipment shall conform to the requirements of "Performing Onboard Diagnostic System Checks as Part of a Vehicle Inspection and Maintenance Program," EPA420-R-01-015, EPA, June 2001 (and no future editions or amendments), which is incorporated by reference. A copy of this incorporated material is on file with the Department, the Secretary of State, and is available online at <http://azdeq.gov/VECS/Rulemaking>.
  - c. OBD scan tools shall have the most recent available software downloaded and installed before inspection.
  - d. Test Rejection. A vehicle shall be rejected from an OBD test if any of the following conditions occurs:
    - i. The number of unset readiness indicators, excluding continuous indicators, is three or more for a model year 1996-2000 vehicle, or two or more for a model year 2001 and newer vehicle;
    - ii. The data link connector cannot be located or is inaccessible;
    - iii. The data link connector is loose and the scan tool cannot be inserted into the connector;
    - iv. The data link connector has no voltage; or
    - v. The eVIN and monitors are mismatched.
  - e. Test Failure. A vehicle fails the OBD test if any of the following conditions occurs:
    - i. The vehicle's MIL does not illuminate when the ignition is on and the engine is off;
    - ii. The vehicle's MIL illuminates continuously or flashes with the engine running;
    - iii. The OBD system is not communicating;
    - iv. The vehicle's OBD system reports the MIL as commanded on;
    - v. The vehicle's OBD system data is inappropriate for the vehicle being tested; or

- vi. The vehicle's OBD system data does not match the original equipment manufacturer (OEM) or a Department exempted OBD software configuration.
5. Transient Loaded and Evaporative System Pressure Test.
- a. Transient Loaded Test Procedure.
    - i. The transient loaded test shall consist of 147 seconds of mass emissions measurement using a constant volume sampler while the vehicle is driven by an inspector through a computer-monitored driving cycle on a dynamometer with inertial weight settings appropriate for the weight of the vehicle.
    - ii. The driving cycle shall include the acceleration, deceleration, and idle operating modes described in Table 4.
    - iii. The 147-second sequence may be ended earlier using a fast-pass or fast-fail algorithm.
    - iv. A retest algorithm shall be used to determine if a test failure is due to insufficient vehicle preconditioning. As determined by the retest algorithm, an additional test may be performed on a failing vehicle.
    - v. The highest selectable drive gear shall be used for automatic transmissions and first gear shall be used for manual transmission acceleration from idle.
    - vi. Exhaust emissions concentrations in grams per mile for HC, CO, NO<sub>x</sub> and CO<sub>2</sub> shall be recorded continuously beginning with the first second.
    - vii. All testing and test equipment for the transient loaded emissions test shall conform to "IM240 & Evap Technical Guidance," EPA420-R-00-007, EPA, April 2000, and no future editions or amendments, which is incorporated by reference, except that the transient driving cycle in Table 4, the standards in Table 4, and the fast-pass, fast-fail retest algorithms described in subsection (C)(5)(a) shall be used. A copy of the incorporated material is on file with the Department, the Secretary of State, and is available online at <http://azdeq.gov/VECS/Rulemaking>.
    - viii. In determining compliance under subsection (C)(5)(d) for a vehicle that operates on natural gas, HC emissions shall be multiplied by 0.19, when an analyzer with a flame ionization detector is used or 0.61, when an NDIR analyzer is used.
  - b. Evaporative System Pressure Test Procedure. The evaporative system pressure test shall consist of the following steps in sequence:
    - i. Connect the test equipment to either the fuel tank vent hose at the canister or the fuel tank filler neck;
    - ii. Pressurize the system to  $14 \pm 0.5$  inches of water without exceeding 26 inches of water system pressure; and
    - iii. Close off the pressure source, seal the evaporative system, and monitor pressure decay for two minutes unless a failure is detected or a fast-pass determination is made as defined in EPA420-R-00-007, which is incorporated by reference in subsection (C)(5)(a)(vii) of this rule.
  - c. Test Rejection. A vehicle shall be rejected from the transient loaded and evaporative system pressure test if it has an audible or visible exhaust leak during emissions testing, or if the vehicle displays unsafe behavior on the dynamometer during testing.
  - d. Transient Loaded Test Failure. A vehicle fails the transient loaded test if emissions measured during the test exceed the Table 3 standard applicable to the model year and type of the vehicle being tested as follows:

- i. The average emissions measured for the entire test exceed the “composite standard” for any pollutant; or
    - ii. The average emissions measured during seconds 65 through 146 exceed the “phase-2” standard for any pollutant.
  - e. Evaporative System Pressure Test Failure. A vehicle fails the evaporative system pressure test if any of the following conditions occurs:
    - i. The evaporative system cannot maintain a system pressure above eight inches of water for two minutes after being pressurized to  $14 \pm 0.5$  inches of water;
    - ii. The canister is missing or damaged; or
    - iii. The hose or electrical system is missing, routed incorrectly, or disconnected, according to the vehicle emissions control information label.
  - f. Test Failure. A vehicle fails the transient loaded and evaporative system pressure test if it fails the test under either subsection R10-2-1006(C)(5)(d) or R10-2-1006(C)(5)(e).
- 6. Loaded Test.
  - a. Loaded Cruise Test Procedure.
    - i. The vehicle’s drive wheels shall be placed on a dynamometer and the vehicle shall be operated according to the Table 1 of this Article.
  - b. Besides the Arizona specific dynamometer test schedule, loaded tests shall conform to the procedures listed at 40 CFR 51, Subpart S, Appendix B, Section III, amended as of July 1st, 2017, which is incorporated by reference and on file with the Department, the Secretary of State, and is available online at <http://azdeq.gov/VECS/Rulemaking>.
  - c. Loaded Test Equipment Specifications.
    - i. The equipment used in Area A state stations for loaded cruise and curb idle testing shall conform to “IM240 & Evap Technical Guidance,” EPA420-R-00-007, EPA, April 2000, and no future editions or amendments, which is incorporated by reference in subsection (C)(5)(a)(vii) of this rule.
    - ii. The equipment used in Area B state stations and all Arizona fleet emission testing stations for the loaded test shall comply with 40 CFR 51, Subpart S, Appendix A, Section I, amended as of July 1, 2017, which is incorporated by reference and on file with the Department, the Secretary of State, and is available online at <http://azdeq.gov/VECS/Rulemaking>.
  - d. In determining whether a vehicle that operates on natural gas complies with the HC emissions standards in Table 2 of this Article, the results of the test shall be multiplied by 0.19, when an analyzer with a flame ionization detector is used or 0.61, when an NDIR analyzer is used.
  - e. Test Rejection. A vehicle shall be rejected from a loaded cruise and curb idle test, if the CO<sub>2</sub> plus CO reading during the curb idle test is less than 6%.
  - f. Test Failure. A vehicle fails the loaded cruise and curb idle test if tailpipe emissions measured by the test exceed the applicable standards in Table 2 for loaded cruise mode or curb idle mode for the type and model year of the vehicle being tested.
- 7. Two Speed Idle Test
  - a. All two speed idle testing shall conform to the procedures listed at 40 CFR 51, Subpart S, Appendix B, Section II, amended as of July 1, 2017, and no future editions or amendments, which is incorporated by reference and on file with the Department, the Secretary of State, and is available online at <http://azdeq.gov/VECS/Rulemaking>.

- b. All equipment used for two speed idle testing shall conform with the requirements of 40 CFR 51, Subpart S, Appendix A, Section I, amended as of July 1, 2017, and no future editions or amendments, which is incorporated by reference and on file with the Department.
  - c. Test Failure. A vehicle fails the two speed idle test if tailpipe emissions measured by the test exceed the applicable standards in Table 2 for the type and model year of the vehicle being tested.
8. Idle Test
- a. All idle testing shall conform to the procedures listed at 40 CFR 51, Subpart S, Appendix B, Section I, amended as of July 1, 2017, and no future editions or amendments, which is incorporated by reference and on file with the Department, the Secretary of State, and is available online at <http://azdeq.gov/VECS/Rulemaking>.
  - b. All equipment used for two speed idle testing shall conform with the requirements of 40 CFR 51, Subpart S, Appendix B, Section I, amended as of July 1, 2017, and no future editions or amendments, which is incorporated by reference and on file with the Department.
  - c. Test Failure. A vehicle fails the idle test if tailpipe emissions measured by the test exceed the applicable standards in Table 2 for the type and model year of the vehicle being tested.
9. Exhaust Sampling Requirements for Annual Tests on Non-Diesel Vehicles.
- a. All CO and HC emissions analyzers shall have water traps incorporated in the sampling lines. Sampling probes shall be capable of taking undiluted exhaust samples from a vehicle exhaust system.
  - b. A vehicle, other than a diesel-powered vehicle, shall be inspected with a gas analyzer capable of determining concentrations of CO and HC within the ranges and tolerances specified in Table 5.
  - c. A vehicle with multiple exhaust pipes shall be inspected by collecting and averaging samples by one of the following methods:
    - i. Collecting separate samples from each exhaust pipe and use the average concentration to determine the test result;
    - ii. Using manifold exhaust probes to simultaneously sample approximately equal volumes from each exhaust pipe; or
    - iii. Using manifold exhaust pipe adapters to collect approximately equal volume samples from each exhaust pipe.
10. Snap Idle Test.
- a. Snap Idle Test Procedure.
    - i. The Department shall test the vehicle with a procedure that conforms to Society of Automotive Engineers Recommended Practice J1667, February 1996, incorporated by reference and on file with the Department, the Secretary of State and is available online at <http://azdeq.gov/VECS/Rulemaking>. This incorporation by reference contains no future editions or amendments.
    - ii. All testing and test equipment shall conform to the J1667 Recommended Practice.
    - iii. The procedure shall use the corrections for ambient test conditions in Appendix B of the J1667 Recommended Practice for all tests.
    - iv. To expedite testing throughput, the Department may implement rapid testing procedures.
    - v. The test results shall be reported as the percentage of smoke opacity.
  - b. Snap Idle Test Failure.

- i. Except as provided in subsection (C)(10)(c), a vehicle fails the snap idle test if the opacity of emissions exceeds the level specified in the following table:

<u>Model Year</u>	<u>Standard</u>
<u>1991 or later</u>	<u>40%</u>
<u>1990 or earlier</u>	<u>55%</u>

- ii. The engine model year is determined by the emission control label. If the emission control label is missing, illegible, or incorrect, the test standard shall be 40%, unless a correct, legible, emission control label replacement is attached to the vehicle within 30 days of the inspection.

- c. Alternative Opacity Standard. The Director shall identify an alternative, less stringent opacity standard for an engine family if the conditions of either subsection (C)(10)(c)(i) or (C)(10)(c)(ii) are satisfied.

- i. The engine family exhibits smoke opacity greater than the applicable standard in subsection (C)(10)(b)(i) when in good operating condition and adjusted to the manufacturer's specifications. If this condition is satisfied, the Director shall identify a technologically appropriate less stringent standard based on a review of data obtained from engines in good operating condition and adjusted to manufacturer's specifications.
- ii. The engine family has been granted an exemption from a standard equivalent to the applicable standard in subsection (C)(10)(b)(i) based on the J1667 Recommended Practice by the executive officer of the California Air Resources Board (CARB). If this condition is satisfied, the Director shall allow the engine family to comply with any technologically appropriate less stringent standard identified by the executive officer of CARB.
- iii. A demonstration under subsection (C)(10)(c)(i) shall be based on data from at least three vehicles. Data from official inspections under this subsection (C)(10) showing that vehicles in the engine family meet the standard may be used to rebut the demonstration.
- iv. The Director shall implement any new standard resulting from each exemption as soon as practicable for all subsequent tests and provide notice at all affected test stations and fleets.

11. Loaded Opacity A Test.

a. Test Procedure.

- i. The vehicle shall be tested on a chassis dynamometer beginning with no power absorption by selecting a gear ratio that produces a maximum vehicle speed of 30-35 MPH at governed or maximum rated RPM.
- ii. If the vehicle has a manual transmission or an automatic transmission with individual gear selection, the engine shall be operated at governed or maximum rated engine RPM, at normal operating temperature under a power absorption load applied to the dynamometer until the loading reduces the engine RPM to 80% of the governed speed at wide-open throttle position.
- iii. If the vehicle has an automatic transmission and automatic gear kick-down, the engine shall be loaded to a speed just above the kickdown speed or 80% of the governed speed, whichever is greater.

- iv. If the chassis dynamometer does not have enough horsepower absorption capability to lug the engine down to these speeds, the vehicle's brakes may be used to assist the dynamometer.
  - b. Test Failure. A vehicle fails the test if the opacity reading for a period of 10 consecutive seconds exceeds the applicable standard in R18-2-1030(B).
- 12. Loaded Opacity B Test.
  - a. Test Procedure. The vehicle shall be tested by a loaded dynamometer test by applying a single load of 30 HP, ± 2 HP, while operated at 50 MPH.
  - b. Test Failure. A vehicle fails the test if the opacity reading for a period of 10 consecutive seconds exceeds the applicable standard in R18-2-1030(B).
- 13. Loaded Opacity C Test.
  - a. Test Procedure. The vehicle shall be tested by a loaded dynamometer test by applying a single load of between 6.4 - 8.4 HP while operated at 30 MPH.
  - b. Test Failure. A vehicle fails the test if the opacity reading for a period of 10 consecutive seconds exceeds the applicable standard in R18-2-1030(B).
- 14. Exhaust Sampling Requirements for Diesel Vehicles Tests other than the Snap Idle Test.
  - a. For a diesel-powered vehicle equipped with multiple exhaust pipes, separate measurements shall be made on each exhaust pipe. The reading taken from the exhaust pipe that has the highest opacity reading shall be used for comparison with the standard in R18-2-1030(B).
  - b. A vehicle shall be inspected with either a full-flow or sampling-type opacity meter. The opacity meter shall be a direct reading, continuous reading light extinction-type using a collimated light source and photo-electric cell, accurate to a value within ± 2% of full scale.
- 15. Functional Gas Cap Test.
  - a. Test Procedure.
    - i. The vehicle shall undergo a functional test of the gas cap to determine cap leakage.
    - ii. A vehicle with a non-sealing gas cap shall be checked for the presence of a properly fitting gas cap.
  - b. Exemption. A vehicle with a vented fuel system is exempt from this subsection.
  - c. Exemption. A vehicle that is manufactured without a gas cap is exempt from this subsection.
  - d. Test Failure.
    - i. A vehicle fails the test if cap leakage exceeds 60 cubic centimeters of air per minute at a pressure of 30 inches of water gauge.
    - ii. Notwithstanding subsection 18-2-1006(C)(15)(d)(i), a vehicle does not fail the test if the failing cap is immediately replaced at the state station by a gas cap that satisfies the requirements of this subsection.
- 16. Tampering Inspection.
  - a. The inspection shall be based on the original configuration of the vehicle as manufactured. The Department shall verify the applicable emissions system requirements shall be verified by the "Vehicle Emission Control Information" label. "Original configuration" for a foreign manufactured vehicle means the design and construction of a vehicle produced by the manufacturer for original entry and sale in the United States.
  - b. The Department's tampering inspection shall consist of the following:
    - i. A visual inspection to determine the presence and proper installation of each required catalytic converter system or OEM equivalent;
    - ii. An examination to determine the presence of an operational injection system, if applicable;

- iii. A visual inspection to determine the presence of an operational positive crankcase ventilation system or closed crankcase ventilation system, if applicable; and
    - iv. A visual inspection to determine the presence of an operational evaporative control system, if applicable.
- 17. Visual Gas Cap Test.
  - a. The visual gas cap test consists of the inspector's ocular verification that a gas cap is properly fitted to the vehicle.
- 18. Testing Vehicles that Operate on More than One Fuel.
  - a. A vehicle, other than a vehicle for which an OBD test is required, designed to operate on more than one fuel, shall be tested on the fuel in use when the vehicle is presented for inspection, except vehicles that operate on alternative fuel, as defined in A.R.S. § 1-215.
- 19. Testing Vehicles that Operate on Alternative Fuels.
  - a. The inspector shall test vehicles that operate on an alternative fuel, as defined in A.R.S. § 1-215, other than a vehicle for which an OBD test is required, on each fuel that the vehicle is intended to operate on, using the appropriate emissions test procedure and standards for that vehicle.
  - b. The vehicle shall be operated for a minimum of 30 seconds after switching fuels and before testing begins. The vehicle shall be rejected for testing if it is not able to operate on each fuel that the vehicle is intended to operate on or if the vehicle operator cannot switch fuels.
  - c. A vehicle that operates exclusively on propane or natural gas, as defined in A.R.S. § 1-215, shall be exempt from the functional gas cap test in subsection 10-2-1006(C)(15) and the evaporative pressure system test in subsection 10-2-1006(C)(5)(b).

**R18-2-1007. Evidence of Meeting State Inspection Requirements**

- A. A ~~Vehicle~~ vehicle required to be inspected under this Article shall pass inspection before registration by meeting the requirements of R18-2-1006, unless the vehicle owner obtains a certificate of waiver ~~waived~~ under R18-2-1008.
- B. The MVD or its agent may use the MVD motor vehicles emissions database, if available, as evidence that a vehicle complies with the requirements of this Article.
- C. If the MVD motor vehicles emissions database is not available, the MVD or its agent shall accept any of the following documents identified in subsections (C)(1) to (C)(5), when complete, unaltered, and dated no more than 90 days before registration expiration date, as evidence that a vehicle complies with the requirements of this Article unless the MVD or its agent has reason to believe it is false. Documents accompanying a late registration may be dated subsequent to the registration expiration date:
  - 1. Certificate of compliance,
  - 2. Certificate of waiver (except from auto dealers licensed to sell used motor vehicles under Title 28),
  - 3. Certificate of exemption,
  - 4. Director's certificate, or
  - 5. The upper section of the vehicle inspection report with "PASS" in the final results block.
- D. A complete certificate of inspection or government vehicle certificate of inspection dated within 12 months of registration for an annually tested vehicle and 24 months for a biennially tested vehicle shall be accepted by the MVD or its agent as evidence that a vehicle is in compliance with the requirements of this Article unless the MVD or its agent has reason to believe it is false. A ~~certificate corrected according to R18-2-1019(F)(1)(a)~~ shall be accepted by the MVD or its agent.

- E. Documents listed in subsection (C) and originating in ~~area~~ Area B are not acceptable for meeting the inspection requirements in ~~area~~ Area A, unless the tests required in Area A and Area B for the vehicle under R18-2-1006 are identical.
- F. Government vehicles for which only weight fees are paid shall be registered without evidence of inspection.

**R18-2-1008. Procedure for Issuing Certificates of Waiver**

- A. ~~Unless prohibited under subsection (C), (D), or (E), a certificate of waiver inspector shall be issued subsequent to issue a certificate of waiver after reinspection by a state inspector at a state or Department station to a vehicle that failed the emissions inspection or the emissions and tampering inspections when it is determined by repair receipts, emissions test results, evidence of repairs performed, underhood verification, or similar evidence that the requirements of R18-2-1009 and R18-2-1010 have been met, or for emissions failures only, any further repairs within the repair cost limit would be ineffective. A waiver may be denied if a waiver request is based upon repair estimates and the state inspector demonstrates that a recognized repair facility can repair or improve the vehicle's test readings within the repair cost limit reinspection when the vehicle owner demonstrates any of the following conditions have been satisfied:~~
  - 1. The requirements of R18-2-1009 and R18-2-1010, to the extent applicable, have been satisfied;
  - 2. The vehicle owner has spent the maximum required repair cost on the maintenance and repair procedures required by R18-2-1010; or
  - 3. Any further repairs within the maximum required repair cost would not enable the vehicle to pass the required vehicle emissions inspection.
- B. The demonstration required by subsection (A) may consist of repair receipts, emissions test results, evidence of repairs performed, under hood verification, repair cost estimates, or similar evidence.
- ~~B.C.~~ A temporary certificate of waiver may be issued to a vehicle failing the tampering inspection if the vehicle owner provides to ~~the Director~~ a waiver inspector a written statement from an automobile parts or repair business that an emission control device necessary to repair the tampering is not available and cannot be obtained from any usual source of supply, and if all requirements of R18-2-1008(A) have been met. All written statements are subject to verification for authenticity and accuracy by the ~~Department~~ waiver inspector. The Department may deny a temporary certificate of waiver if the state inspector has any reason to believe the written statement is false or a usual source of supply exists and the device necessary to repair the tampering is available. Certificates of waiver for ~~tampered vehicles~~ may be issued under this subsection conditionally for a specified period, not to exceed 90 days, that allows sufficient time for the procurement and installation of a proper emissions control device. A receipt or bill from a vehicle repair facility or automobile parts store shall be an acceptable proof of purchase. Before the end of the specified time period, the vehicle owner shall present to the ~~Director~~ waiver inspector proof of purchase and installation of the device. The Department shall track all issued ~~conditional~~ temporary certificates of waiver and if no proof of purchase and installation is received before the end of the specified time period, the ~~Director~~ Department shall forward to the ~~Department of Motor Vehicles~~ MVD an order to cancel the vehicle's registration.
- ~~C.D.~~ The Director shall not issue a waiver to a vehicle that has failed the emissions test due to the catalytic converter system. A vehicle shall have failed the emissions test due to the catalytic converter system if:
  - 1. The converter's oxidation efficiency, as measured by the Catalyst Efficiency Test Procedure in R18-2-1031(A), is less than 75%; and The vehicle failed the emissions test due to the catalytic converter system. A vehicle fails the emissions test due to the catalytic converter system if:

- a. The vehicle has a catalytic converter system that is missing or defeated;
  - b. The vehicle is equipped with an on-board diagnostic computer (OBD) with a malfunction indicator light (MIL), "check engine" or "service engine soon" light commanded on by the computer and containing diagnostic trouble codes indicating the catalytic converter must be replaced.; or
  - c. A vehicle with a repair order or estimate paperwork provided the waiver technician at the time of waiver inspection shows that a diagnostic determination has been made by the mechanic that the catalytic converter must be replaced.
2. ~~No engine or fuel system malfunctions exist that would prevent the proper operation of a catalytic converter~~ The vehicle failed the emissions test with an HC, CO, NOx, or opacity emission level greater than two times the pass-fail standard in R18-2-1006.
  3. The same vehicle has previously received a certificate of waiver.
  4. The waiver request is based upon repair estimates and the waiver inspector demonstrates that a recognized repair facility can repair or improve the vehicle's test readings within the repair cost limit.
- D. ~~The Director shall not issue a waiver to a vehicle failing the emission test with an HC, CO, NOx, or opacity emission level greater than two times the pass fail standard in R18-2-1006, unless the vehicle is repaired so that each emission level is less than two times the pass fail standard.~~
- E. ~~After January 1, 1997, the Director shall not issue a certificate of waiver to the same vehicle more than once.~~
- F.E. The fee for a certificate of waiver under this Section shall be fixed by the Director according to A.R.S. § 49-543, and shall be based upon the Director's estimated costs to the state for administering and enforcing the provisions of this Article for issuance of certificates of waiver under this Section. The fee shall be payable ~~directly to the Department of Environmental Quality~~ at the time the certificate of waiver is issued.
- F. If a waiver inspector denies a certificate of waiver under this Section, the vehicle owner may request review of the denial by a state inspector.

#### **R18-2-1009. Tampering Repair Requirements**

- A. If ~~When~~ a vehicle fails the visual inspection for properly installed catalytic converters, the vehicle owner shall replace the converters ~~shall be replaced~~ with new or reconditioned OEM converters, or equivalent new aftermarket converters. ~~The Department shall provide names of acceptable aftermarket converters at the time of inspection on the repair requirement list.~~
- B. ~~If a vehicle fails the functional gas cap pressure test described in R18-2-1006(E)(7)(a) or (F)(7)(a), the gas cap shall be replaced with one that meets those specifications. If a vehicle designed with a vented system fails a visual inspection for the presence of a gas cap, a properly fitting gas cap shall be installed on the vehicle.~~
- C.B. If ~~When~~ a vehicle fails the visual inspection for the presence of an operational ~~air pump~~ air injection system, the vehicle owner shall install a new, used, or reconditioned, operational air pump ~~shall be properly installed~~ on the vehicle according to manufacturer specifications.
- D.C. If ~~When~~ a gasoline vehicle fails the visual inspection for the presence or malfunction of the positive crankcase ventilation system, the vehicle owner shall repair or replace the system ~~shall be repaired or replaced~~ with OEM or equivalent aftermarket parts.
- D. ~~When~~ a diesel-powered vehicle fails the visual inspection for the presence or malfunction of the closed crankcase ventilation system, the vehicle owner shall repair or replace the system with OEM or equivalent aftermarket parts.
- E. If ~~When~~ a vehicle fails the visual inspection for the presence or malfunction of the evaporative control system, the vehicle owner shall repair or replace the system ~~shall be repaired or replaced~~ with OEM or equivalent aftermarket parts.

**R18-2-1010. Low Emissions Tune-up, Emissions and Evaporative System Repair**

- A. ~~A low emissions tune-up on a nondiesel powered vehicle consists of the following procedures: Vehicle maintenance and repairs under subsection (B) and the failure-specific maintenance and repair requirements of subsection (C) must be performed before reinspection of a vehicle that fails a tailpipe emissions or OBD test under R18-2-1006.~~
- B. Vehicle maintenance and repairs on a non-diesel powered vehicle consists of the following procedures:
1. Emissions Failure Diagnosis. For a computer-controlled vehicle, the on-board-diagnostics ~~computer~~ shall be accessed and any stored trouble codes recorded. For a model year 1996 or newer vehicle equipped with an OBD system, a compatible scan tool shall be used to access and record diagnostic trouble codes. The following instruments or equipment are required to complete a low emissions tune-up:
    - a. Tachometer, although for 1996 and later vehicles an OBD scanner can be used to monitor engine RPMs;
    - b. Timing light A compatible OBD scan tool, if appropriate;
    - c. Engine analyzer or oscilloscope; and
    - d. A HC/CO NDIR analyzer to make final A/F adjustments, if specified by the manufacturer.
  2. Adjustment. All adjustments shall be made according to the manufacturer's specifications and procedures. Final adjustment shall be made on the vehicle engine only after the engine is at normal operating temperature.
  3. Inspection of Air Cleaner, Choke, and Air Intake System. The vehicle owner shall repair or replace a ~~A~~ dirty or plugged air cleaner, stuck choke, or restricted air intake system shall be replaced or repaired as required.
  4. Dwell and Basic Timing Check. Dwell and basic engine timing shall be checked and the vehicle owner shall make adjustments adjusted, if necessary, according to manufacturer's specifications.
  5. Inspection of PCV ~~Valve System~~. The PCV ~~valve system~~ shall be checked to ensure that it is the type recommended by the manufacturer and is correctly operating. Free flow through the PCV system passages and hoses shall be verified. The vehicle owner shall Repair repair or replace the system as required.
  6. Inspection of Vacuum Hoses. The vacuum hoses shall be inspected for leaks, obstruction, and proper routing and connection. The vehicle owner shall repair Repair or replace as required.
  7. ~~Perform a visual inspection for leaking fuel lines or system components. Repair or replace as required.~~ Fuel Lines and System Components Inspection. A visual inspection for leaking fuel lines or system components shall be performed. The vehicle owner shall repair or replace any leaking lines or systems as required.
  8. Idle Speed and A/F Mixture Check. The idle speed and A/F mixture shall be checked and the vehicle owner shall make adjustments adjusted according to manufacturer's specifications and procedures. If the vehicle is equipped with a fuel injection system or an alternate fuel (LPG or LNG), the manufacturer's recommended adjustment procedure shall be followed.
- B. ~~A vehicle that fails reinspection does not qualify for a waiver unless a low emissions tune-up and diagnosis is performed on the vehicle.~~
- C. Failure-specific recommended repairs and maintenance. If the maximum required repair cost in subsection (F) or (G) is not exceeded after ~~a low emissions tune-up~~ the diagnosis and vehicle maintenance and repairs described in subsection (A) (B), then the following procedures apply:
1. CO failure.
    - a. If a vehicle fails CO only, the vehicle shall be checked for:
      - i. Proper canister purge system operation,

- ii. High float setting,
    - iii. Leaky power valve, and
    - iv. Faulty or worn needles, seats, jets or improper jet size.
  - b. If applicable, the ~~following~~ vehicle shall ~~also~~ be checked for the following items:
    - i. Computer,
    - ii. Engine and computer sensors,
    - iii. Engine solenoids,
    - iv. Engine thermostats,
    - v. Engine switches,
    - vi. Coolant switches,
    - vii. Throttle body or port fuel injection system,
    - viii. Fuel injectors,
    - ix. Fuel line routing and integrity,
    - x. Air in fuel system including line and pump,
    - xi. Fuel return system,
    - xii. Injection pump,
    - xiii. Fuel injection timing,
    - xiv. Routing of vacuum hoses, and
    - xv. Electrical connections.
  - c. The items in subsections (C)(1)(a) and (b) shall be repaired or replaced as required.
- 2. HC, or HC and CO failure.
  - a. If a vehicle fails HC, or HC and CO emissions, the vehicle shall be checked for:
    - i. Faulty spark plugs and faulty, open, crossed, or disconnected plug wires;
    - ii. Distributor module;
    - iii. Vacuum hose routing and electrical connections;
    - iv. Distributor component malfunctions including vacuum advance;
    - v. Faulty points or condenser;
    - vi. Distributor cap crossfire;
    - vii. Catalytic converter efficiency air supply;
    - viii. Vacuum leaks at intake manifold, carburetor base gasket, EGR, and vacuum-operated components.
  - b. The vehicle owner shall repair or replace the items in subsection (C)(2)(a) ~~shall be repaired or replaced~~ as required.
- 3. NOx failure.
  - a. If a vehicle fails for NOx emissions, the vehicle shall be checked for:
    - i. Removed, plugged, or malfunctioning EGR valve, exhaust gas ports, lines, and passages;
    - ii. EGR valve electrical and vacuum control circuitry, components, and computer control, as applicable;
    - iii. Above normal engine operating temperature;
    - iv. Proper air management;
    - v. Lean A/F mixture;
    - vi. Catalytic converter efficiency; and
    - vii. Over-advanced off-idle timing.
  - b. The items in subsection (C)(3)(a) shall be repaired or replaced as required.
- 4. OBD failure. If the vehicle fails the OBD test, the vehicle owner shall be repaired for re- ~~pair~~ pair the items indicated on the ~~Vehicle Emissions Report~~ vehicle emissions report as causing the failure. If the failure results from ~~Diagnostic~~ diagnostic ~~Trouble~~ trouble ~~Codes~~ codes (DTCs) that caused the ~~Malfunction~~ malfunction ~~Indicator~~ indicator ~~Lamp~~ lamp (MIL) to be illuminated, the vehicle owner shall repair or replace the components or

systems causing the DTCs shall be repaired or replaced. After repair of a DTC failure, and before reinspection, the vehicle shall be operated under conditions recommended by the vehicle manufacturer for the OBD computer to evaluate the repaired system.

- D. For Evaporative System Failures, the following procedures apply:
1. If a vehicle fails the evaporative system pressure test, the vehicle shall be checked for leaking or disconnected vapor hoses, line, gas cap, and fuel tank.
  2. If a vehicle fails a visual inspection of the evaporative system, the vehicle shall be checked for a missing or damaged canister, canister electrical and vacuum control circuits and components, disconnected, damaged, misrouted or plugged hoses, and damaged or missing purge valves. ~~Repair or replace as necessary~~ The vehicle owner shall repair or replace the system with OEM or equivalent aftermarket parts.
- E. ~~If a vehicle fails the liquid fuel leak inspection, the vehicle shall be checked for leaking or disconnected fuel delivery, metering, or evaporation system components including those listed in R18-2-1006(E)(5)(b). Repair or replace as necessary~~ If a vehicle fails the functional gas cap pressure test described in R18-2-1006, the vehicle owner shall replace the gas cap with one that meets the requirements of that subsection. If a vehicle designed with a vented system fails a visual inspection for the presence of a gas cap, the vehicle owner shall install a properly fitting gas cap on the vehicle.
- F. The maximum required repair cost for a vehicle in ~~area~~ Area A, not including cost to repair the vehicle for failing an evaporative system pressure test due to tampering, or other tampering repair cost, is:
1. For a diesel-powered vehicle with a GVWR greater than 26,000 pounds or a diesel-powered vehicle with tandem axles: \$500; and
  2. For a vehicle that is not a diesel-powered vehicle with a GVWR greater than 26,000 pounds and is not a diesel-powered vehicle with tandem axles:
    - a. Manufactured in or before the 1974 model year: \$200;
    - b. Manufactured in the 1975 through 1979 model years: \$300; and
    - c. Manufactured in or after the 1980 model year: \$450.
  3. Subsection (F) does not prevent a vehicle owner from authorizing or performing more than the required repairs. A vehicle operator who has a vehicle reinspected shall have the repair receipts available when requesting a certificate of waiver.
- G. The maximum required repair cost for vehicles in ~~area~~ Area B, not including tampering repair cost, is:
1. For a diesel-powered vehicle with a GVWR greater than 26,000 pounds or a diesel-powered vehicle with tandem axles: \$300; and
  2. For a vehicle that is not a diesel-powered vehicle with a GVWR greater than 26,000 pounds and is not a diesel-powered vehicle with tandem axles:
    - a. Manufactured in or before the 1974 model year: \$50;
    - b. Manufactured in the 1975 through 1979 model years: \$200; and
    - c. Manufactured in or after the 1980 model year: \$300.
  3. Subsection (G) does not prevent a vehicle owner from authorizing or performing more than the required repairs. A vehicle operator who has a vehicle reinspected shall have the repair receipts available when requesting a certificate of waiver.
- H. ~~A low emissions tune-up on a diesel-powered vehicle consists of the following procedures~~ Before reinspection of a diesel vehicle that has failed an inspection, the vehicle owner shall comply with the following maintenance and repair requirements to the extent that the total cost of meeting the requirements does not exceed the maximum required repair cost in subsection (F) or (G):
1. Inspect for dirty or plugged air cleaner, or restricted air intake system. Repair or replace as required.
  2. Check fuel injection system timing according to manufacturer's specifications. Adjust as required.

3. Check for fuel injector fouling, leaking, or mismatch. Repair or replace as required.
  4. Check fuel pump and A/F ratio control according to manufacturer's specifications. Adjust as required.
  5. If the vehicle fails the J1667 procedure, check smoke-limiting devices, if any, including the aneroid valve and puff limiter. Repair or replace as required.
- I. The vehicle owner shall use Any any available warranty coverage for a vehicle shall be used to obtain needed repairs before an expenditure can be counted toward the cost limits in subsection (F) and (G). If the operator of a vehicle within the age and mileage coverage of section 207(b) of the Clean Air Act presents a written denial of warranty coverage from the manufacturer or authorized dealer, warranty coverage is not considered available under this subsection.

**R18-2-1011. Vehicle Inspection Report**

- A. The Department shall provide a A vehicle inspected at a state station ~~shall be provided with~~ a uniquely numbered vehicle inspection report of a design approved by the Director that contains, at a minimum, the following information, as applicable to the tests required for the vehicle under R18-2-1006:
1. License plate number;
  2. Vehicle identification number;
  3. Model year of vehicle;
  4. Make of vehicle;
  5. Style of vehicle;
  6. Type of fuel;
  7. Odometer reading ~~to the nearest 1000 miles, truncated;~~
  8. Emissions standards for idle and loaded cruise modes, if applicable;
  9. Emissions measurements during idle and loaded cruise modes, if applicable;
  10. Opacity measurements and standards, if applicable;
  11. Emissions standards and measurements for the transient loaded test, and the evaporative system pressure test, if applicable;
  12. Results of OBD test including all diagnostic trouble codes that commanded the illumination of the malfunction indicator lamp;
  13. Tampering inspection results;
  - ~~14. Liquid fuel leak inspection results;~~
  - ~~15.~~14. Repair requirements;
  - ~~16.~~15. Final test results;
  - ~~17.~~16. Repairs performed;
  - ~~18.~~17. Cost of emissions-related repairs;
  - ~~19.~~18. Cost of tampering-related repairs;
  - ~~20.~~19. Name, address, and telephone number of the business or person making repairs;
  - ~~21.~~20. Signature and certification number of person certifying repairs;
  - ~~22.~~21. Date of inspection;
  - ~~23.~~22. Test results of the previous inspection if the inspection is a reinspection;
  - ~~24.~~23. Inspection station, lane locators; and
  - ~~25.~~24. Test number and time of test.
- B. A vehicle failing the initial inspection shall receive the Department's approved an inspection report supplement ~~approved by the Department~~ containing, at a minimum, the following:
1. Diagnostic and tampering information including acceptable replacement units, and
  2. Applicable maximum repair costs.
- C. The inspection report shall provide include a ~~3-inch by 5-inch tear-out~~ section that may be used as a certificate of compliance for vehicles passing the inspection or as a certificate of waiver, if applicable. The section shall contain all of the following information:
1. License plate number,

2. Vehicle identification number,
  3. Final results,
  4. Serial number of the inspection report,
  5. Date of inspection,
  6. Model year,
  7. Make,
  8. Date of initial inspection, and
  9. Inspection fee, and
  10. Label as either a certificate of compliance or a certificate of waiver.
- ~~1. The tear out section shall be a certificate of compliance when the word "compliance" appears in the appropriate location on the printout.~~
  - ~~2. The tear out section shall be a certificate of waiver when the word "waiver" appears in the appropriate location on the printout.~~
  - ~~3. The tear out section shall contain all of the following information:
 
    - ~~a. License plate number,~~
    - ~~b. Vehicle identification number,~~
    - ~~c. Final results,~~
    - ~~d. Serial number of the inspection report,~~
    - ~~e. Date of inspection,~~
    - ~~f. Model year,~~
    - ~~g. Make,~~
    - ~~h. Date of initial inspection, and~~
    - ~~i. Inspection fee.~~~~

D. At the time of registration ~~or reregistration~~, the certificate of compliance or certificate of waiver may be submitted to the Arizona Department of Transportation Motor Vehicle Division as evidence of meeting the requirements of this Article.

**R18-2-1012. Inspection and Reinspections; Procedures and Fee**

- ~~A. A vehicle that is inspected by a state station must be accompanied by a document such as a registration renewal notice, registration, certificate of title, or bill of sale that identifies the vehicle by make, model year, identification number, and license plate if applicable.~~
- ~~B. If the vehicle inspection report from the previous test is used, it shall be retained by the test lane inspector.~~
- ~~C.A. The fees vehicle owners are required to pay for emissions inspections at a state station shall be specified in the contract between the contractor and the state of Arizona according to A.R.S. § 49-543, and shall include the full cost of the vehicle emissions inspection program including administration, implementation, and enforcement. Each fee is payable by the vehicle owner directly to the contractor at the time and place of inspection ~~in cash or by check approved by the contractor as specified in the contract, and deposited into an account established by the Department for administration of fees. The contractor will be compensated by the Department for services provided on a schedule and in a manner defined in the contract. The amount collected by the contractor to defray the cost of the inspection shall be retained by the contractor. The amount collected to defray the cost of the administration, implementation, and enforcement of the vehicle emissions inspection program shall be remitted to the Department. Amounts collected shall be recorded and reported to the Department monthly. The contractor shall submit to the state of Arizona on a monthly basis, by the 10th day of each month, a report showing the number of inspections performed and the amount of fees collected.~~~~
- ~~D. Each subsequent inspection, if needed, shall be treated by the state and the contractor in the same manner as an initial inspection and reinspection, providing for a free reinspection according to R18-2-1013, if needed, following a paid inspection. The fee for each paid reinspection shall be the full fee as provided for in the contract with the contractor.~~

- B. A vehicle failing the initial paid inspection or any subsequent paid inspection is entitled to one reinspection at no additional charge under the following conditions:
1. The vehicle is presented for inspection within 60 calendar days of the initial or any subsequent paid inspection.
  2. Emissions-related repairs or adjustments and any tampering repairs have been made.
  3. The vehicle is accompanied by the vehicle inspection report from the initial or subsequent inspection.
- C. A vehicle failing the reinspection shall be provided a vehicle inspection report and a vehicle inspection report supplement.
- E.D. A state station emissions inspector shall not recommend repairs or repair facilities.

**R18-2-1013. Reinspections Repealed**

- ~~A. A vehicle failing the initial inspection or any subsequent paid inspection is entitled to one reinspection at no additional charge under the following conditions:~~
- ~~1. The vehicle is presented for inspection within 60 calendar days of the initial or any subsequent paid inspection, if the vehicle operator presents the vehicle inspection report from the previous inspection, indicating the itemization of the repairs performed.~~
  - ~~2. Emissions related repairs or adjustments and any tampering repairs have been made.~~
  - ~~3. The vehicle is accompanied by the entire vehicle inspection report from the initial or subsequent inspection with the following information filled in on the reverse side:~~
    - ~~a. Emissions related and tampering related repairs made;~~
    - ~~b. Cost of emissions related and tampering related repairs as reflected by receipts or bills;~~
    - ~~c. Name, address, telephone number, and type of facility making repairs;~~
    - ~~d. Signature of person certifying the repairs;~~
    - ~~e. Date of repairs; and~~
    - ~~f. The state certification number of the technician making repairs, if applicable.~~
- ~~B. A vehicle shall be retested after repair for any portion of the inspection the vehicle failed on the previous test to determine if the repairs are effective. To the extent that repair to correct a previous failure could cause failure of another portion of the test, that portion shall also be retested. Evaporative system repairs shall trigger an exhaust emissions retest.~~
- ~~C. A vehicle failing the reinspection shall be provided a vehicle inspection report and a vehicle inspection report supplement.~~

**R18-2-1014. Repealed**

**R18-2-1015. Repealed**

**R18-2-1016. Licensing of Inspectors and Fleet Agents**

- A. The Department shall license a person as a vehicle emissions inspector if the applicant passes a practical and a written examination with a score equal to or greater than 80% in the following areas Emissions inspectors shall be licensed as follows:
- ~~1. For nondiesel powered fleet vehicle emissions inspectors:~~
    - ~~a. Equipment used in the inspection and the control of emissions;~~
    - ~~b. Types of emission inspection failures;~~
    - ~~c. Corrective procedures for excessive HC emissions;~~
    - ~~d. Corrective procedures for excessive CO emissions;~~
    - ~~e. Corrective procedures for excessive NOx emissions, for inspectors in area A;~~
    - ~~f. Proper fuel system adjustment procedures;~~

- g. — Computerized engine control systems; and
- h. — Regulations governing fleet stations;
- 2. — For diesel powered fleet vehicle emissions inspectors:
  - a. — Equipment used in the inspection and the control of opacity and emissions;
  - b. — Corrective procedures for excessive opacity;
  - c. — Proper fuel injection system adjustment procedures;
  - d. — Proper use of tools required by the vehicle manufacturer for field setting of fuel injectors, inlet and exhaust valve clearance, governors, and throttle controls;
  - e. — Computerized engine control systems; and
  - f. — Regulations governing fleet stations;
- 3. — For state station vehicle emission inspectors:
  - a. — Air pollution causes and effects;
  - b. — Purpose, function, and goals of the inspection program;
  - c. — State inspection regulations;
  - d. — Test procedures and rationale for their design;
  - e. — Emission control devices, configuration, and inspection;
  - f. — Test equipment operation, calibration, and maintenance;
  - g. — Proficiency in driving the transient test cycle in Table 4;
  - h. — Quality control procedures;
  - i. — Public relations; and
  - j. — Safety and health issues related to the inspection process.
- 4. — For the practical portion of the examination an applicant shall demonstrate the ability to conduct a proper emissions inspection, including proper use of equipment and procedures, to pass. If an inspector fails to demonstrate such ability in an audit, either covert or overt, the inspector's license shall be suspended. The suspended licensee shall demonstrate to the Department the skills required by this subsection within 30 days of suspension or such license shall be revoked.
- B. — ~~If an applicant for a nondiesel powered vehicle emissions inspector license fails the written examination, the applicant shall successfully complete the vehicle emissions inspector state training program before reexamination for licensure.~~
- C. — ~~Applications may be obtained from the Department. The application shall contain the following:~~
  - 1. — The type of license requested;
  - 2. — The applicant's name;
  - 3. — The applicant's home address;
  - 4. — The applicant's phone number;
  - 5. — The name of the applicant's employer;
  - 6. — The phone number of the applicant's employer;
  - 7. — The applicant's signature; and
  - 8. — The date of the license request.
- D. — ~~All completed applications shall be returned to the Department.~~
- E. — ~~Licenses issued to vehicle emissions inspectors shall be renewed annually on or before the expiration date. An inspector whose license has expired may not inspect vehicles.~~
- F. — ~~Applications for renewal of vehicle emissions fleet inspector's licenses shall be submitted within 30 days before the current license expiration date.~~
- G. — ~~The Department may suspend, revoke, or refuse to renew a license if the licensee has violated any provision of A.R.S. Title 49, Chapter 3, Article 5 or any provision of this Article or fails to continue to demonstrate proficiency to the Department as required in subsection (A).~~
- H. — ~~A vehicle emissions inspector shall notify the Department of any change in employment status, due to retirement, resignation or termination, within seven days of the change. The notification shall include the name and license number of the emissions inspector, a statement declaring the employment change, and the effective date of the employment change.~~

~~I. The Department shall assign a single, unique, nontransferable inspector's number to each vehicle emissions inspector.~~

1. To obtain a license as a vehicle emissions inspector, an applicant shall pass a written test with a score greater than or equal to 80%. After passing the written test, the applicant shall pass a separate practical examination.
  - a. Applications to become an emissions inspector may be obtained from the Department and an applicant must submit a completed application to the Department. The Department must deem an application administratively complete before an applicant will be allowed to sit for the written test. If the Department finds the application to be incomplete, the applicant shall be provided an opportunity to submit sufficient information to enable the Department to deem the application administratively complete.
  - b. The written test shall cover the following subjects:
    - i. The air pollution problem in Arizona, its causes and effects;
    - ii. The purpose, function, and goals of the vehicle inspection program;
    - iii. State vehicle inspection regulations and procedures;
    - iv. Technical details of the test procedures and rationale for their design;
    - v. Emission control device function, configuration, and inspection;
    - vi. Test equipment operation, calibration, and maintenance;
    - vii. Quality control procedures and their purpose;
    - viii. Public relations; and
    - ix. Safety and health issues related to the inspection process.
  - c. After passing the written test, the inspector applicant shall pass a practical exam where the applicant shall demonstrate the ability to conduct a proper emissions inspection, including proper use of equipment and procedures, in accordance with the testing procedures in R18-2-1006(C). An inspector applicant shall pass a practical examination for each type of test the applicant intends to perform.
2. Licenses issued to vehicle emissions inspectors shall be renewed biannually, on or before the expiration date.
3. An inspector whose license is expired or suspended shall not inspect vehicles.
4. A vehicle emissions inspector shall submit an application for a renewal of the vehicle emissions inspector's license at least 90 days before the current license expiration date.
5. The Department may suspend, revoke, or refuse to renew a license if the licensee has violated any provision of A.R.S. Title 49, Chapter 3, Article 5, any provision of this Article, or fails to continue to demonstrate proficiency to the Department.
6. A vehicle emissions inspector shall notify the Department of any change in employment status no later than fourteen days after the change.
7. The Department shall assign a single, unique, nontransferable inspector's number to each vehicle emissions inspector.
8. If a licensed emissions inspector fails to demonstrate the ability to conduct a proper vehicle emissions inspection during any audit, the Department shall suspend the vehicle emissions inspector's license. The suspended emissions inspector shall pass a practical examination within 30 days after suspension or the inspector's license shall be revoked. An inspector's license may be reinstated once the inspector passes a written examination with a score of 80% or greater and demonstrates the ability to properly conduct a vehicle emissions test during a practical examination.

B. Fleet Agents shall be licensed as follows:

1. To obtain a license as a fleet agent, an applicant shall pass a written test with a score greater than or equal to 80%. A fleet agent is an individual associated with a fleet emissions testing permit who is ultimately responsible for making sure a fleet complies with

the requirements of this Article. This license is separate and distinct from a fleet emissions inspector license.

- a. Applications to become a fleet agent may be obtained from the Department. An application must be administratively complete and submitted in the manner required by the Department before an applicant will be allowed to sit for the written test.
- b. The written test shall cover the following subjects:
  - i. The statutes and rules governing the operation and administration of a fleet emissions inspection station.
  - ii. The duties of a fleet agent.
  - iii. How to operate an account on the Department's web portal.
  - iv. Purchasing certificates of inspection.
2. If a licensed fleet agent fails to assure that the agent's fleet complies with this Article, the agent's license shall be suspended. The suspended agent shall pass a written test within 30 days of suspension or such license shall be revoked.
3. Licenses issued to fleet agents shall be renewed biannually, on or before the expiration date.
4. A fleet represented by an agent that has a suspended license may not inspect vehicles.
5. The Department may suspend, revoke, or refuse to renew a fleet agent's license if the licensee has violated any provision of A.R.S. Title 49, Chapter 3, Article 5, any provision of this Article, or fails to continue to demonstrate proficiency to the Department as required.
6. A fleet agent shall notify the Department of any change in employment status within seven days of the change.
7. The Department shall assign a single, unique, nontransferable agent's number to each fleet agent.

#### **R18-2-1017. Inspection of Government Vehicles**

- A. ~~Inspection of government~~ Government vehicles operated in areas Area A and Area B shall be ~~conducted~~ inspected as follows:
  1. At a licensed fleet station operated by the government entity;
  2. At a state station upon payment of the fee; or
  3. At a state station upon payment of the contracted fee, either singly or in combination with other government fleet operators.
- B. A government vehicle, except a federally owned vehicle that is excluded from the definition of motor vehicle under 40 CFR 85.1703, shall be inspected according to this Article and shall have a ~~Government Vehicle Certificate of Inspection~~ government vehicle certificate of inspection (GVCOI) affixed to the vehicle if in compliance with state ~~inspection~~ emissions requirements.
  1. ~~The vehicle emissions inspector performing the inspection shall punch out the appropriate year and month on the Government Vehicle Certificate of Inspection GVCOI to designate the date of the vehicle's next annual or biennial inspection. The vehicle emissions inspector, at the time of inspection, shall record the serial number of the Government Vehicle Certificate of Inspection on the vehicle inspection report. If the vehicle emissions inspection is performed at a fleet station, the emissions inspector, at the time of inspection, shall record the serial number in the block labeled "Certificate of Inspection No." on the "Fleet Vehicle Inspection Report/Monthly Summary." Each Government Vehicle Certificate of Inspection shall be used in serial number order. Presence of a current Government Vehicle Certificate of Inspection indicates a government vehicle has met the state of Arizona emissions inspection requirements.~~
  2. If the vehicle emissions inspection is performed at a fleet station, the emissions inspector shall record administratively complete results of the inspection into the Department's web

portal on the day of the inspection. The unique number on the GVCOI sticker must be entered along with the emissions testing results for the vehicle.

- 2.3. A government vehicle, with the exception of a motorcycle or an undercover law enforcement vehicle, shall have the ~~Government Vehicle Certificate of Inspection~~ GVCOI affixed to the lower left side of the rear window as determined from a position facing the window, from outside the vehicle. If a vehicle does not have a rear window, the ~~Government Vehicle Certificate of Inspection~~ GVCOI shall be affixed to the lower left corner of the windshield as determined from the driver's position.
3. ~~A government motorcycle shall have the Government Vehicle Certificate of Inspection affixed to the lower left hand corner of the windscreen as determined from the driver's position. If the Government Vehicle Certificate of Inspection cannot be affixed to the lower left hand corner of the windscreen, the Government Vehicle Certificate of Inspection may be affixed to a visible position on the front or left side of the left front fork of the motorcycle. The fork shall be determined from the driver's position.~~
- C. The ~~Government Vehicle Certificate of Inspection~~ GVCOI shall be purchased from the Department ~~in lots of 25~~ the Department's web portal.
1. The fee for a certificate of inspection shall be fixed by the Director according to A.R.S. § 49-543, and shall be based upon the Director's estimated costs to the state of administering and enforcing the provisions of this Article as they apply to issuance of certificates of inspections. ~~Payment for certificates shall be included with an application for certificates. Checks shall be made payable to the Department of Environmental Quality.~~
2. Only the Department may sell or otherwise transfer ~~certificates of inspection~~ GVCOI.
- D. ~~All Government Vehicle Certificates of Inspection shall be designed, issued, and administered to ensure compliance with this Article. The Department shall be the only source of supply for Government Vehicle Certificates of Inspection.~~
- E. ~~Government entity fleet stations shall inspect the fleet vehicles according to R18-2-1019 except that a government vehicle certificate of inspection shall only be used for government vehicles.~~
- F. ~~A government entity fleet station shall send a quarterly statement identifying vehicles and test results to the Department within 10 business days following the end of the quarter.~~

### **R18-2-1018. Certificate of Inspection**

- A. A fleet inspector shall submit and certify administratively complete certificates of inspection (COI) to the Department through the Department's web portal. A COI is used as evidence that the vehicle it is assigned to has passed the tests required by this Article and complies with the applicable state emissions standards for that vehicle. A fleet station other than a government entity fleet station shall use completed certificates of inspection as evidence that its vehicles meet the requirements of this Article unless inspection Inspection data is may be electronically transmitted to MVD under A.R.S. § 49-542(Q). If a fleet vehicle is inspected at a state station, the vehicle inspection report provided under R18-2-1011 shall be used.
- B. On the day a vehicle is inspected, a licensed vehicle emissions inspector shall enter an administratively complete record of the inspection into the Department's web portal. A certificate of inspection shall contain the following information:
1. ~~VIN;~~
  2. ~~Model year;~~
  3. ~~License number;~~
  4. ~~If applicable, a statement that the inspection meets area A requirements;~~
  5. ~~Owner of vehicle;~~
  6. ~~Date of expiration, according to R18-2-1019(F)(1)(b);~~
  7. ~~Fleet station permit number, and~~
  8. ~~Inspector's signature and license number.~~

- C. ~~A certificate of inspection issued to a fleet vehicle is transferable to an auctioneer licensed as a used motor vehicle dealer to sell the vehicle. The certificate of inspection is valid for a valid for a period not to exceed of 180 days after the transfer unless the vehicle is reregistered with a new owner, in which case the vehicle shall be inspected according to this Article before the reregistration.~~
- D. ~~A certificate of inspection, complete or incomplete, is not transferable except as provided in subsection (C) or except when submitted to MVD for the purpose of vehicle registration. The following individuals are authorized to purchase certificates of inspection as long as the fleet they are associated with meets the requirements of this article:~~
- ~~1. A fleet agent who is licensed by the Department under R18-2-1016;~~
  - ~~2. A responsible corporate officer; or~~
  - ~~3. A designated responsible officer.~~
- E. ~~Only a person who meets the requirements of R18-2-1019(D)(4) is authorized to purchase certificates of inspection, certificates of waiver, or Government Vehicle Certificates of Inspection.~~

### **R18-2-1019. Fleet Station Procedures and Permits**

- A. ~~The following requirements apply to issuance of fleet station permits:~~
- ~~1. ~~An owner or lessee of a fleet of 25 or more nonexempt vehicles whose place of business is located in area A or B may apply to the Director for a permit to establish a fleet station. A dealer's business inventory of vehicles held for resale, counted cumulatively over the previous 12 months at the time of application review by the Department shall be used to determine compliance with this subsection. A newly established dealer shall certify that it will comply with the 25 nonexempt vehicles requirement.~~~~
  - ~~2. ~~An application form for a fleet station permit shall be obtained from the Department. All completed applications shall be submitted to the Department. An application shall be considered administratively complete when:~~~~
    - ~~a. ~~The Department receives a completed application form and fleet agent designation form;~~~~
    - ~~b. ~~The applicant or designated employee successfully completes the fleet agent examination; and~~~~
    - ~~c. ~~The Department conducts a site inspection.~~~~
  - ~~3. ~~Before an application for a fleet station permit may be approved, a state inspector shall inspect the premises to determine compliance with subsections (B) and (C).~~~~
  - ~~4. ~~A fleet station permit shall not expire.~~~~
  - ~~5. ~~A fleet station permit shall only be applicable to the fleet's inspection facility located at the address shown on the fleet station permit. If a fleet owner or lessee requests a permit for inspection facilities at more than one address, the fleet owner or lessee shall apply for a permit for each facility.~~~~
  - ~~6. ~~A fleet station permit issued by the Director is non-transferable.~~~~
  - ~~7. ~~If the name or address of the permitted fleet facility changes and the name or address change does not involve a change of ownership, the permit shall be returned to the Department for cancellation and a new permit application shall be submitted. The Director shall cancel the returned permit and issue a new permit.~~~~
  - ~~8. ~~In the event of loss, destruction, or mutilation of the permit, the person to whom it was issued may obtain a duplicate upon furnishing satisfactory proof of loss, destruction, or mutilation. If a fleet owner or lessee obtains a duplicate permit and then finds the original, the fleet owner or lessee shall immediately surrender the original permit to the Department.~~~~
- B. ~~A fleet station permit applicant or fleet station permit holder, or its employees, shall own or lease the following equipment for testing and repair of a fleet vehicle, and maintain the equipment in good working condition:~~

1. ~~If the permit is for the inspection of a vehicle required to take an idle only, or an idle plus 2500 RPM unloaded test:~~
    - a. ~~An NDIR CO and HC emissions analyzer that complies with the requirements of R18-2-1006(F)(8) to conduct the emissions inspection;~~
    - b. ~~Pressure test equipment for the functional gas cap test that complies with the requirements of R18-2-1006(E)(7)(a); and~~
    - c. ~~An ignition-operated tachometer.~~
  2. ~~If the permit is for the inspection of a vehicle required to take a steady-state loaded test:~~
    - a. ~~An NDIR CO and HC emissions analyzer that complies with the requirements of R18-2-1006(F)(8) to conduct the emissions inspection;~~
    - b. ~~Pressure test equipment for the functional gas cap test that complies with the requirements of R18-2-1006(E)(7)(a);~~
    - c. ~~A dynamometer to operate the vehicle under load; and~~
    - d. ~~An ignition-operated tachometer.~~
  3. ~~If the permit is for the inspection of a vehicle required to take a transient loaded test:~~
    - a. ~~Equipment to perform a transient loaded emissions test as required in R18-2-1006(E)(2);~~
    - b. ~~Equipment to perform the evaporative system pressure test as required in R18-2-1006(E)(2)(b);~~
    - c. ~~Equipment to perform the maintenance and quality control requirements of R18-2-1006(E)(2) and "IM240 and Evap Technical Guidance;" and~~
    - d. ~~Pressure test equipment for the functional gas cap test that complies with the requirements of R18-2-1006(E)(7)(a).~~
  4. ~~If the permit is for the inspection of a vehicle required to take an OBD test:~~
    - a. ~~A scan tool used to perform the OBD test that complies with the Society of Automotive Engineers Recommended Practice J1979, September 1997, incorporated by reference and no future editions or amendments. A copy of this referenced material is on file with the Department and the Secretary of State and may be obtained at Society of Automotive Engineers, 400 Commonwealth Dr., Warrendale, PA 15096-0001; and~~
    - b. ~~Pressure test equipment for the functional gas cap test that complies with the requirements of R18-2-1006(E)(7)(a).~~
  5. ~~If the permit is for the inspection of a vehicle required to take a diesel test:~~
    - a. ~~Opacity meter: A meter used in area A shall comply with the requirements of R18-2-1006(H) for the applicable test procedure. A meter used in area B shall comply with the requirements of R18-2-1006(I)(6)(b); and~~
    - b. ~~A dynamometer for testing any light-duty diesel vehicle in area A or for testing any diesel vehicle in area B.~~
- C. ~~A fleet's inspection facility shall comply with the following requirements:~~
1. ~~The facility shall include space devoted principally to maintaining or repairing the fleet's motor vehicles. The space shall be large enough to conduct maintenance or repair of at least one fleet motor vehicle.~~
  2. ~~The facility shall be exclusively rented, leased, or owned by the permit applicant or permit holder.~~
- D. ~~A fleet owner or lessee shall employ the following personnel:~~
1. ~~If the facility is for the repair of nondiesel-powered vehicles, at least one person to perform tune-ups of engines and replacement or repair of fuel system and ignition components.~~
  2. ~~If the facility is for the repair of diesel-powered vehicles, at least one person to perform tune-ups and replacement or repair of diesel fuel systems in the vehicle fleet.~~

3. ~~A licensed vehicle emissions inspector who will perform the necessary inspections. This inspector may be the same person required by subsection (D)(1) or (2).~~
  4. ~~A fleet agent, who shall be in charge of the day to day operation of the fleet and who demonstrates proficiency by passing a Department administered examination annually, with a score equal to or greater than 80%, on the statutes and rules governing the operation and administration of a fleet emissions inspection station. The fleet owner or lessee shall designate the fleet agent on a form obtained from the Department.~~
- E. ~~Unless inspected at a state station, a vehicle owned by or leased to a holder of a fleet emissions inspection station permit shall be inspected according to R18-2-1006(D) through (J), except as follows:~~
1. ~~A dealer fleet vehicle in area A held for resale and an area B fleet vehicle, with a model year of 1981 or newer, and other than diesel powered, shall be required to take and pass both the curb idle test specified in R18-2-1006(F)(2)(b) and a 2,500 RPM unloaded fast idle test as follows:~~
    - a. ~~The vehicle's engine shall be operated at 2,500, ± 300 RPM, for no more than 30 seconds with the transmission in neutral.~~
    - b. ~~HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized or at the end of 30 seconds, whichever occurs first, and compared to the loaded cruise standards in Table 2. The curb idle test standards in Table 2 shall apply for the idle test.~~
  2. ~~A dealer fleet vehicle in area A held for resale, and an area B vehicle, with a model year of 1980 or older and other than diesel powered, shall be required to take and pass a curb idle test as specified in R18-2-1006(F)(1). The curb idle test standards in Table 2 shall apply.~~
  3. ~~A dealer fleet vehicle in area A held for resale with a model year of 1975 or newer and other than diesel powered, shall be required to take and pass a tampering inspection as specified in R18-2-1006(E)(7).~~
  4. ~~A dealer fleet vehicle in area B held for resale with a model year of 1975 or newer and other than diesel powered, shall be required to take and pass a tampering inspection as specified in R18-2-1006(F)(7).~~
  5. ~~A consignment vehicle shall be tested at a state inspection station according to R18-2-1005(A)(3).~~
- F. ~~The vehicle emissions inspector shall complete and process the forms for vehicle inspection as follows, except a government entity fleet shall issue and process each government vehicle certificate of inspection under R18-2-1017:~~
1. ~~A certificate of inspection shall be processed as follows:~~
    - a. ~~A certificate of inspection shall be completed and signed by the vehicle emissions inspector performing the inspection at the time the vehicle passes inspection. The vehicle emissions inspector who performed the inspection may correct a certificate by drawing a single line through the mistake, writing the correct information directly above the mistake, and initialing and dating the correction. Each certificate shall be issued in numerical order;~~
    - b. ~~For an inspection that does not include a biennial test, the expiration date shall be one year from the date the vehicle passes the mandatory vehicle emissions inspection. For a vehicle required to pass a biennial test, the expiration date shall be two years after the pass date;~~
    - c. ~~All copies of a certificate of inspection shall be legible;~~
    - d. ~~Unless inspection data is electronically transmitted under A.R.S. § 49-542(Q), the original completed certificate shall be presented to MVD for processing the vehicle's application for title and registration or the Arizona registration card.~~

- MVD may accept a signed certificate of inspection as evidence that the vehicle is a fleet inspected vehicle and meets the inspection requirements of this Article;
- e. The vehicle emissions inspector shall forward the second copy of each completed certificate of inspection, along with the second copy of the "Fleet Vehicle Inspection Report/Monthly Summary," to the Department monthly, not later than two weeks after the last day of the month in which the inspection is conducted;
  - f. The third copy of each completed certificate of inspection, along with the original "Fleet Vehicle Inspection Report/Monthly Summary," shall be retained for two years from the date of inspection;
  - g. Vehicle emissions certificates shall be purchased from the Department in lots of 25. Excess certificates may be returned to the Department for refund or may be used in subsequent years;
  - h. The fee for a certificate of inspection shall be fixed by the Director according to A.R.S. § 49-543, and shall be based upon the Director's estimated costs to the state of administering and enforcing the provisions of this Article as they apply to issuance of a certificate of inspection. Payment for certificates shall be included with an application for certificates. Checks shall be made payable to the Department of Environmental Quality.
  - i. Only the Department shall sell or otherwise transfer a certificate of inspection. This subsection does not apply to the submission of a certificate of inspection to MVD for the purpose of vehicle registration;
  - j. The fleet station owner shall be responsible for the security and accountability of the fleet's certificates and fleet vehicle emissions inspection records. Certificates and fleet vehicle emissions inspection records shall be maintained at the fleet station and shall be made available for review by a state inspector during normal business hours of the fleet station;
  - k. If any certificate is discovered lost or stolen, the fleet station owner shall notify the Department in writing within 24 hours, indicating the number of certificates lost or stolen and each serial number. The Department may revoke a fleet station permit for refusal or failure to report a lost or stolen certificate within 24 hours;
  - l. In the event of loss, destruction, or mutilation of an original completed certificate of inspection, a Director's certificate may be obtained from the Department by hand delivery of the following:
    - i. The second or third copy of the lost, destroyed, or mutilated certificate of inspection;
    - ii. The original of the "Fleet Vehicle Inspection Report/Monthly Summary;"
    - iii. A cover letter from the fleet agent explaining the situation that caused the loss, destruction, or mutilation of the original certificate of inspection; and
    - iv. Payment of a fee to cover the cost of issuance of the Director's certificate. The fee for a Director's certificate shall be fixed by the Director according to A.R.S. § 49-543, and shall be based upon the Director's estimated cost to the state of administering and enforcing the provisions of this Article as they apply to issuance of a Director's certificate. Checks shall be made payable to the Department of Environmental Quality; and
  - m. If an original certificate of inspection is voided by a fleet station, the original of the voided certificate shall be matched to the corresponding third copy of the certificate and retained at the fleet station for two years from the date of inspection.
2. The fleet agent or vehicle emissions inspector shall obtain the "Fleet Vehicle Inspection Report/Monthly Summary" form from the Department. The vehicle emissions inspector

performing the inspection shall record the following information on the form at the time of inspection:

- a. The VIN of the vehicle passing inspection;
  - b. The vehicle's license number, if applicable;
  - c. The HC content of the undiluted exhaust recorded at idle, if applicable;
  - d. The CO content of the undiluted exhaust recorded at idle, if applicable;
  - e. The HC content of the undiluted exhaust recorded at 2,500 rpm, if applicable;
  - f. The CO content of the undiluted exhaust recorded at 2,500 rpm, if applicable;
  - g. Results of a tampering check, if applicable;
  - h. Liquid fuel leak inspection results;
  - i. The vehicle model year;
  - j. The vehicle make;
  - k. The GVWR for a vehicle certified under federal truck standards;
  - l. The date of inspection;
  - m. The license number of the vehicle emissions inspector conducting the inspection;
  - n. The signature of the inspector making the entry;
  - o. The serial number of the certificate of inspection, recorded in numerical order;
  - p. For a vehicle required to take the transient loaded emissions test, the inspector shall record the total HC, CO, CO<sub>2</sub> and NO<sub>x</sub> measured in grams/mile, and the evaporative system pressure test result, if applicable;
  - q. The registration number of the registered analyzer or opacity meter used to perform the inspection;
  - r. For a light duty diesel vehicle, the inspector shall record opacity rather than undiluted HC and CO;
  - s. For a heavy duty diesel vehicle, instead of undiluted HC and CO:
    - i. The time of the inspection;
    - ii. The ambient temperature;
    - iii. The corrected barometric pressure;
    - iv. The relative humidity at the time of inspection;
    - v. The engine year and cubic inch or liter displacement;
    - vi. The GVWR;
    - vii. The diameter of the exhaust stack; and
    - viii. The corrected opacity reading.
  - t. For a vehicle required to take an OBD test, the inspector shall record the OBD results rather than HC, CO, and NO<sub>x</sub>.
3. A certificate of waiver may be issued by a fleet vehicle emissions inspector unless the fleet owner or lessee is an auto dealer licensed to sell used motor vehicles under A.R.S. Title 28. The certificate of waiver may be issued according to the following procedure if the requirements of R18-2-1008(A), R18-2-1009, and R18-2-1010 are met:
- a. A certificate of waiver shall be completed and signed by the vehicle emissions inspector performing the inspection after completion of a fleet inspection waiver report. The report shall be forwarded to the Department within three business days from the date of issuance of the certificate of waiver. A fleet inspection waiver report shall be provided by the Department with the purchase of each certificate of waiver. The report shall contain a description of the vehicle, test results, and repairs performed.
  - b. The expiration date of the certificate of waiver shall be two years from the date that the waiver is issued for a vehicle required to take the transient loaded emissions test, and one year for all other vehicles.
  - c. All information required on the certificate of waiver shall be legible.

- d. ~~The vehicle emissions inspector issuing the certificate of waiver shall initial all corrections.~~
  - e. ~~Only the vehicle emissions inspector performing the inspection may sign or initial a certificate of waiver.~~
  - f. ~~Unless inspection data is electronically transmitted under A.R.S. § 49-542(Q), the original completed certificate shall be presented to MVD for processing of either the vehicle's application for title and registration or the Arizona registration card. MVD may accept the signed certificate of waiver as evidence that the vehicle is a fleet inspected vehicle and meets the inspection requirements of this Article if the certificate is complete and the expiration date has not passed.~~
  - g. ~~The second copy of each completed certificate of waiver shall accompany the completed fleet inspection waiver report.~~
  - h. ~~The third copy of each completed certificate of waiver, along with a copy of the fleet inspection waiver report, shall be retained by the fleet station owner for two years from the date of inspection.~~
  - i. ~~The fee for a certificate of waiver shall be fixed by the Director according to A.R.S. § 49-543, and shall be based upon the Director's estimated cost to the state of administering and enforcing the provisions of this Article as they apply to issuance of a certificate of waiver. Payment for certificates shall be included with an application for certificates. Checks shall be made payable to the Department of Environmental Quality.~~
  - j. ~~Only the Department shall sell or otherwise transfer a certificate of waiver. This subsection does not apply to the submission of a certificate of waiver to MVD for the purpose of vehicle registration.~~
  - k. ~~The fleet station owner shall be responsible for the security and accountability of the fleet's certificates.~~
  - l. ~~If a certificate is discovered lost or stolen, the fleet station owner shall notify the Department in writing within 24 hours and indicate the number of certificates lost or stolen and each serial number. The Department may revoke a fleet station permit for refusal or failure to report a lost or stolen certificate within 24 hours of discovery.~~
  - m. ~~In the event of loss, destruction, or mutilation of an original completed certificate of waiver, a Director's certificate may be obtained from the Department by hand-delivery of the following:
    - i. ~~The second or third copy of the lost, destroyed, or mutilated certificate of waiver;~~
    - ii. ~~The original of the "Fleet Vehicle Inspection Report/Monthly Summary;"~~
    - iii. ~~A cover letter from the fleet agent explaining the situation that caused the loss, destruction, or mutilation of the original certificate of waiver; and~~
    - iv. ~~Payment of a fee to cover the cost of issuance of the Director's certificate. The fee for a Director's certificate shall be fixed by the Director according to A.R.S. § 49-543, and shall be based upon the Director's estimated cost to the state of administering and enforcing the provisions of this Article as they apply to issuance of a Director's certificate. Checks shall be made payable to the Department of Environmental Quality.~~~~
  - n. ~~In the event an original certificate of waiver is voided by a fleet station, the original of the voided certificate shall be matched to the corresponding third copy of the certificate and retained by the fleet for two years from the date of inspection.~~
4. ~~Upon request, a state inspector shall be allowed access to and shall be permitted to photograph, on or off the premises, any original "Fleet Vehicle Inspection Report/Monthly~~

~~Summary," the second copy of a certificate of inspection, and any other related documents.~~

- ~~G. The fleet shall comply with the following general operating requirements:~~
- ~~1. The fleet station permit and the licenses of all inspectors employed at the station shall be prominently displayed at the fleet's inspection facility.~~
  - ~~2. A fleet station shall only certify a vehicle owned by or leased to the holder of the fleet station permit.~~
  - ~~3. The inspection equipment shall be operated, calibrated, and maintained as follows:~~
    - ~~a. All test equipment and instrumentation shall be maintained in accurate working condition as required by the manufacturer. An instrument requiring periodic calibration shall be calibrated according to instructions and recommendations of the instrument or equipment manufacturer. An NDIR emissions analyzer shall be registered and calibrated according to R18 2 1027. Calibration records for each instrument, except an NDIR emissions analyzer, shall be maintained by the fleet station. The calibration records shall be signed and dated by the technician performing each calibration.~~
    - ~~b. The instrument calibration records shall be available for review by the Department.~~
    - ~~c. Working gases used by the fleet station shall be subject to analysis and comparison to the Department's standard gases at any time.~~
    - ~~d. Fleet station equipment shall be subject to both scheduled and unscheduled checks for accuracy and condition by the Department.~~
  - ~~4. A fleet emissions inspection station that is unable to test at least 25 vehicles according to R18 2 1006 and subsection (A) shall surrender its permit.~~
  - ~~5. A motor vehicle dealer with a fleet station permit shall comply with A.R.S. § 49-542.03.~~
  - ~~6. If a fleet station fails to meet any requirement of subsection (B), (C), or (D), it shall immediately cease operating as a fleet station until the requirement is met. If the fleet is cited for failure to have the necessary equipment under subsection (B), it shall not resume operation as a fleet emissions inspection station until compliance is verified by the Department.~~
  - ~~7. A fleet station shall notify the Department in writing within seven days of the end or start of employment of any vehicle emissions inspector. The written notification shall include the name and license number of the vehicle emissions inspector, a statement declaring the employment change, and the effective date of the employment change. A fleet station that does not employ a vehicle emissions inspector shall immediately cease operating as a fleet station and notify the Department immediately by telephone and within seven days in writing. All unused vehicle certificates of inspection shall be returned to the Department for a refund within seven days after operations cease.~~
  - ~~8. A fleet station that does not employ a fleet agent, as described in subsection (D)(4), shall immediately cease operating as a fleet station and shall notify the Department immediately by telephone and within seven days in writing. The written notification shall include the name and license number of the fleet agent, a statement declaring the employment change, and the effective date of the employment change. The fleet station may resume fleet station operation after the permit applicant or other designated employee takes and passes the examination required in subsection (D)(4), if the responsibility of the day-to-day operation of the fleet station and a fleet agent designation form has been filed with the Department.~~
- ~~H. A fleet's activities shall be governed by the following compliance and enforcement rules:~~
- ~~1. Subsections (B) through (G) apply at all times after the issuance of a fleet station permit. In addition, subsections (B), (C), and (D) apply before a permit can be issued or removed from suspension.~~

2. ~~The Director may suspend or revoke a fleet station permit according to A.R.S. § 49-546(F) and A.R.S. Title 41, Chapter 6, if the permittee, or any person employed by the permittee:
 
  - a. ~~Violates any provision of A.R.S. Title 49, Chapter 3, Article 5 or any provision of this Article;~~
  - b. ~~Misrepresents a material fact in obtaining a permit;~~
  - c. ~~Fails to make, keep, and submit to the Department records for a vehicle tested as a permittee; or~~
  - d. ~~Does not provide a state inspector access to the information required by this Article.~~~~
3. ~~If a fleet station permit is surrendered, suspended or revoked, all unused vehicle certificates of inspection shall be returned to the Department for a refund.~~
4. ~~A fleet vehicle is subject to inspection by a state inspector.~~
5. ~~Surrender of a permit under subsection (A)(8) or (G)(4) shall not prevent the Department from carrying out an investigative or disciplinary proceeding against the permit holder for a violation before surrender.~~

A. A fleet emissions testing station applicant or permittee shall create and manage an account on the Department's web portal.

B. To obtain a fleet emissions inspection station permit, an applicant shall:

1. Be a registered owner or lessee of a fleet of at least twenty-five nonexempt vehicles.
  - a. A motor vehicle dealer's business inventory of vehicles held for resale over the previous 12 months shall be used to determine compliance with this subsection.
  - b. A motor vehicle dealer with less than 12 months of operations that applies for a fleet emissions testing permit shall certify that it intends to test at least 25 vehicles per year.
2. Be located within Area A, within 50 miles of the border of Area A, or within Area B. A dealer outside these areas who certifies to the Department that customers who reside in Area A are the primary source of the dealer's business may also apply for a fleet permit.
3. Maintain a facility that has space devoted principally to maintaining or repairing the fleet's motor vehicles.
  - a. The space shall be large enough to conduct maintenance or repair of at least one motor vehicle.
  - b. Any fleet station shall be exclusively rented, leased, or owned by the applicant.
4. Own or lease the machinery, tools, and equipment required for the specific tests the applicant wishes to perform. Equipment and testing requirements are listed in R18-2-1006(C).
5. Employ the following personnel:
  - a. At least one (1) fleet agent licensed pursuant to R18-2-1016.
  - b. At least one (1) emissions inspector licensed pursuant to R18-2-1016.
  - c. At least one (1) person who is able to perform necessary emissions related repairs for fleet vehicles.
  - d. A single person may fill two or more of these roles for a fleet.
6. Provide data to the Department as required by this section.
7. Pass an initial inspection to determine compliance with this section.
8. Submit to the ongoing inspections and audits prescribed in this Article.

C. A fleet emissions inspection testing permittee shall continuously comply with all requirements of this Article.

D. The equipment used at a fleet emissions inspection station is subject to the following requirements:

1. A fleet emissions testing station applicant or permittee shall own or lease the equipment referenced in R18-2-1006 that is necessary for the specific type of testing that the permittee is licensed to perform.
  2. All testing equipment and instruments shall be maintained in accurate working condition as required by the manufacturer. An instrument requiring periodic calibration shall be calibrated according to instruction and recommendations of the instrument or equipment manufacturer. Calibration records shall be submitted through the web portal for review by the Department. The calibration records shall be certified by the technician performing each calibration.
    - a. Fleet station analyzers shall comply with, be calibrated, and be quality control checked according to 40 CFR 51, Subpart S, Appendix A, Section I, amended as of July 1, 2017, and no future editions or amendments, which is incorporated by reference in (C)(7)(b) and on file with the Department.
    - b. A fleet station opacity meter used for emission inspections is required to read the equivalent opacity value of neutral density filter within +/- 5% opacity at any point in the range of meter.
  3. Calibration gases used by the fleet station shall be subject to analysis and comparison to the Department's standard gases at any time.
  4. Fleet testing equipment shall be subject to both scheduled and unscheduled audits by state inspectors.
  5. A fleet's analyzer shall be calibrated at least monthly with calibration gases approved by the Department. A registered opacity meter shall be calibrated according to manufacturer's specifications before performing the first vehicle emissions inspection in any month.
- E. For every test performed by a vehicle emissions inspector, that vehicle emissions inspector shall log into the Department's web portal the same day that the inspection takes place to report the results of the test to the Department.
- F. A fleet's activities shall be governed by the following compliance and enforcement rules:
1. All requirements in this Article apply at all times after a fleet emissions testing license has been issued.
  2. The Director may suspend or revoke a fleet emissions testing license according to A.R.S. § 49-546(F) and A.R.S. Title 41, Chapter 6, if the permittee, or any person employed by the permittee:
    - a. Violates any provisions of A.R.S. Title 49, Chapter 3, Article 5 or any provision of this Article;
    - b. Misrepresents a material fact in obtaining a permit;
    - c. Fails to make, keep, and submit to the Department records for a vehicle tested; or
    - d. Does not provide a state inspector access to the information required in this Article.
  3. If a fleet emissions inspection permit is surrendered, suspended or revoked, all unused certificates of inspection shall be refunded.
  4. Any fleet vehicle is subject to inspection by a state inspector.
- G. A fleet emissions inspection station permit is non-transferable and does not expire.

**R18-2-1020. Licensing of Third Party Agents; Department Issuance of Issuing Alternative Fuel Certificates**

- ~~A. Licensing of Third Party Agents. The Department shall accept an application for a third party agent license to issue Alternative Fuel Certificates from any person who demonstrates all of the following:~~
- ~~1. The applicant has knowledge of all laws and rules governing the inspection of alternative fuel vehicles;~~
  - ~~2. The applicant has training or experience in inspecting alternative fuel vehicles; and~~

- ~~3. The applicant agrees to conduct inspections in accordance with the laws and rules for the inspection of alternative fuel vehicles.~~
- ~~B. A third party agent license is valid for a period of five years.~~
- ~~C. Issuing Alternative Fuel Certificates. The Department or its agent shall inspect a vehicle converted to run on alternative fuel and shall issue an Alternative Fuel Certificate alternative fuel certificate according to A.R.S. § 28-2416 A.R.S. § 28-2416(2)(b) if the vehicle is currently powered by an alternative fuel as defined in A.R.S. § 1-215(4).~~

**R18-2-1021. Reserved**

**R18-2-1022. Procedure for Waiving Inspections Due to Technical Difficulties**

A vehicle emissions station manager employed by an official emissions inspection station may issue a Director's certificate for a vehicle that cannot be inspected as required by this Article because of technical difficulties inherent in the manufacturer's design or construction of the vehicle.

**R18-2-1023. Certificate of Exemption for Out-of-State Vehicles**

- A. If a vehicle being registered ~~or reregistered~~ in area Area A or area Area B requires an emission test and will not be physically available for inspection within the state during the 90-day period before the emissions compliance expiration date, ~~and an emissions inspection is not available for that class of vehicle at an official inspection station in the area where the vehicle is located,~~ the owner or owner's agent may apply in writing submit an application to the Department for a certificate of exemption.
- B. The owner or owner's agent shall ~~complete the owner portion of the certificate of exemption form, and a law enforcement official shall complete the vehicle verification portion. The owner or owner's agent shall submit the completed form to the Department~~ apply for a certificate of exemption in the manner and form required by the Department.
- C. The Department ~~shall~~ may issue a certificate of exemption:
1. For a vehicle ~~that meets the requirements of subsection (A) as indicated by the form completed under subsection (B) that will not be located in the state during the 90-day period before the emissions compliance expiration date and is located in an area where emissions testing is not available. This exemption shall only be granted if an affidavit confirming the location of the vehicle is signed and submitted with the application.~~
  2. For a vehicle that has passed an official emissions inspection in another state during the 90 days before emissions compliance expiration upon submission of the inspection compliance document issued by the ~~government~~ entity conducting the inspection program.
- D. The fee for a certificate of exemption shall be fixed by the Director according to A.R.S. § 49-543 and shall be based upon the Director's estimated costs to the state of administering and enforcing the provisions of this Article as they apply to issuance of certificates of exemption. The payment for the certificates shall be included with the application for certificates. ~~Checks shall be made payable to the Department of Environmental Quality.~~

**R18-2-1024. Expired**

**R18-2-1025. Inspection of Contractor's Equipment and Personnel**

- A. ~~State stations shall be inspected by state inspectors as follows~~ State inspectors shall conduct performance audits to determine whether a state station is correctly performing all inspection and functions related to inspections as follows:
1. ~~In Area A:~~

- a. ~~Automated emission analyzers, calibrated and maintained according to “IM240 and Evap Technical Guidance,” shall be inspected using state station field calibration gases at least once every other month.~~
- b. ~~Opacity meters shall be inspected for accuracy using a neutral density filter at least once each month.~~
- c. ~~During audits, a check shall be made for equipment tampering, worn instrumentation, blocked filters, and other conditions that would impair accurate sampling.~~
- 2. ~~In Area B:~~
  - a. ~~Automated emission analyzers shall be inspected using state station field calibration gases at least two times each month.~~
  - b. ~~Opacity meters shall be inspected for accuracy using a neutral density filter at least two times each month.~~
  - c. ~~During audits, a check shall be made for tampering, worn instrumentation, blocked filters, and other conditions that would impair accurate sampling.~~
  - d. ~~Functional checks of dynamometer accuracy including roll speed and power absorption shall be performed at least quarterly.~~
- 1. Overt audits shall be completed at least two times each year for each inspection lane.  
Overt audits shall include:
  - a. A check for the observance of appropriate document security;
  - b. A check to see that required recordkeeping practices are being followed;
  - c. A check for licenses, certificates, and other required display information;
  - d. An observation and evaluation of each vehicle emissions inspector's ability to perform an inspection; and
  - e. A check to ensure all emissions testing equipment is calibrated and operating correctly.
- 2. If a vehicle emissions inspector fails an audit, the vehicle emissions inspector's license may be suspended or revoked under R18-2-1016(A)(4).
- 3. Vehicle emissions inspection records shall be reviewed at least monthly to assess station performance and identify any problems, potential fraud, or incompetence.
- 4. Covert audits may be performed as necessary to confirm compliance with this article.
- B. ~~Equipment used to perform a transient loaded emissions test, shall be audited at least twice a year for all of the following:~~
  - 1. ~~Constant volume sampler critical flow and calibration;~~
  - 2. ~~Optimization of the flame ionization detector fuel to air ratio using methane;~~
  - 3. ~~Proper dynamometer coast down, roll distance, and inertia weight;~~
  - 4. ~~Ability to detect background pollutant concentrations;~~
  - 5. ~~Evaporative pressure test system for accuracy, response time, and other criteria consistent with “IM240 and Evap Technical Guidance;” and~~
  - 6. ~~Functional gas cap analysis equipment.~~
- C.B. ~~If an equipment audit of an inspection lane in either area A or area B indicates that a state station analyzer is not operating within contractually specified tolerance, the state inspector shall immediately re-audit the failing equipment. If the equipment fails the second audit, the inspector shall immediately notify the station manager indicates that equipment is not calibrated and accurate, the equipment shall not be used to conduct emissions testing until it is replaced or repaired. The station manager shall either replace or repair the failing equipment or close the affected lane until the equipment is repaired and its accuracy verified. The state inspector shall provide a copy of the analyzer's failing results to the station manager.~~
- D.C. ~~A state station analyzer removed by the contractor may be returned to service upon its repair and written verification of a passing calibration audit. The contractor shall immediately notify the Department in writing of the analyzer's return to service. The contractor's calibration audit of the analyzer shall be provided to the Department within seven calendar days after the analyzer's re-~~

~~turn to service. Equipment that is removed from testing may be returned to service upon its repair and a state inspector's verification of a passing calibration audit.~~

- E. ~~State inspectors shall conduct performance audits to determine whether vehicle emissions inspectors are correctly performing all inspections and functions related to inspections as follows:~~
1. ~~Overt audits at least two times each year for each inspection lane:~~
    - a. ~~Check for proper document security;~~
    - b. ~~Check for required recordkeeping including vehicle emissions inspector licenses; and~~
    - c. ~~Observation and written evaluation of each vehicle emissions inspector's ability to perform an inspection.~~
  2. ~~State station and vehicle emissions inspector records shall be reviewed at least monthly to assess station performance and identify any problems, potential fraud, or incompetence.~~
  3. ~~If a vehicle emissions inspector fails an audit under subsection (E)(1) or (E)(2), the vehicle emissions inspector's license may be suspended or revoked according to R18-2-1016(A)(4).~~
- F. ~~D. A state inspector shall inspect On road on-road emissions analyzers shall be inspected by a state inspector at least monthly using dry gas analysis equipment.~~
- G. ~~If an equipment audit indicates that an on road emissions analyzer is not operating within contractually specified tolerance, the state inspector shall immediately re-audit the failing equipment. If the equipment fails the second audit, the inspector shall immediately notify the contractor and the contractor shall repair or replace the equipment according to subsections (C) and (D).~~

#### **R18-2-1026. Inspection of Fleet Stations**

- A. ~~Equipment used by fleet stations to perform emissions testing shall be inspected by state inspectors for accuracy as follows: meet the requirements for the type of testing a fleet station is licensed to perform.~~
1. ~~Emission analyzers shall be inspected using field calibration gases at least quarterly.~~
  2. ~~Opacity meters shall be inspected using a neutral density filter at least quarterly.~~
  3. ~~Equipment for transient loaded emissions tests shall be inspected according to R18-2-1025(A) and (B).~~
- B. A fleet station's emissions gas analyzer shall not be used for an official emissions inspection if:
1. ~~The state's field calibration gases are not read within the tolerances prescribed by subsection (J);~~ The calibration gases are not read within the following tolerances:
    - a. Within plus 0.50% CO to minus 0.25% CO in the range from 0 to 2% CO; and
    - b. Within plus 60 PPM HC to minus 30 PPM HC in the range from 0 to 500 PPM HC when read as N-HEXANE.
  2. ~~There is a leak in the sampling systems or the calibration port; or~~ The calibration gases are not read within the manufacturer specified tolerances;
  3. ~~The sample handling system is restricted.~~ There is a leak in the sampling systems or the calibration port; or
  4. The sample handling system is restricted.
- C. ~~The fleet emissions testing station is responsible for calibration of the fleet station emission analyzer shall acquire and utilize calibration gases with assigned HC and CO concentrations to calibrate fleet emission analyzers.~~
- D. ~~A state inspector may, at the inspector's discretion, allow a fleet station employee, or someone authorized by the fleet station, to calibrate the analyzer utilizing the state's field calibration gases shall fail a fleet emissions analyzer if the analyzer does not meet the requirements of this section. A fleet emission inspector shall not use the analyzer for inspection until the analyzer is cleared for return to service by a state inspector.~~
- E. ~~The Department shall assign HC and CO concentrations to a calibration gas submitted by a fleet station emission analyzer technician and purchased from a private source.~~

- ~~F. A state inspector shall tag a fleet station emission analyzer if the analyzer does not meet the requirements of this Section. The fleet vehicle emissions inspector shall not use the analyzer for inspection until the tag is removed by a state inspector or an analyzer repair person certified under R18-2-1028. The tag shall be in the form of a U.S. postcard and contain the information listed in R18-2-1027(E).~~
- ~~G. An analyzer tagged under subsection (F) shall not be returned to service until its accuracy is verified by a state inspector or an emissions analyzer repair person certified under R18-2-1028.~~
- ~~H. A fleet station is responsible for periodic maintenance and calibrations of its emissions analyzers. Repair and maintenance requirements are prescribed in R18-2-1019.~~
- ~~I. If a state inspector has approved its use, a fleet station may lease or borrow an emission analyzer for official inspections for up to six months while the station's approved analyzer is being repaired.~~
- ~~J. Fleet station analyzers used for transient loaded tests shall comply with and be quality control checked according to "IM240 and Evap Technical Guidance." All other fleet station emission analyzers used for emissions inspections are required to read the calibration gases within the following tolerances:~~
- ~~1. Within plus 0.50% CO to minus 0.25% CO in the range from 0 to 2% CO;~~
  - ~~2. Within plus 1.00% CO to minus 0.50% CO in the range from 2% to 10% CO;~~
  - ~~3. Within plus 60 PPM HC to minus 30 PPM HC in the range from 0 to 500 PPM HC when read as N-HEXANE; and~~
  - ~~4. Within plus 200 PPM HC to minus 100 PPM HC in the range from 500 to 2,000 PPM HC when read as N-HEXANE.~~
- ~~K. A fleet station opacity meter used for emission inspections is required to read the equivalent opacity value of neutral density filter within  $\pm 5\%$  opacity at any point in the range of the meter.~~
- ~~L. A state inspector shall conduct performance audits to determine whether a vehicle emissions inspector fleet emissions inspection station is correctly performing inspections and functions related to inspections as follows:~~
- ~~1. Overt audits at least two times each year for each facility that include:
 
    - ~~a. Check A check for the observance of proper appropriate document security;~~
    - ~~b. Check A check to see for that required recordkeeping including vehicle emissions inspector licenses; and practices are being followed;~~
    - ~~c. Observe and make a written evaluation of each vehicle emissions inspector's ability to perform an inspection. A check for licenses, certificates, and other required display information;~~
    - ~~d. An observation and evaluation of each vehicle emissions inspector's ability to perform an inspection; and~~
    - ~~e. A check to ensure all emissions testing equipment is calibrated and operating correctly.~~~~
  - ~~2. Fleet station and vehicle emissions inspector records shall be reviewed at least monthly to assess fleet performance and identify any problems, potential fraud, or incompetence.~~
  - ~~3. If a vehicle emissions inspector fails an audit, the vehicle emissions inspector's license may be suspended or revoked according to R18-2-1016(A)(4).~~
  - ~~4. Covert audits may be performed as necessary to confirm compliance with this article.~~

**R18-2-1027. Registration and Inspection of Emissions Analyzers and Opacity Meters Repealed**

- ~~A. An automotive repair facility may apply to the Department at no charge for registration of NDIR-HC and CO analyzers, and opacity meters. NDIR emission analyzers and opacity meters used by fleet inspection stations shall be registered for the fleet station permit approval. Application forms for analyzer or opacity meter registration are available from the Department. Completed application forms shall be submitted to the Department. For purposes of 18 A.A.C. 1, the application components for registration of an analyzer or opacity meter are:~~

1. ~~The Department receives a completed application form;~~
  2. ~~The applicant or employee successfully completes the "Certified Technician" examination described in R18-2-1028(A)(2); and~~
  3. ~~The Department inspects the analyzer.~~
- B. ~~A registered analyzer shall be calibrated at least monthly, by a certified technician, with calibration gases approved by the Department. A registered opacity meter shall be calibrated according to manufacturer's specifications before performing the first vehicle emissions inspection in any month.~~
- C. ~~A registered analyzer shall meet the requirements of R18-2-1006(F)(8)(a). Calibration shall be verified by a state inspector before the analyzer is registered. The analyzer shall read the value of the calibration gases within the following tolerances:~~
1. ~~Plus 0.50% CO to minus 0.25% CO in the range from 0 to 2% CO;~~
  2. ~~Plus 1.00% CO to minus 0.50% CO in the range from 2% to 10% CO;~~
  3. ~~Plus 60 PPM HC to minus 30 PPM HC in the range from 0 to 500 PPM HC when read as N-HEXANE; and~~
  4. ~~Plus 200 PPM HC to minus 100 PPM HC in the range from 500 to 2,000 PPM HC when read as N-HEXANE.~~
- D. ~~Each registered opacity meter and analyzer shall have a unique registration number assigned by the Department. The technician shall maintain a repair and calibration log for each registered opacity meter and analyzer on a form provided by the Department. The log shall be made available to a state inspector on request.~~
- E. ~~A state inspector shall tag a registered opacity meter or analyzer if the opacity meter or analyzer does not meet the requirements of this Section. A tagged opacity meter or analyzer shall not be used for the purposes of R18-2-1010 or R18-2-1019 until the tag is removed by a state inspector or an emission analyzer repair person certified under R18-2-1028 after accuracy is verified.~~
1. ~~The tag shall be in the form of a U.S. postcard and contain the following information:~~
    - a. ~~Analyzer registration number or opacity meter registration number;~~
    - b. ~~Brief statement that the analyzer does not meet state operating requirements for registered analyzers;~~
    - c. ~~Reason for tagging;~~
    - d. ~~Date the analyzer was tagged and the signature of state inspector issuing the tag;~~
    - e. ~~Details of repairs performed to correct the failure;~~
    - f. ~~CO and HC concentrations of calibration gases used to verify analyzer accuracy;~~
    - g. ~~Analyzer readings when gases were introduced into the analyzer sampling probe, and~~
    - h. ~~Repair person's certificate number and signature or signature of state inspector removing the tag and date accuracy is verified.~~
  2. ~~The tag shall be returned to the Department within two business days after accuracy is verified.~~
- F. ~~An owner of a registered emission analyzer or opacity meter shall notify the Department within seven business days of the retirement, resignation, or termination of any licensed vehicle emissions inspector or certified technician. The Department shall revoke the registration of an emission analyzer or opacity meter if the owner of the analyzer or meter does not employ an inspector licensed under R18-2-1019 or a technician certified under R18-2-1028.~~

**R18-2-1028. Certification of Users of Registered Analyzers and Analyzer Repair Persons Repealed**

- A. ~~A person may be certified to use a registered analyzer and opacity meter if:~~
1. ~~The person completes the application form and submits it to the Department; and~~
  2. ~~The person demonstrates proficiency by scoring 80% or higher on a Department-administered examination in the following areas:~~

- a. ~~Equipment used in the inspection and control of emissions;~~
  - b. ~~Types of emissions inspection failures;~~
  - c. ~~Correction procedures for excessive HC emissions;~~
  - d. ~~Correction procedures for excessive CO emissions;~~
  - e. ~~Proper carburetor adjustment procedures; and~~
  - f. ~~Diesel fuel injection systems.~~
- B. ~~Certification under subsection (A) shall be valid for one year from date of issue and may be renewed, under the conditions of subsection (A), by submitting a renewal application to the Department 30 days before the current certification expiration date.~~
- C. ~~A person certified under subsection (A) shall notify the Department within seven business days of the person's retirement, resignation, or termination from employment.~~
- D. ~~A person may be certified to repair and remove tags from an emission analyzer under R18-2-1027 if:~~
- 1. ~~Application is made to the Department;~~
  - 2. ~~The person demonstrates proficiency by scoring 80% or higher on a Department-administered examination in the following areas:~~
    - a. ~~State and federal regulations governing emissions analyzers;~~
    - b. ~~Fundamentals of emission analyzer operation, repair and preventive maintenance;~~
    - c. ~~Theory of operation of vehicle emissions control devices.~~
- E. ~~Certification under subsection (D) shall be valid for one year from date of issue and may be renewed, under the conditions of subsection (D), by submitting a renewal application to the Department 30 days before the current certification expiration date.~~
- F. ~~Each person certified under this Section shall receive a unique nontransferable certification number.~~
- G. ~~The Department may suspend, revoke or refuse to renew the certification issued under subsection (A) if:~~
- 1. ~~The person's actions demonstrate a lack of proficiency in the areas listed under subsection (A)(2); or~~
  - 2. ~~The person has willfully violated any provision of this Article.~~
- H. ~~The Department may suspend, revoke, or refuse to renew the certification issued under subsection (D) if:~~
- 1. ~~The person's actions demonstrate a lack of proficiency in the areas listed under subsection (D)(2); or~~
  - 2. ~~The person has willfully violated any provision of this Article.~~

**R18-2-1031. ~~Standards for Evaluating the Oxidation Efficiency of a Catalytic Converter~~ Repealed**

- A. ~~Except for a vehicle requiring an Idle Only Inspection, a gasoline-powered vehicle requiring a catalytic converter test under R18-2-1008(C) shall be tested using the following Catalyst Efficiency Test Procedure:~~
- 1. ~~Immediately after a vehicle completes an Inspection and Maintenance (I/M) test in the waiver lane, the exhaust sampling cone shall be removed from the tailpipe. The vehicle shall remain on the dynamometer with the engine idling and the transmission in neutral. The vehicle engine must be at normal operating temperature.~~
  - 2. ~~For the catalyst test, the dynamometer and the constant volume sampler shall remain at the settings used for the vehicle's I/M test.~~
  - 3. ~~The inspector shall insert the sampling tube for the A/F analyzer into the tailpipe of the vehicle.~~

4. ~~The inspector shall accelerate the vehicle to  $40 \pm 2.5$  MPH and maintain a steady state operating mode for the duration of the test. Once the vehicle obtains the test speed, the test shall begin.~~
  5. ~~Once the test begins, a two minute stabilization period shall take place, during which the inspector shall monitor the A/F analyzer to ensure that the A/F is 14.0 or greater. If the mean A/F is less than 14.0, the inspector shall abort the test.~~
  6. ~~If the A/F is 14.0 or greater, the exhaust sampling cone shall be repositioned for exhaust sampling.~~
  7. ~~After the stabilization period ends, the total hydrocarbon and methane concentrations and the A/F ratio shall be continuously recorded for two minutes.~~
  8. ~~At the end of the two minute sampling period, the inspector shall stop the vehicle, remove the exhaust sampling cone and the A/F analyzer sampling probe from the tailpipe, and remove the vehicle from the dynamometer.~~
  9. ~~The mean total hydrocarbon concentration shall be divided by the mean methane concentration for the recorded values of the test, to produce a ratio (R) of total hydrocarbon to methane. The ratio, R, shall be applied to the formula: Catalyst Efficiency (%) =  $3(R) \pm 100$ .~~
  10. ~~A vehicle passes the test if the Catalyst Efficiency (%) is 75% or greater.~~
  11. ~~The test result for a non passing vehicle with a mean A/F equal to, or less than, 14.3 shall be inconclusive.~~
  12. ~~A vehicle fails the Catalyst Efficiency Test Procedure if the A/F is greater than 14.3 and the Catalyst Efficiency (%) is less than 75%. The failing vehicle cannot be granted a waiver according to R18-2-1008(C)(1).~~
- B. ~~Analytical equipment required to perform the Catalyst Efficiency Test Procedure shall meet the following requirements:~~
1. ~~Analyzer Specifications:~~
    - a. ~~An analyzer shall meet performance specifications of 40 CFR 86 subparts B, D, and N with respect to accuracy, precision, drift, interference, and noise. 40 CFR, subparts B, D, and N, adopted as of July 1, 1998, are incorporated by reference and on file with the Department and the Secretary of State. This incorporation contains no future editions or amendments. A copy of this referenced material may be obtained from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington D.C. 20402-9328.~~
    - b. ~~Total hydrocarbon analysis shall be determined by a flame ionization detector. The analyzer shall be single range with a calibration curve covering at least 0 to 300 ppm carbon.~~
    - c. ~~Methane analysis shall be determined by a flame ionization detector equipped with a non-methane cutter capable of oxidizing 98% of the hydrocarbons (except methane) while more than 90% of the methane remains unchanged. The analyzer shall be single range with a calibration curve covering at least 0 to 30 ppm.~~
    - d. ~~Engine A/F mixture analysis shall be determined by a Universal Exhaust Gas Oxygen Sensor. The range shall be 8.0 to 25.5 A/F for gasoline with an accuracy of  $\pm 2\%$  of point and a response time of less than 150 milliseconds.~~
  2. ~~Analyzer Performance Verification and Calibration:~~
    - a. ~~The operator of an analyzer under this Section shall verify analyzer performance according to manufacturer recommendations.~~
    - b. ~~Upon initial installation, and monthly thereafter, the operator of an analyzer under this Section shall generate a 10 point calibration curve for each total hydrocarbon and methane analyzer. A gas divider employing equally spaced points may be used to generate the calibration curve.~~

- ~~i. Each calibration curve generated shall fit the data within  $\pm 2.0\%$  at each calibration point.~~
- ~~ii. Each calibration curve shall be verified for each analyzer with a confirming calibration standard between 15-80% of full scale that is not used for curve generation. Each confirming standard shall be measured by the curve within  $\pm 2.5\%$ .~~

**Appendix of Tables Applicable to Article 10**

**Table 1. Dynamometer Loading Table - Annual Tests**

Gross Vehicle Weight			
Rating (Pounds)	Engine Size	Speed (MPH)	Load (HP)
8500 or less	4 cyl. or less	22-25	2.8-4.1
8500 or less	5 or 6 cyl.	29-32	6.4-8.4
8500 or less	8 cyl. or more	32-35	8.4-10.8
8501 or more	All	37-40	12.7-15.8

**Table 2. Emissions Standards - Annual Tests**

**MAXIMUM ALLOWABLE**

**Motorcycles**

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
2-Stroke	All	All	18,000	5.00	18,000	5.00	N/A	N/A
4-Stroke	All	All	500	5.00	1,800	5.50	N/A	N/A

**Reconstructed Vehicles**

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
4-Stroke	1967-1980	All	700	5.25	1,200	7.50	1,200	5.60
4-Stroke	1980 & Newer	All	700	5.25	1,200	7.50	700	5.25

**Light-Duty Vehicles**

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
2-Stroke	All	All	18,000	5.00	18,000	5.00	18,000	5.00

4-Stroke	1967-1971	4 or less	450	3.75	500	5.50	500	4.20
4-Stroke	1967-1971	more than 4	380	3.00	450	5.00	450	3.75
4-Stroke	1972-1974	4 or less	380	3.50	400	5.50	400	4.20
4-Stroke	1972-1974	more than 4	300	3.00	400	5.00	400	3.75
4-Stroke	1975-1978	4 or less	120	1.00	250	2.20	250	1.65
4-Stroke	1975-1978	more than 4	120	1.00	250	2.00	250	1.50
4-Stroke	1979	4 or less	120	1.00	220	2.20	220	1.65
4-Stroke	1979	more than 4	120	1.00	220	2.00	220	1.50
4-Stroke	1980 & newer	All	100	0.50	220	1.20	220	1.20

Light-Duty Truck 1 (0-6000 lbs GVWR)

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
2-Stroke	All	All	18,000	5.00	18,000	5.00	18,000	5.00
4-Stroke	1967-1971	4 or less	450	3.75	500	5.50	500	4.20
4-Stroke	1967-1971	more than 4	380	3.00	450	5.00	450	3.75
4-Stroke	1972-1974	4 or less	380	3.50	400	5.50	400	4.20
4-Stroke	1972-1974	more than 4	300	3.00	400	5.00	400	3.75
4-Stroke	1975-1978	4 or less	120	1.00	250	2.20	250	1.65
4-Stroke	1975-1978	more than 4	120	1.00	250	2.00	250	1.50
4-Stroke	1979	4 or less	120	1.00	220	2.20	220	1.65
4-Stroke	1979	more than 4	120	1.00	220	2.00	220	1.50
4-Stroke	1980 & newer	All	100	0.50	220	1.20	220	1.20

Light-Duty Truck 2 (6001 - 8500 lbs GVWR)

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
2-Stroke	All	All	18,000	5.00	18,000	5.00	18,000	5.00
4-Stroke	1967-1971	4 or less	450	3.75	500	5.50	500	4.20
4-Stroke	1967-1971	more than 4	380	3.00	450	5.00	450	3.75
4-Stroke	1972-1974	4 or less	380	3.50	400	5.50	400	4.20

4-Stroke	1972-1974	more than 4	300	3.00	400	5.00	400	3.75
4-Stroke	1975-1978	All	300	3.00	350	4.00	350	3.00
4-Stroke	1979	4 or less	120	1.00	220	2.20	220	1.65
4-Stroke	1979	more than 4	120	1.00	220	2.00	220	1.50
4-Stroke	1980 & newer	All	100	0.50	220	1.20	220	1.20

Heavy-Duty Truck (8501 lbs or greater GVWR)

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
2-Stroke	All	All	18,000	5.00	18,000	5.00	18,000	5.00
4-Stroke	1967-1971	4 or less	450	3.75	500	5.50	500	4.20
4-Stroke	1967-1971	more than 4	380	3.00	450	5.00	450	3.75
4-Stroke	1972-1974	4 or less	380	3.50	400	5.50	400	4.20
4-Stroke	1972-1974	more than 4	300	3.00	400	5.00	400	3.75
4-Stroke	1975-1978	All	300	3.00	350	4.00	350	3.00
4-Stroke	1979 & newer	All	300	3.00	300	4.00	300	3.00

**Table 3. Emissions Standards - Transient Loaded Emissions Tests**  
FINAL STANDARDS (Standards are in grams per mile)

(i) Light Duty Vehicles

Model Years	Hydrocarbons		Carbon Monoxide		Oxides of Nitrogen	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1981-1982	3.0	2.5	25.0	21.8	3.5	3.4
1983-1985	2.4	2.0	20.0	17.3	3.5	3.4
1986-1989	1.6	1.4	15.0	12.8	2.5	2.4
1990-1993	1.0	0.8	12.0	10.1	2.5	2.4
1994+	0.8	0.7	12.0	10.1	2.0	1.9

(ii) Light Duty Trucks 1 (less than 6000 pounds GVWR)

Model Years	Hydrocarbons		Carbon Monoxide		Oxides of Nitrogen	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1981-1985	4.0	3.4	40.0	35.3	5.5	5.4
1986-1989	3.0	2.5	25.0	21.8	4.5	4.4

1990-1993	2.0	1.7	20.0	17.3	4.0	3.9
1994+	1.6	1.4	20.0	17.3	3.0	2.9

(iii) Light Duty Trucks 2 (greater than 6000 pounds GVWR)

Model Years	Hydrocarbons		Carbon Monoxide		Oxides of Nitrogen	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1981-1985	4.4	3.7	48.0	42.5	7.0	6.9
1986-1987	4.0	3.4	40.0	35.3	5.5	5.4
1988-1989	3.0	2.5	25.0	21.8	5.5	5.4
1990-1993	3.0	2.5	25.0	21.8	5.0	4.9
1994+	2.4	2.0	25.0	21.8	4.0	3.9

**Table 4. Transient Driving Cycle**

Time	Speed								
sec- ond	mph								
0	0	30	20.7	60	26	90	51.5	120	54.9
1	0	31	21.7	61	26	91	52.2	121	55.4
2	0	32	22.4	62	25.7	92	53.2	122	55.6
3	0	33	22.5	63	26.1	93	54.1	123	56
4	0	34	22.1	64	26.5	94	54.6	124	56
5	3.3	35	21.5	65	27.3	95	54.9	125	55.8
6	6.6	36	20.9	66	30.5	96	55	126	55.2
7	9.9	37	20.4	67	33.5	97	54.9	127	54.5
8	13.2	38	19.8	68	36.2	98	54.6	128	53.6
9	16.5	39	17	69	37.3	99	54.6	129	52.5
10	19.8	40	17.1	70	39.3	100	54.8	130	51.5
11	22.2	41	15.8	71	40.5	101	55.1	131	50.8
12	24.3	42	15.8	72	42.1	102	55.5	132	48
13	25.8	43	17.7	73	43.5	103	55.7	133	44.5
14	26.4	44	19.8	74	45.1	104	56.1	134	41
15	25.7	45	21.6	75	46	105	56.3	135	37.5
16	25.1	46	22.2	76	46.8	106	56.6	136	34
17	24.7	47	24.5	77	47.5	107	56.7	137	30.5
18	25.2	48	24.7	78	47.5	108	56.7	138	27
19	25.4	49	24.8	79	47.3	109	56.3	139	23.5
20	27.2	50	24.7	80	47.2	110	56	140	20
21	26.5	51	24.6	81	47.2	111	55	141	16.5
22	24	52	24.6	82	47.4	112	53.4	142	13
23	22.7	53	25.1	83	47.9	113	51.6	143	9.5
24	19.4	54	25.6	84	48.5	114	51.8	144	6
25	17.7	55	25.7	85	49.1	115	52.1	145	2.5
26	17.2	56	25.4	86	49.5	116	52.5	146	0
27	18.1	57	24.9	87	50	117	53		

28	18.6	58	25	88	50.6	118	53.5
29	20	59	25.4	89	51	119	54

**Table 5. Tolerances**

~~Range State Station Fleet Station~~

~~4 & 2 stroke vehicles:~~

~~CO in MOL percent 0 to 2.0%  0.1%  0.25%~~

~~2 to 10.0%  0.25%  0.5%~~

~~4-stroke vehicles:~~

~~HC as N hexane in PPM 0 to 500 PPM  15 PPM  30 PPM~~

~~500 to 2000 PPM  50 PPM  100 PPM~~

~~2-stroke vehicles:~~

~~HC as propane in PPM 0 to 25,000 PPM  1250 PPM  1250 PPM~~

	<u>Range</u>	<u>State Station</u>	<u>Fleet Station</u>
<u>4 &amp; 2 stroke vehicles:</u>			
<u>CO in MOL percent</u>	<u>0 to 2.0%</u>	<u>±0.1%</u>	<u>±0.25%</u>
	<u>2 to 10.0%</u>	<u>±0.25%</u>	<u>±0.5%</u>
<u>4-stroke vehicles:</u>			
<u>HC as N-hexane in PPM</u>	<u>0 to 500 PPM</u>	<u>±15 PPM</u>	<u>±30 PPM</u>
	<u>500 to 2000 PPM</u>	<u>±50 PPM</u>	<u>±100 PPM</u>
<u>2-stroke vehicles:</u>			
<u>HC as propane in PPM</u>	<u>0 to 25,000 PPM</u>	<u>±1250 PPM</u>	<u>±1250 PPM</u>

**Table 6. Repealed**

## Article 10 Rulemaking Responsiveness Summary

All comments/suggestions are reproduced in their original form. Only the column labeled “ADEQ Response” has copy written by the agency. Some minor formatting changes have been made to the originally submitted comments for the purpose of this summary, but they remain otherwise untouched.

### Comments from Gordon Darby Arizona Testing

NPRM or Rulemaking Reference	Specific Language Reference (From Gordon-Darby Arizona Testing)	GDAT's Questions/Comments/Suggestions	ADEQ RESPONSE
(5)(C)(2)	This rulemaking exempts brand new cars from emissions testing for 5 years, even if they are last model year's vehicle. Currently, if a 2017 model year vehicle is purchased in 2018, the vehicle will only receive a 4 year exemption.	ARS 49.542 (J.2.d) (d) New vehicles before the sixth registration year after initial purchase or lease. What in the MVD record will be used to code our software indicating if a vehicle is eligible for testing if not the MY?	MVD tracks initial registration date in its system, GDAT can use this identifier to determine if the vehicle is eligible for testing.
(5)(C)(3)	Exemption for Military Personnel on Out of State Active Duty...ADEQ will also be launching an online process to streamline out-of-state vehicle registration for all parties.	When does ADEQ plan on implementing this process? Can GDAT assist with it's development?	ADEQ has built the program for granting out of state exemptions in house. It launched in November. No assistance from GDAT is necessary.
(5)(C)(9)	This rulemaking will expand OBD testing in Arizona to include any vehicle that is OBDII certified by the EPA. Previously, OBD testing was not done for fleets and certain weight classes of vehicles in the state. Specifically, in 2005, OBD systems became mandatory for heavy-duty vehicles and engines up to 14,000 lbs GVWR. Then, in December 2008, EPA finalized OBD regulations for 2010 and later heavy-duty engines used in highway vehicles over 14,000 lbs GVWR and made changes to the OBD requirements for heavy-duty applications up to 14,000 lbs GVWR to align them with requirements for applications over 14,000 lbs GVWR.	When does ADEQ anticipate starting OBD testing on diesel vehicles described?+E11+E14	ADEQ would like to begin OBD testing for light-duty diesels as soon as possible. OBD testing for medium and heavy duty diesels would begin as soon as the new testing program has been approved by the EPA.
(5)(C)(9)(a)	This rulemaking will immediately prescribe OBD testing for diesel vehicles 8500 lbs or less in Area A.	Discuss what immediately means and likely timeframe when rulemaking will be finalized.	ADEQ expects any State Implementation Plan (SIP) revisions to be approved by the EPA by July, 2020.

(5)(C)(9)(a)	After the additional provisions of this rulemaking have been approved into the SIP by the EPA Administrator, diesel testing procedures between Area A and Area B will be standardized, and any diesel vehicle that is OBDII certified will receive an OBD test instead of opacity testing.	When does ADEQ expect EPA will approved revised SIP?	ADEQ expects any SIP revisions to be approved by the EPA by July, 2020.
(5)(C)(9)(b)	Government diesel vehicles will be allowed to receive OBD testing after the change. This change will affect the testing method for around 70,000 cars a year.	How are the 70K vehicles mentioned here currently inspected by Gov test facilities?	Many government entities take advantage of the ADEQ fleet program, which allows them to self-test their vehicles if they meet the statutorily defined permitting requirements.
(5)(C)(11)	Evolving technology has made it possible to review emissions testing results remotely in real time.	Please clarify?	ADEQ's new program for fleet emissions testing permits, called myDEQ, allows ADEQ to pull emissions testing results data from fleets immediately upon submission.
(5)(C)(11)(a)	Audit tables	Please discuss origin of numbers contained in audit tables.	The numbers in the audit tables reflect the amount of overt audits that ADEQ does on both the state and fleet stations in both Area A and Area B.
(5)(C)(12)	This rule change will eliminate the method in which ADEQ registers equipment to fleet emissions testing permits. Currently, emissions testing equipment is registered separately from a permit, and then linked to the permit itself.	Are fleets required to test gas caps?	Yes, all fleet vehicles must pass a gas cap test.
(5)(C)(13)(A)	Effect on Used Car Dealerships	Are Used Car Dealerships (and New) performing tampering inspections?	Yes, fleet vehicles must pass a tampering inspection.
(5)(C)(13)(B)	In Area A, this will save diesel vehicle owners \$34 every two years. In Area B, it will save diesel vehicle owners \$12.25 every two years.	Can ADEQ help GDAT understand how savings referenced was derived?	Currently, certain diesel owners pay \$28 a test. When they switch to OBD testing, they will pay \$17 dollars a test. Additionally, OBD testing clears the vehicle from required testing for two years, while the current method of testing diesel vehicles only clears the vehicle for 1 year.

	“Loaded cruise test” means an exhaust emissions test conducted on a chassis dynamometer under R18 2 1006(E)(1)(a) and (F)(2)(a) .	Some definitions, example - Loaded Cruise test were struck, and term(s) still used later on in the document. Would the e State want a list?	ADEQ has reviewed the document and ensured that standardized definitions of testing types are used throughout the document.
R18-2-1003(A)	The following vehicles shall be inspected according to this Article at a state station or a fleet station unless exempted by subsection (B) :	What is ADEQ's vision for struck language?	ADEQ has made a number of changes with the intention of making the rules easier to understand. Striking the language in this rule should help Arizonans to understand the vehicle emissions regulations.
R18-2-1005(A)(4)	For a vehicle registered outside area A and area B and used to commute to the driver’s principal place of work located in area Area A or area Area B, upon vehicle registration or reregistration; and annually thereafter .	How are commuters identified? Anything we can do to help identify them?	Commuters are identified by the MVD. There currently isn't a way to have Gordon-Darby assist in identifying commuters.
R18-2-1005(B)(4)	For a vehicle registered outside area Area A or Area B but used to commute to the driver’s principal place of work employment located in area Area A or Area B, up-on vehicle registration and biennially thereafter ;.	How are commuters identified? Anything we can do to help identify them?	Commuters are identified by the MVD, there currently isn't a way to have Gordon-Darby assist in identifying commuters.
R18-2-1006(B)(2)(a)(i)	OBD Certified?	Definition?	ADEQ appreciates GDAT's comment on this definition, and has modified the rules to ensure that OBD certified is defined as the EPA OBD certification.
R-18-2-1006(B)(2)(i)	Correction to table.	1967-1974 Shows test procedure C17 but believe ADEQ meant C16	ADEQ has reviewed and corrected the testing procedure applicable to these vehicles.
R-18-2-1006(B)(2)(b)	Correction to table.	Should loaded be C.6? In Chart under B.2c. There is no reference to <= 14,500 GVWR?	In the pre-SIP approval rules, these vehicles would receive a loaded test under the chart at R18-2-1006(a). After SIP approval, they will receive an OBD test under the same rule. The rules at (B)(2)(c) are targeted specifically at larger vehicles like buses and refuse trucks. Alt.Fuel vehicles in the 8,501 - 14,500 range will be covered by the original rule in R18-2-1006(a) or

			(a)(i) and subject to an OBD test.
R-18-2-1006(B)(3)(a)	Correction to table.	1996 or later - Table shows as Annual but these are biennial tests	ADEQ appreciates GDAT's comment on the length of certification, State law prescribes annual testing for all diesel vehicles until the contingent version of §49-542 has been approved into the SIP. In the interim, Arizonans who drive light duty diesels will be subject to an annual OBD test.
R-18-2-1006(B)(3)(a)(i)	Correction to table.	1967-1974 Shows test procedure C17 but believe ADEQ meant C16	ADEQ has reviewed and corrected the testing procedure applicable to these vehicles.
R18-2-1006(B)(3)(a)(i)	1975 through 1980, 8,500 pounds or less, Non-OBD Annual Test, Loaded test	Is this meant to be Idle or loaded test?	This is meant to be a loaded test as written in the rule.
R18-2-1006(B)(6)	Area A Diesel Testing Procedures Until SIP Revision is Approved, 8,500 and less, OBD Test.	Today we do not OBD test any diesel vehicles.	Yes, as mentioned in the preamble, these rule changes will mandate OBD testing for light duty diesel vehicles upon the effective date.
R18-2-1006(B)(7)	Area B Diesel Testing Procedures Until SIP Revision is Approved, More than 26,000 pounds, Loaded opacity A	Today we perform Snap Idle testing of vehicle in over of 26,000 GVWR.	A.R.S. §49-542(F)(1)(a) mandates that diesel vehicles receive a loaded test in Area B. After these rules have been approved in to the SIP, Snap Idle testing of super heavy duty diesel vehicles will be enabled in Area B.
R-18-2-1006(B)(9)	Dealer Fleet Testing Procedures. The test procedures in the table in this section ap-ply until the administrator approves sections (B)(2)(a)(i), (B)(3)(a)(i), and (B)(8) into the applicable implementation plan for used vehicles sold by a motor vehicle dealer who is a fleet operator and who has been issued a permit pursuant to §49-546. After those sections are approved into the	Can ADEQ confirm that this means vehicles that used to be tested at Fleets that require an IM147 or loaded idle will not be required to be tested at a VEIP station unless the Fleet has test equipment to provide the applicable test?	ADEQ confirms that this means that vehicles in the 1981-1996 MY range that receive an emissions test at a fleet emissions testing station in Area A must receive an IM147 test.

	applicable implementation plan, used vehicles sold by a motor vehicle dealer who is a fleet operator and who has been issued a permit pursuant to §49-546 will be subject to the same testing procedures as vehicles tested at state stations and the table in this section will no longer be applicable .		
R18-2-1006(C)(4)(d)	Test Rejection. A vehicle shall be rejected from an OBD test if any of the following conditions occurs: ii. The data link connector cannot be located or is inaccessible; iv. The OBD is not communicating; v. The data link connector has no voltage; or vi. The eVIN and monitors are mismatched.	Today we fail for these reasons. Some of these items are failures to combat OBD defeat devices that exhibit some of the conditions listed. Do we want to reject for these reasons indicated?	ADEQ has revisited its pass/fail/reject criteria as a result of this comment and made the decision to count communication errors as a failure instead of a rejection.
R18-2-1006(C)(8)(b)	Idle Test: b. All equipment used for two speed idle testing shall conform with the requirements of 40 CFR 51, Subpart S, Appendix A, Section I, amended as of July 1, 2017, and no future editions or amendments, which is incorporated by reference and on file with the Department.	Should this be 40 CFR 51, Subpart S, Appendix B II?	The correct citation in the Code of Federal Regulations for the idle test is 40 CFR 51, Subpart S, Appendix B, Section 1
R18-2-1006(C)(10)(c)	Snap Idle Test: c. Alternative Opacity Standard. The Director shall identify an alternative, less stringent opacity standard for an engine family if the conditions of either subsection (C)(10)(c)(i) or (C)(10)(c)(ii) are satisfied. i. The engine family exhibits smoke opacity greater than the applicable standard in subsection (C)(10)(b)(i) when in good operating condition and adjusted to the manufacturer's specifications. If this condition is satisfied, the Director shall identify a technologically appropriate less stringent standard based on a review of data obtained from engines in good operating condition and adjusted to manufacturer's specifications. ii. The engine family has been granted an exemption from a standard equivalent to the applicable standard in subsection (C)(10)(b)(i) based on the J1667 Recommended Practice by the executive officer of the California Air Resources Board (CARB). If	How do you envision implementation?	ADEQ has no plans for implementing an alternative opacity standard, but has made the decision to leave this part of the rules intact.

	<p>this condition is satisfied, the Director shall allow the engine family to comply with any technologically appropriate less stringent standard identified by the executive officer of CARB.</p>		
R18-2-1006(C)(11)(i-iv)	<p>Loaded Opacity A Test.</p> <p>a. Test Procedure.</p> <p>i. The vehicle shall be tested on a chassis dynamometer beginning with no power absorption by selecting a gear ratio that produces a maximum vehicle speed of 30-35 MPH at governed or maximum rated RPM.</p> <p>ii. If the vehicle has a manual transmission or an automatic transmission with individual gear selection, the engine shall be operated at governed or maximum rated engine RPM, at normal operating temperature under a power absorption load applied to the dynamometer until the loading reduces the engine RPM to 80% of the governed speed at wide-open throttle position.</p> <p>iii. If the vehicle has an automatic transmission and automatic gear kick-down, the engine shall be loaded to a speed just above the kickdown speed or 80% of the governed speed, whichever is greater.</p> <p>iv. If the chassis dynamometer does not have enough horsepower absorption capability to lug the engine down to these speeds, the vehicle's brakes may be used to assist the dynamometer.</p>	<p>We believe this is referring to Lug down diesel testing once performed in Pima. This test is no longer performed in Pima.</p>	<p>Changes to testing procedures must be approved by the EPA before being implemented. ADEQ will follow up to ensure compliance with Clean Air Act obligations.</p>
R18-2-1006(C)(14)(b)	<p>b. A vehicle shall be inspected with either a full-flow or sampling-type opacity meter. The opacity meter shall be a direct reading, continuous reading light extinction type using a collimated light source and photoelectric cell, accurate to a value within <math>\pm 5\%</math> of filter value.</p>	<p>Should this say +/- 2% full scale?</p>	<p>ADEQ followed up with the contractor to ensure use of enforceable standards for auditing opacity meters. After review, ADEQ has decided to adopt the opacity standards suggested by the contractor in this comment.</p>

R18-2-1006(C)(15)(a)	15. Functional Gas Cap Test. a. Test Procedure. i. The vehicle shall undergo a functional test of the gas cap to determine cap leakage. ii. A vehicle with a non-sealing gas cap shall be checked for the presence of a properly fitting gas cap.	No mention of CITS testability rates. Was this omitted or listed somewhere else?	CITS testability rates are more appropriately dealt with in the contract between ADEQ and the station contractor than in rule.
R18-2-1006(C)(15)	15. Functional Gas Cap Test:	Should cap less vehicles be mentioned?	ADEQ has exempted cap less vehicles from having to undergo a functional gas cap test in the NFRM. Thank you for this comment.
R18-2-1010	Low Emissions Tune-up: If a vehicle fails a visual inspection of the evaporative system, the vehicle shall be checked for a missing or damaged canister, canister electrical and vacuum control circuits and components, disconnected, damaged, misrouted or plugged hoses, and damaged or missing purge valves.	The word checked is crossed out. Was that intended to be removed?	ADEQ did not intend to remove the word "checked." That edit was part of another edit that was removed. This has been corrected in the NFRM.
R18-2-1011(A)	Vehicle Inspection Report A. The Department shall provide a A vehicle inspected at a state station shall be provided a uniquely numbered vehicle inspection report ...	Currently we are providing a vehicle and inspection authority code which is encrypted for MVD. This is old language used when we were preprinting VIR's with serial numbers.	The inspection authority code meets ADEQ's requirement that each inspection report is unique and traceable.
R18-2-1011(A)(24)	24. Test number...	What are you referring to regarding "Test Number"? (Test Sequence number?)	The inspection authority code meets ADEQ's requirement that each inspection report is unique and traceable.
R18-2-1011(C)(1 & 4)	C. The inspection report shall provide include a 3-inch by 5-inch tear-out section that may be used as a certificate of compliance for vehicles passing the inspection or as a certificate of waiver, if applicable. The section shall contain all of the following information: 1. License plate, 4. Serial number of the inspection report .	MVD Authority Code as indicated in row #55.	The inspection authority code meets ADEQ's requirement that each inspection report is unique and traceable.

Summary(C)(9)	Emissions testing using the on-board diagnostic system or OBD testing is a quick, efficient, and effective way to conduct an emissions test. Nearly all 1996 and later vehicles have an internal computer which continuously monitors the engine, transmission, and other emissions control systems. The OBD test is, in effect, an “early warning system” that alerts the driver or vehicle owner about the need for repairs that can reduce air pollution and ensure that your vehicle keeps running as cleanly as it was designed to run. To do an OBD inspection, the inspector connects a communication cable from the emissions testing equipment to the vehicle’s diagnostic link connector (DLC). Through the cable, the emissions testing equipment will request specific communication protocols from the vehicle, allowing the testing equipment to verify whether or not the vehicle’s emissions control system is in compliance.	Should highlighted word in red be owner?	Yes. This correction has been made in the NFRM.
R18-2-1016(8) R18-2-1025(A)(2)	If a licensed emissions inspector fails to demonstrate the ability to conduct a proper vehicle emissions inspection during any audit, the Department shall suspend the vehicle emissions inspector’s license. R18-2-1025 A. 2. says inspector may get suspended.	Please clarify? Does this apply to fleet inspectors?	Yes, this section applies to fleet inspectors. If a fleet inspector fails an audit, then the Department shall suspend them. If a state station inspector fails an audit, the department may suspend them.
R18-2-1025(C)	Inspection of Contractor’s Equipment and Personnel: Equipment that is removed from testing may be returned to service upon its repair and a state inspector's verification of a passing calibration audit .	Please clarify differences from today's practices.	ADEQ does not envision operational changes as a result of this change in language.
R18-2-1031	CAT Efficiency testing	When does ADEQ envision this change taking place?	Once the rule changes are finalized, ADEQ will work with the contractor on an implementation schedule for all regulatory changes.
Table 2	Indicates motorcycle standards.	We no longer test motorcycles. Was this entered by mistake?	Although ADEQ does not currently enforce these standards, the agency believes it is good guidance for motorcycle

			owners who want to make sure their vehicles are running clean.
Table 2	Vehicle Engine Type Model Year 4-Stroke 1967-1980 4-Stroke 1980 & Newer	Should the model year be as follows: Vehicle Engine Type Vehicle Model Year 4-Stroke 1967-1980 4-Stroke 1981 & Newer	ADEQ recognizes that this standard is confusing considering in that 1980 vehicles generally receive a different test than 1981 vehicles, but the 1981 and later vehicles that receive must meet the standards in Table 3.

**Comments from GDAT regarding failure vs. rejection during onboard diagnostic testing**

GDAT Comment	ADEQ Response
<p><u>Original Verbiage:</u></p> <p><u>Test Rejection. A vehicle shall be rejected from an OBD test if any of the following conditions occurs:</u></p> <ul style="list-style-type: none"> <li>i. <u>The number of unset readiness indicators, excluding continuous indicators, is three or more for a model year 1996-2000 vehicle, or two or more for a model year 2001 and newer vehicle;</u></li> <li>ii. <u>The data link connector cannot be located or is inaccessible;</u></li> <li>iii. <u>The data link connector is loose, and the scan tool cannot be inserted into the connector;</u></li> <li>iv. <u>The OBD is not communicating;</u></li> <li>v. <u>The data link connector has no voltage; or</u></li> <li>vi. <u>The eVIN and monitors are mismatched.</u></li> </ul> <p><u>Test Failure. A vehicle fails the OBD test if any of the following conditions occurs:</u></p> <ul style="list-style-type: none"> <li>i. <u>The vehicle’s MIL does not illuminate when the ignition is on and the engine is off;</u></li> <li>ii. <u>The vehicle’s MIL illuminates continuously or flashes with the engine running;</u></li> <li>iii. <u>The vehicle’s OBD system reports the MIL as commanded on;</u></li> <li>iv. <u>The vehicle’s OBD system data is inappropriate for the vehicle being tested; or</u></li> <li>v. <u>The vehicle’s OBD system data does not match the original equipment manufacturer (OEM) or an ADEQ exempted OBD software configuration.</u></li> </ul> <p><u>Suggested Changes:</u></p> <p><u>Test Rejection. A vehicle shall be rejected from an OBD test if any of the following conditions occurs:</u></p> <ul style="list-style-type: none"> <li>i. <u>The number of unset readiness indicators, excluding</u></li> </ul>	<p>ADEQ appreciates the contractors comment on this important matter. As a result of conversations with the contractor, ADEQ has decided to include OBD communication errors in the “failure” section instead of “rejection” section. This will ensure that Arizona meets federal requirements for OBD testing.</p>

<p><u>continuous indicators, is three or more for a model year 1996-2000 vehicle, or two or more for a model year 2001 and newer vehicle; (Excluding those vehicles listed in EPA Document “OB D Testability Issues, June 2012”, as authorized by Trevor Baggio re.)</u></p> <p>ii. <u>The data link connector is loose, and the scan tool cannot be inserted into the connector;</u></p> <p><u>Test Failure. A vehicle fails the OBD test if any of the following conditions occurs:</u></p> <p>i. <u>The vehicle’s MIL does not illuminate when the ignition is on and the engine is off;</u></p> <p>ii. <u>The vehicle’s MIL illuminates continuously or flashes with the engine running;</u></p> <p>iii. <u>The vehicle’s OBD system reports the MIL as commanded on;</u></p> <p>iv. <u>The vehicle’s OBD system data is inappropriate for the vehicle being tested; or</u></p> <p>v. <u>The vehicle’s OBD system data does not match the original equipment manufacturer (OEM) or an ADEQ exempted OBD software configuration.</u></p> <p>vi. <u>The vehicle’s data link connector cannot be located or is inaccessible;</u></p> <p>vii. <u>The vehicle’s OBD system is not communicating;</u></p> <p>viii. <u>The vehicle’s data link connector has no voltage; or</u></p> <p>ix. <u>The eVIN and monitors are mismatched. (Suggest removal of ix. We believe that this is covered in iv. and v. above. A description of “Mismatched” may better explain intent if ix. remains.)</u></p>	
<p><b>Comments from ADOT</b></p>	<p><b>ADEQ Response</b></p>
<p>Motorcycle - R18-2-1001(40) defines motorcycle by referring to A.R.S. § 28-101(29), which is an old citation. Due to the frequent changes to this section, it would be easier to cite A.R.S. § 28-101. Since this is an old definition, I am not sure if their interpretation matches our definition, which is: “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 and a moped. Motorcycles are exempt from emissions testing under A.R.S. § 49-542(J).</p>	<p>ADEQ has updated the rules to ensure that ADEQ definitions match ADOT’s definitions.</p>
<p>Golf Cart – R18-2-1001(32) defines golf cart as a motor vehicle with not less than three wheels in contact with the ground, an unladen weight of less than 1,300 lbs., operates at no more than 15 mph, and is designed to carry golf equipment and persons. This is defined in A.R.S. § 49-541(10). A.R.S. § 28-101 defines a golf cart as a vehicle with less than 1,800 lbs., that doesn’t exceed 25 mph and can’t carry more than 4 people. Golf carts are exempt from emissions testing under A.R.S. § 49-542(J)(2).</p>	<p>ADEQ has updated the rules to ensure that ADEQ definitions match ADOT’s definitions.</p>

<p>Dealer – R18-2-1001(19) defines dealer as a person or organization licensed by the Arizona Department of Transportation as a new motor vehicle dealer or used motor vehicle dealer. The Title 28 definitions in A.R.S. § 28-4301(25) and (35) for new motor vehicle dealer and used motor vehicle dealer are more detailed and include more than buying a vehicle. R18-2-1005(C) refers to “All vehicles sold by a dealer licensed to sell used motor vehicles.</p> <p>“New motor vehicle dealer” means a person who buys, sells, exchanges or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged in the business of selling, new motor vehicles or used motor vehicles taken in trade on new motor vehicles or used vehicles purchased for resale.</p> <p>“Used motor vehicle dealer” means a person, other than a new motor vehicle dealer, who buys, sells, auctions, exchanges or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged in the business of selling, seven or more used motor vehicles in a continuous twelve month period. Used motor vehicle dealer does not include a wholesale motor vehicle auction dealer or a public consignment auction dealer.</p> <p>Depending on stylistic preference, a statutory reference could be added at the end of ADEQ’s definition of dealer to refer to the dealer licensing statute.</p> <p>ADEQ’s proposed rule: “19. “Dealer” means a person or organization licensed by the Arizona Department of Transportation as a new motor vehicle dealer or used motor vehicle dealer under A.R.S. Title 28, Chapter 10.</p>	<p>ADEQ has updated the rules to ensure that ADEQ definitions match ADOT’s definitions.</p>
<p>Alternative Fuel Certificate – R18-2-1020 refers to ADEQ inspecting and issuing an alternative fuel certificate for a vehicle converted to run on alternative fuel. I believe the citation to A.R.S. § 28-2416(2)(b) should be A.R.S. § 28-2416(B)(2)(b) or just as A.R.S. § 28-2416.</p>	<p>ADEQ has updated the rules to ensure that ADEQ definitions match ADOT’s definitions.</p>

# Economic Impact Statement – Title 18, Chapter 2, Article 10 Rulemaking.

## Part I – Summary of the Rulemaking

### 1. An identification of the rulemaking.

This rulemaking is designed to modernize a number of provisions in Title 18, Chapter 2, Article 10 of the Arizona Administrative Code. These changes will have a minimal economic impact on the different Arizona entities and citizens, but ADEQ believes that the overall impact will be slightly positive. This rulemaking creates no additional burdens on Arizona agencies, businesses, or citizens.

The provisions likely to have an economic impact in this rulemaking include:

1. Vehicle exemptions;
2. Exemptions for military personnel on active duty;
3. Fleet agent and fleet inspector licenses increased from 1 year to 2 years;
4. Transferable certificates of inspection (COIs) for dealer fleets;
5. Elimination of the liquid fuel leak test;
6. OBD testing expansion;
7. Reduced ADEQ auditing;
8. MyDEQ launch for Fleet Emissions Testing Permits (MyDEQ Fleet); and
9. MyDEQ launch for Out of State Exemptions (MyDEQ OOS).

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

1. Arizona businesses, primarily used motor vehicle dealers.
2. Arizona citizens, specifically owners of diesel powered vehicles and individuals seeking out of state exemptions (military members, individuals who live in Arizona part-time, college students.)
3. Emissions inspectors and fleet agents.
4. The Department of Environmental Quality.
5. Other state agencies, jurisdiction, and quasi-governmental entities.
6. The contractor running the emissions testing stations, currently Gordon-Darby.

### 3. Cost/benefit analysis:

#### a. Part I - Cost/Benefit Stakeholder Matrix

Minimal	Moderate	Substantial	Significant
\$1,000 or less per year	\$1,000 to \$10,000 per year	\$10,001 or more per year	Cost/Burden cannot be calculated, but the Department expects it to be significant.

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/Increased Revenue
<b>A. State and Local Government Agencies</b>			
Arizona Department of Environmental Quality	Clarity of the new rule Reduced Auditing MyDEQ Fleet MyDEQ OOS Fleet license timeframe extension OBD Expansion Transferable COIs	None None None None None None Moderate	Significant Substantial Significant Substantial  Moderate Significant None
Other state agencies, jurisdictions, and quasi-governmental entities.	Clarity of the new rule Reduced Auditing MyDEQ Fleet Fleet license timeframe extension OBD Expansion	None None None None None	Significant Moderate Moderate  Moderate Substantial
<b>B. Privately Owned Businesses</b>			
Used car dealerships	Reduced Auditing MyDEQ Fleet Fleet license timeframe extension OBD Expansion Clarity of new rule	None None None None None	Significant Moderate  Moderate Moderate Moderate
Emission Testing Contractor	Clarity of the new rule OBD Expansion Reduced Auditing Elimination of liquid fuel leak test	None Substantial None None	Significant Substantial Substantial  Minimal
<b>C. Private Individuals</b>			
Emissions Inspectors and Fleet Agents	Fleet license timeframe extension MyDEQ Fleet OBD Expansion	None None None	Minimal Minimal Minimal
Arizona Citizens Generally	OBD Expansion Transferable COIS Clarity of the new rule	None None None	Significant Minimal Minimal
Arizona Citizens – Diesel Vehicle Owners	OBD Expansion	None	Minimal

Arizona Citizens – People needing out of state exemptions.	MyDEQ OOS	None	Minimal
Active Duty Military	MyDEQ OOS	None	Minimal

## Part II - Individual Stakeholder Summaries/Calculations

### A. Used Car Dealerships

One of the ways this rulemaking will have a positive impact on Arizona businesses is by assigning certificates of inspection (COI's) to a vehicle instead of a location. The rules that restrict COI transferability are outdated, as they were written at a time where car dealerships did not have multiple locations. Modern car dealerships have evolved, and routinely sell cars at different locations than the lot that they were originally parked on when the dealership took title. This rule making recognizes that reality, as requiring cars to be emissions tested multiple times when they have already passed a test and aren't being driven costs time, money, and effort with no increase in environmental benefit.

The persons who will be directly affected by and will benefit from this rulemaking are used car dealerships in Arizona, as well as individuals who buy cars from used car dealerships. An individual COI costs \$11.50, so although the economic benefits will be small, used car dealerships should expect to save money. They will also save money by reducing the amount of hours of labor they spend emissions testing cars. This rule could also benefit used car dealerships that throw events like tent sales and other off-site sales events as it will remove logistical barriers that prohibit those events from happening.

Used car purchasers will benefit from this rule change because their transaction will be more expedient, as the car won't have to undergo a duplicative emissions test before delivery at second dealership location or at the off-site sales events mentioned above.

This rule change will also reduce inspections on businesses that have fleet emissions testing permits. Reduced inspection are possible because ADEQ has launched a new, online portal called myDEQ for managing fleet emissions inspection permits. MyDEQ allows for immediate reporting of fleet emissions inspection results, which means less time ADEQ inspectors need to spend in the field. By reducing inspections and leveraging technology, the businesses that take advantage of ADEQ's fleet emissions testing permit should see cost savings.

Fleet permittees will also benefit from being allowed to conduct OBD testing. Although the cost per COI is the same, maintenance costs on OBD testing equipment is far less than the cost of maintaining a gas analyzer to perform emissions testing.

### B. Arizona Citizens - Diesel Vehicle Owners

OBD testing is a more stringent, cheaper, and higher quality version of emissions testing for vehicles that are certified with the OBDII system. Testing diesel vehicles using this already

installed technology will make emissions testing cheaper and quicker for all of the diesel vehicles that can take advantage of it. Additionally, an OBD test allows for two years of registration while opacity testing only allows registration for one. In Area A, this will save diesel vehicle owners \$34 every two years. In Area B, it will save diesel vehicle owners \$12.25 every two years.

### **C. Arizona Citizens, Generally**

Arizona citizens should benefit from cleaner air as a result of this rulemaking. The current method of testing for diesel vehicles, opacity testing, does not test for oxide of nitrogen (NO<sub>x</sub>), which is one of the air pollutants identified as an ozone precursor. By implementing OBD testing for diesel vehicles, ADEQ hopes to reduce NO<sub>x</sub> pollution and help prevent the formation of ozone and to level the playing field for all vehicle types that emit NO<sub>x</sub>.

### **D. Other state agencies, jurisdictions, and quasi-governmental entities.**

Many state agencies take advantage of the ADEQ fleet program to maintain current emissions testing on their vehicles. The benefits provided to private businesses in Arizona will extend to governments with the rollout of MyDEQ fleet. Additionally, in Arizona, government entities must attach a sticker to a vehicle to prove that it passed emissions. MyDEQ allows government entities to have these stickers shipped to them instead of having to come down to ADEQ to pick them up.

### **E. Active Duty Military**

This rulemaking will enable active duty military members to receive free emissions exemptions no matter where they are in the world. This means that when they return home on leave, they will be able to come home to properly registered vehicles that they can use for the duration of their stay.

### **F. Emissions Testing Contractor**

The changes to this article will have a direct effect on the emissions testing contractor. The contractor will incur a cost to implement OBD testing for diesels at all of Arizona's test stations. This cost will be limited to man hours for modifying software, as well as the time it will take to train employees in to execute new procedures. There will be minor equipment costs as well, as heavy duty diesel vehicles use a different plug for OBD testing than gasoline vehicles or light duty vehicles.

It's likely that these initial costs will be offset in the long term with cost savings because OBD testing is a simpler and more effective form of emissions testing. The current method of diesel testing, opacity testing, requires more expensive equipment and takes much longer to perform. The piece of equipment necessary to perform opacity testing, an opacity meter, is notoriously difficult to maintain. The filter heads require consistent maintenance and cleaning, and the probes "gum up" after extended use. These issues will be eliminated with OBD testing.

## **G. ADEQ**

Overall, this rulemaking will lower program costs for the Department. This rulemaking reduces the amount of physical inspections that the Department is required to conduct. Physical inspections are costly, and in a world that is moving to more computer oriented emissions testing, they are easily replaced with more remote forms of observation. MyDEQ is a quicker, more efficient way to monitor fleet compliance than performing quarterly physical inspections. The reductions in cost associated with inspections only are expressed in an infographic attached to this economic impact.

In addition to the cost savings for cost reductions, ADEQ will also see cost savings associated with reviewing emission testing data that is submitted by fleets. Each month, every fleet submits a monthly summary of all the emissions testing data they've collected throughout the month. ADEQ staff reviews this data as part of our Clean Air Act obligations. Currently, each of these monthly summaries are being mailed to the Department. This means that ADEQ customer service staff has to process the mail, and compliance officers review the summaries by hand. This method has been in use since the fleet program began. MyDEQ allows compliance officers to generate excel spreadsheets and review the emissions testing results on the computer, instead of going through the laborious hand review process. Additionally, ADEQ is developing macros for these spreadsheets which will automatically alert compliance officers to emissions testing results that are outside of normal ranges.

MyDEQ also streamlines the licensing process itself. Currently, each emissions inspector license is handmade for each inspector every single year. This process involves updating a word document, embossing the license itself, and then hand delivering it to the emissions inspector. MyDEQ eliminates this process, and instead computer generates licenses and emails them to the inspector.

The one aspect of this rule change that may increase costs for the Department is making COIs transferable. This provision was specifically asked for by stakeholders, and although it will moderately increase costs for the Department, it should significantly decrease costs for businesses that take advantage of the fleet emissions testing permit.

MyDEQ will also save the Department time when processing out-of-state emissions testing exemptions. The out-of-state exemption process is similar to the fleet processes described above. Currently, customers must mail their vehicle and testing information. ADEQ customer service staff hand processes all of this mail, and if a customer has forgotten anything, they're forced to mail the additional documentation. This takes a significant amount of time, as ADEQ processes nearly 60,000 of these exemptions every year. The myDEQ rollout will streamline this process significantly, as well as create an automated electronic filing system that allows ADEQ to adhere to state document retention policies with absolutely zero labor.

**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 rulemaking.**

ADEQ estimates that overall there will be no cost increases to the agency as a result of this rulemaking. By leveraging new technology such as myDEQ, ADEQ should see cost savings by reducing inspections.

- (b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the rulemaking.**

ADEQ estimates that there will be no cost increases to other political subdivisions of the state as a result of this rulemaking. Political subdivisions that take advantage of the fleet emissions testing permit should see some costs savings with this rulemaking because of myDEQ.

- (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 rulemaking.**

Used car dealerships can expect to spend less money on COIs, as well as reduced hours of labor on emissions testing as a result of this rulemaking. ADEQ estimates that this rulemaking will result in moderate cost savings for Arizona businesses.

**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 estimates that this rulemaking will have no impact on private and public employment in businesses, agencies, and political subdivisions of this state.

**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 millions dollars in its last fiscal year.

There are small used car dealerships that will benefit from this rulemaking. They will benefit by having to spend less time and money performing duplicative emissions testing on vehicles.

- (b) The administrative and other costs required for compliance with the rulemaking.**

There will be no additional costs required for compliance with this rulemaking. Businesses that are eligible for a fleet emissions testing station permit will continue to be eligible, and will continue to be subject to the same regulations and inspections as before.

**(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 rulemaking.**

The cost savings to business is likely too small to have a measurable impact on used car prices on Arizona. The benefit that consumers can expect as a result of this rule change is that the logistics of doing car sales events like tent sales will be much easier after the rulemaking. Arizonans who choose to take advantage of sales events of that nature can expect more events, as the amount of time spent on the logistics for throwing them will be reduced.

**A statement of the probable effect on state revenues.**

A.R.S. § 49-542 (D) mandates that every motor vehicle sold in the state must pass an emissions test before being delivered to a retail purchaser. To ensure motor vehicle dealerships meet this requirement quickly and efficiently, ADEQ runs the fleet emissions testing program under a statutory grant of authority at A.R.S. § 49-546. This results in a cost savings for Arizona businesses, as a COI issued by a fleet station costs only \$11.50 compared to a cost of \$17 or more at a centralized state station. Additionally, fleets save time and money by not having to drive their merchandise to a centralized station every time they acquire a new car.

By reducing the duplicative testing requirement through this rulemaking, ADEQ expects a di minimis impact on agency revenues. ADEQ estimates that less than 5,000 cars a year, out of the 100,000 tested by our fleet stations, will be affected by this rule change. That means an approximate decrease of \$57,500 for the administration of the agencies fleet emissions testing permit program.

**A description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking.**

ADEQ was not able to identify any less intrusive or costly alternative methods for achieving the purpose of the rulemaking.

**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” mean**

**empirical, replicable, and testable data as evidenced in supporting documentation, statistics, reports, studies, or research.**

ADEQ has relied on its own COI fee data to make projections on costs. ADEQ has also reached out to stakeholders at the various meetings held for this change. It is difficult to project with a high degree of accuracy, because the business of selling used cars is extremely cyclical in nature. Therefore, ADEQ believes that its COI fee data is the best dataset available for any economic impact projections for this rulemaking.

## ARTICLE 10. MOTOR VEHICLES; INSPECTIONS AND MAINTENANCE

### R18-2-1001. Definitions

In this Article, unless the context otherwise requires:

1. Abbreviations and symbols are as follows:
  - a. "A/F" means air/fuel,
  - b. "CO" means carbon monoxide.
  - c. "CO<sub>2</sub>" means carbon dioxide.
  - d. "EGR" means exhaust gas recirculation.
  - e. "GVWR" means gross vehicle weight rating.
  - f. "HC" means hydrocarbon.
  - g. "HP" means horsepower.
  - h. "LNG" means liquefied natural gas.
  - i. "LPG" means liquid petroleum gas.
  - j. "MIL" means Malfunction Indicator Lamp.
  - k. "MPH" means miles per hour.
  - l. "MVD" means the Motor Vehicle Division of the Arizona Department of Transportation.
  - m. "NDIR" means nondispersive infrared.
  - n. "NO<sub>x</sub>" means the sum of nitrogen oxide and nitrogen dioxide.
  - o. "%" means percent.
  - p. "OEM" means original equipment manufacturer.
  - q. "OBD" means On-Board Diagnostics.
  - r. "PCV" means positive crankcase ventilation.
  - s. "PPM" means parts per million by volume.
  - t. "RPM" means revolutions per minute.
  - u. "VIN" means vehicle identification number.
2. "Annual test" means any vehicle emissions test that is not a biennial test.
3. "Apportioned vehicle" means a vehicle that is subject to the proportional registration provisions of A.R.S. § 28-2233.
4. "Area A" has the meaning in A.R.S. § 49-541.
5. "Area A vehicle" means a motor vehicle subject to emissions inspection and that is:
  - a. Registered or to be registered within area A;
  - b. Owned by or leased to a person having a valid fleet permit and customarily kept in area A;
  - c. A government vehicle customarily kept in area A;
  - d. Used to commute to the driver's principal place of employment located in area A; or
  - e. Parked, will be parked, or is the subject of a parking permit application at an institution located in area A and subject to the requirements of A.R.S. §§ 15-1444(C) or 15-1627(G).
6. "Area B" has the meaning in A.R.S. § 49-541.
7. "Area B vehicle" means a motor vehicle subject to emissions inspection and that is:
  - a. Registered or to be registered within area B;
  - b. Owned by or leased to a person having a valid fleet permit and customarily kept in area B;
  - c. A government vehicle customarily kept in area B;
  - d. Used to commute to the driver's principal place of employment located in area B; or
  - e. Parked, will be parked, or is the subject of a parking permit application at an institution located in area B and subject to the requirements of A.R.S. §§ 15-1444(C) or 15-1627(G).
8. "Biennial test" means the transient loaded emissions test and evaporative system tests required under R18-2-1006(E)(2), or the OBD test for area A vehicles under R18-1006(E)(3).
9. "Calibration gas" means a gas with assigned concentrations of CO, hexane, or CO<sub>2</sub> that is used by a state inspector to check the accuracy of emissions analyzers.
10. "Certificate of compliance" means a serially numbered document issued by a state station at the time of a vehicle inspection indicating that the vehicle has met the emissions standards.
11. "Certificate of exemption" means a serially numbered document issued by the Director exempting a vehicle from inspection that is not available within the state for an inspection during the 90 days before the emissions compliance expiration date.
12. "Certificate of inspection" means a serially numbered document issued by the Director indicating that a vehicle has been inspected under A.R.S. § 49-546 and has passed inspection.
13. "Certificate of waiver" means a serially numbered document issued by the Department or a fleet inspector other than an auto dealer licensed to sell used motor vehicles under A.R.S. Title 28, indicating that the requirement of passing reinspection has been waived for a vehicle under A.R.S. § 49-542.
14. "Conditioning mode" means either a fast idle condition or a loaded condition as defined in this Section.
15. "Constant 4-wheel drive vehicle" means any 4-wheel drive vehicle that cannot be converted to 2-wheel drive except by disconnecting one of the vehicle's drive shafts.

16. "Constant volume sampler" means a system that dilutes engine exhaust to be sampled with ambient air so that the total combined flow rate of exhaust and dilution air mix is nearly constant for all engine operating conditions.
17. "Contractor" means a person, business, firm, partnership, or corporation with whom the Director has a contract that provides for the operation of one or more official emissions inspection stations.
18. "Curb idle test" means an exhaust emissions test conducted with the engine of the vehicle running at the manufacturer's idle speed  $\pm$  100 RPM but without pressure exerted on the accelerator.
19. "Curb weight" means a vehicle's unloaded weight without fuel and oil plus 300 pounds.
20. "Dealer" means a person or organization licensed by the Arizona Department of Transportation as a new motor vehicle dealer, used motor vehicle dealer, or motorcycle dealer.
21. "Department" means the Department of Environmental Quality.
22. "Director" means the Director of the Department of Environmental Quality.
23. "Director's certificate" means a serially numbered document issued by the Director in certain circumstances for the vehicle to show evidence of meeting the minimum standards for registration or reregistration under R18-2-1019 or R18-2-1022.
24. "Electrically-powered vehicle" means a vehicle that uses electricity as the means of propulsion and does not require the combustion of fossil fuel within the confines of the vehicle to generate electricity.
25. "Emissions compliance expiration date" means:
  - a. Each registration expiration date for a vehicle subject to an annual test; and
  - b. The registration expiration date in the second year after the initial biennial test required under this Article or R18-2-1005(B) for a vehicle subject to a biennial test.
26. "Emissions inspection station permit" means a certificate issued by the Director authorizing the holder to perform vehicle emissions inspections under this Article.
27. "Exhaust emissions" means products of combustion emitted into the atmosphere from any opening in the exhaust system downstream of the exhaust ports of a motor vehicle engine.
28. "Exhaust pipe" means the pipe that attaches to the muffler and exits the vehicle.
29. "Fast idle condition" means to operate a vehicle by running the engine at 2,500 RPM,  $\pm$  300 RPM, for up to 30 seconds, with the transmission in neutral, to prepare the vehicle for a subsequent curb idle test.
30. "Fast pass or fast fail algorithm" means a procedure in a vehicle emissions testing system that logically determines whether a vehicle will pass or fail the transient loaded emissions test under R18-2-1006(E)(2) before the test is over.
31. "Fleet emissions inspection station" or "fleet station" means any vehicle emissions inspection facility operated under a permit issued under A.R.S. § 49-546.
32. "Fuel" means any material that is burned within the confines of a vehicle to propel the vehicle.
33. "Four-stroke vehicle" means a vehicle equipped with an engine that requires two revolutions of the crankshaft for each piston power stroke.
34. "Golf cart" means a motor vehicle that has not less than three wheels in contact with the ground, has an unladen weight less than 1,300 pounds, is designed to be and is operated at not more than 15 MPH, and is designed to carry golf equipment and persons.
35. "Government vehicle" means a registered motor vehicle exempt from the payment of a registration fee, or a federally owned or leased vehicle.
36. "Gross vehicle weight rating" (GVWR) means the maximum vehicle weight that a vehicle is designed for as established by the manufacturer.
37. "Inspection" means the mandatory vehicle emissions inspection including the tampering inspection.
38. "Inspection sticker" means a self-adhesive, serially numbered rectangular sticker indicating a government vehicle has met Arizona emissions inspection requirements.
39. "Loaded condition" means to condition a vehicle by running the vehicle on a chassis dynamometer at a specified speed and load for no more than 30 seconds to prepare the vehicle for a subsequent curb idle test.
40. "Loaded cruise test" means an exhaust emissions test conducted on a chassis dynamometer under R18-2-1006(E)(1)(a) and (F)(2)(a).
41. "Mass emissions measurement" means measurement of a vehicle's exhaust in mass units such as grams.
42. "Model year" means the date of manufacture of the original vehicle within the annual production period of the vehicle as designated by the manufacturer or, if a reconstructed vehicle, the first year of titling.
43. "MOL percent" means the percent, by volume, that a particular gas occupies in a mixture of gases at a uniform temperature.
44. "Motorcycle" means a motor vehicle, other than a tractor, having a seat or saddle for use of the rider and designed to travel on not more than three wheels in contact with the ground.
45. "Motorhome" means a vehicle built on a truck or bus chassis and equipped as a self-contained traveling home.
46. "New aftermarket catalytic converter" or "new aftermarket converter" means a catalytic converter, except for an OEM, that meets the standards under 40 CFR 86.
47. "Official emissions inspection station" means an inspection facility, other than a fleet emissions inspection station, whether placed in a permanent structure or in a mobile unit for conveyance to various locations within the state, for the purpose of conducting inspections under A.R.S. § 49-542.

48. "On-board diagnostics test" means a method of emissions testing using the on-board computer systems of a 1996 or newer vehicle, to diagnose and report on the status of the engine's emissions systems by connecting a scan tool to the vehicle's data link connector.
49. "Opacity" means the degree of absorption of transmitted light.
50. "Operational air pump" means an air injection system to supply additional air into the exhaust system to promote further oxidation of HC and CO gases and to assist in catalytic reaction.
51. "Person" means the federal government, state, or any federal or state agency or institution, any municipality, political subdivision, public or private corporation, individual, partnership, association, or other entity, and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation.
52. "Reconditioned OEM catalytic converter" or "reconditioned OEM converter" means a used OEM reconditioned equivalent or an OEM converter that has had the pellets replaced with new or used OEM equivalent pellets and that also meets the standards under 40 CFR 86.
53. "Recognized repair facility" means a business with an Arizona transaction privilege tax license whose primary purpose is vehicle repair, and who has at least one employee with a nationally recognized certification for emissions-related diagnosis and repair.
54. "Reconstructed vehicle" means:
  - a. A reconstructed special as identified by the code letters "SP" on the section of the vehicle's Arizona registration card or Arizona certificate of title reserved for identification of the vehicle's style; or
  - b. A vehicle in which the vehicle style is not shown on the Arizona registration card or certificate of title, and the original manufacturer of the complete vehicle cannot be identified from the body.
55. "Standard gases" means gases maintained as a primary standard for determining the composition of working gases, calibration gases, or the accuracy of an emissions analyzer.
56. "State inspector" means an employee of the Department designated to perform quality assurance or waiver functions under this Article.
57. "State station" means an official emissions inspection station operated by a contractor.
58. "Tampering" means removing, defeating, or altering an emissions control device that was installed on a vehicle at the time the vehicle was manufactured. For the purposes of this Article, defeating includes failure to repair any malfunctioning emission control system or device.
59. "Two-stroke vehicle" means a vehicle equipped with an engine that requires one revolution of the crankshaft for each power stroke.
60. "Unloaded fast idle test" means an exhaust emissions test conducted with the engine of the vehicle running at 2,500 RPM.
61. "Vehicle" means any automobile, truck, truck tractor, motor bus, or self-propelled or motor-driven vehicle registered or to be registered in this state and used upon the public highways of this state for the purpose of transporting persons or property, except implements of husbandry, roadrollers, or road machinery temporarily operated upon the highway.
62. "Vehicle emissions inspector" means an individual who is licensed by the Director to perform vehicle emissions inspections under this Article.
63. "Working gases" means gases maintained to perform periodic calibration of an emissions analyzer.

**R18-2-1003. Vehicles to be Inspected by the Mandatory Vehicle Emissions Inspection Program**

- A. The following vehicles shall be inspected according to this Article at a state station or a fleet station unless exempted by subsection (B):
  1. A vehicle to be registered or reregistered within area A or area B for highway use. For the purposes of this Article, registration or reregistration within area A or area B shall be determined by the vehicle owner's permanent and actual residence. The permanent address in the MVD database shall be presumed to be the owner's permanent and actual residence. A post office box address listed on a title or registration document under A.R.S. § 28-2051(C) is not evidence of the owner's permanent and actual residence;
  2. Each vehicle delivered to a retail purchaser by a dealer licensed to sell used motor vehicles for highway use under A.R.S. Title 28 and whose place of business is located in area A or area B;
  3. Each vehicle registered outside area A and area B but used to commute to the driver's principal place of employment located within area A or area B;
  4. Each vehicle owned by a person who is subject to A.R.S. §§ 15-1444(C) or 15-1627(G); and
  5. An area A or area B vehicle located out-of-state for more than 90 days before vehicle registration expiration shall be emissions tested at an official emissions inspection testing center in the area where it is located. If no official emissions testing program is available in the area for that vehicle, the vehicle shall meet the testing requirements under this Article within 15 calendar days of returning to Arizona.
- B. The following vehicles are exempt from the inspection requirements of this Article:
  1. A vehicle manufactured in or before the 1966 model year;
  2. A vehicle leased to a person residing outside area A and area B by a leasing company whose place of business is in area A or area B, except as provided in subsection (A)(3);
  3. A vehicle sold between motor vehicle dealers;
  4. An electrically-powered vehicle;
  5. An apportioned vehicle;

6. A golf cart;
  7. A vehicle with an engine displacement of less than 90 cubic centimeters;
  8. A vehicle registered at the time of change of name of ownership except when:
    - a. The change in registration is accompanied by the required fee for the year following expiration of the prior registration, or
    - b. The change results from the sale by a dealership whose place of business is located in area A or area B;
  9. A vehicle for which a current certificate of exemption or Director's certificate is issued;
  10. A vehicle of a model year the same as, or newer than, the current calendar year and a vehicle of the prior four model years, except:
    - a. A reconstructed vehicle;
    - b. An alternative fuel vehicle, as defined in A.R.S. § 43-1086, and
    - c. A vehicle failing an emissions inspection the owner chooses to have under A.R.S. § 49-543.
  11. A vehicle designed to operate exclusively on hydrogen, as defined in A.R.S. § 1-215.
- C. Government vehicles operated in area A or area B and not exempted by this Article shall be emissions inspected according to R18-2-1017.

**R18-2-1005. Time of Inspection**

- A. Area A vehicles subject to an annual test, all area B vehicles, and vehicles sold or offered for sale by dealers required to be inspected under R18-2-1003, shall be inspected at the following times:
1. For a vehicle not covered by a fleet station permit, within 90 days before each registration expiration date;
  2. For a vehicle sold by a dealer licensed to sell used motor vehicles under A.R.S. Title 28, whose place of business is located in area A or area B, before delivery of the vehicle to the retail purchaser;
  3. For a consignment vehicle offered for sale by a dealer licensed to sell used motor vehicles under A.R.S. Title 28 whose place of business is located in area A or area B, before delivery of the vehicle to the retail purchaser. The consignment vehicle shall be inspected at a state station according to R18-2-1006;
  4. For government vehicles:
    - a. For a vehicle not exempt under R18-2-1003(B)(10), within 12 months after acquisition by the operating entity and then annually on or before the anniversary date of the previous inspection;
    - b. For a vehicle exempt under R18-2-1003(B)(10), within 90 days after the vehicle becomes subject to testing, and then annually on or before the anniversary date of the previous inspection and;
    - c. A vehicle is subject to testing on the anniversary of its date of acquisition;
  5. For a vehicle owned by or leased to a person having a valid fleet station permit, at least once within each 12-month period following any original registration or reregistration;
  6. For a vehicle to be registered in area A or area B under conditions not specified in subsection (1) through (5), within 90 days before registration;
  7. For a vehicle registered outside area A and area B and used to commute to the driver's principal place of work located in area A or area B, upon vehicle registration or reregistration;
  8. For a vehicle owned by a person subject to A.R.S. §§ 15-1444(C) or 15-1627(G), within 30 calendar days following the date of initial registration at the institution located in area A or area B and annually thereafter; and
  9. For a vehicle issued a certificate of exemption under R18-2-1023, within 15 calendar days after returning to Arizona, unless an official emissions inspection document from the out-of-state emissions inspection station is submitted with the request for exemption.
- B. An area A vehicle subject to a biennial test shall be inspected at the following times:
1. For a vehicle not covered by a fleet station permit, within 90 days before the vehicle's emissions compliance expiration date.
  2. For a government vehicle:
    - a. For a vehicle not exempt under R18-2-1003(B)(10), within 12 months after acquisition by the operating entity, and biennially thereafter, on or before the anniversary date of the previous inspection;
    - b. For a vehicle exempt under R18-2-1003(B)(10), within 90 days after the vehicle becomes subject to testing, and biennially thereafter, on or before the anniversary date of the previous inspection; and
    - c. The vehicle becomes subject to testing on the anniversary of its date of acquisition;
  3. For a vehicle owned by or leased to a person having a valid fleet station permit, at least once within each successive 24-month period following original registration;
  4. For a vehicle registered outside area A but used to commute to the driver's principal place of work located in area A, upon vehicle registration and biennially thereafter;
  5. For a vehicle owned by a person subject to A.R.S. §§ 15-1444(C) or 15-1627(G), within 30 days following the date of initial registration at the institution located in area A and biennially thereafter;
  6. For a vehicle to be registered as area A vehicles under conditions not specified in subsections (1) through (5), upon initial registration and within 90 days before the vehicle's emissions compliance expiration date thereafter and;
  7. For a vehicle issued a certificate of exemption under R18-2-1023, within 15 calendar days after returning to Arizona, unless an official emissions inspection document indicating compliance with the emissions requirements from the out-of-state emissions inspection station is submitted with the request for exemption.

- C. A used vehicle not registered as an area A or area B vehicle shall be inspected according to this Article before registration as an area A or area B vehicle unless exempted by R18-2-1003(B).
- D. An area B vehicle being registered in area A is subject to the appropriate annual or biennial test from area A before registration even if the emissions compliance period for area B has not yet expired.
- E. A new vehicle that is exempt from emissions testing under R18-2-1003(B)(10), and subject to either an annual or biennial test, shall be tested before registration in the calendar year that exceeds the vehicle's model year by five years.
- F. Nothing in this Section shall be construed to waive a late registration fee because of failure to meet inspection requirements by the registration deadline, except that a motor vehicle that fails the initial or subsequent test shall not be subject to a penalty fee for late registration renewal if:
  - 1. The initial test is accomplished before the emissions compliance expiration date, and
  - 2. The registration renewal is received by MVD within 30 days of the initial test.
- G. An owner of a vehicle subject to subsection (A)(1), (A)(6), (B)(1), or (B)(6) may submit the vehicle for emissions inspection more than 90 days before the emissions compliance expiration date but the inspection does not satisfy the registration or reregistration testing requirement under R18-2-1003.

**R18-2-1006. Emissions Test Procedures**

- A. Each vehicle inspected at a state station shall be visually inspected before the emissions test for the following unsafe or untestable conditions:
  - 1. A fuel leak that causes wetness or pooling of fuel;
  - 2. A continuous engine or transmission oil leak onto the floor;
  - 3. A continuous engine coolant leak onto the floor such that the engine is overheating or may overheat within a short time;
  - 4. A vehicle with a tire on a driving wheel with less than 2/32-inch tread, with metal protuberances, unmatched tire size, with obviously low tire pressure as determined by visual inspection, or any other condition that precludes a loaded test for reasons of personnel, equipment, or vehicle safety;
  - 5. An exhaust pipe that does not exit the rear or side of the vehicle to allow for safe exhaust probe insertion;
  - 6. An exhaust pipe on a diesel-powered vehicle that does not allow for safe exhaust probe insertion and attachment of opacity meter sensor units;
  - 7. Improperly operating brakes;
  - 8. Any vehicle modification or mechanical condition that prevents dynamometer operation; and
  - 9. Any other condition deemed unsafe or untestable by the inspector, including loud internal engine noise or an obvious exhaust leak.
- B. A vehicle emissions inspection shall not be performed by an official emissions inspection station on any vehicle towing a heavily loaded trailer, carrying a heavy load, loaded with explosives, or loaded with any hazardous material not used as fuel for the vehicle.
- C. Any vehicle unsafe or otherwise untestable as determined by the visual inspection shall be rejected without an emissions test. The inspector shall notify the vehicle owner or operator of all unsafe conditions found on rejected vehicles. The state station shall not charge a fee if the vehicle is rejected. The contractor shall not conduct an emissions test on a vehicle rejected for a safety reason or any other untestable condition until the cause for rejection is repaired.
- D. When conducting the emissions test required by this Section, the vehicle emissions inspector shall meet all of the following requirements:
  - 1. The vehicle shall be tested in the condition presented, unless rejected under subsection (A), (B), or (C). The vehicle's engine shall be operating at normal temperature and not be overheating as indicated by a gauge, warning light, or boiling radiator. All of the vehicle's accessories shall be turned off during testing.
  - 2. A vehicle designed to operate with more than one fuel shall be tested on the fuel in use when the vehicle is presented for inspection, except alternative fuel vehicles, as defined in A.R.S. § 43-1086. The inspector shall test the alternative fuel vehicle on each fuel for which it is intended to operate, using the appropriate emissions test procedure and standards for that vehicle. The alternative fuel vehicle shall:
    - a. Be operated a minimum of 30 seconds before testing, after switching fuels;
    - b. Be rejected if it is not able to operate on both fuels; and
    - c. Be rejected if the vehicle operator cannot switch fuels.
  - 3. A vehicle operated exclusively on propane or natural gas, as defined in A.R.S. § 1-215, shall be exempt from the gas cap and evaporative pressure testing described in subsection (E)(6)(b)(ii), (E)(7)(a), and (F)(7)(a).
- E. In area A, the inspection test procedures for a vehicle other than a diesel-powered vehicle or a vehicle held for resale by a fleet-licensed motor vehicle dealer shall consist of the following:
  - 1. A vehicle manufactured with a model year of 1967 through 1980, a nonexempt vehicle with a GVWR greater than 8,500 pounds, and a reconstructed vehicle, except a motorcycle and a constant 4-wheel drive vehicle, is required to annually take and pass a loaded cruise test and a curb idle test, as follows:
    - a. Loaded cruise test. The vehicle's drive wheels shall be placed on a dynamometer and the vehicle shall be operated according to Table 1 of this Article, in drive for automatic transmission or second or higher gear for manual transmission. Overdrive shall not be used for testing. All vehicles shall be driven by the inspector during testing. HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized, or at the end of 90 seconds, whichever occurs first. After exhaust emissions are recorded, engine speed shall be returned to idle for a curb idle test.

- b. Curb idle test. The test shall be performed with the vehicle in neutral for 1981 and newer vehicles. For 1980 and older vehicles, the test shall be performed in neutral, except that if the vehicle has an automatic transmission, drive shall be used. Engine RPM shall be within  $\pm 100$  RPM of the manufacturer's specified idle RPM. HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized, or at the end of 90 seconds, whichever occurs first. A CO<sub>2</sub> plus CO reading of 6% or greater shall be registered to establish test validity. A CO<sub>2</sub> plus CO reading of less than 6% shall be proof of exhaust sample dilution and the vehicle shall be rejected from further emissions inspection until repaired, except when tested at a fleet emissions inspection station.
        - c. Exhaust sampling for a vehicle required to take an annual emissions test under subsection (E)(1) shall comply with subsection (F)(8).
2. A vehicle with a 1981 or newer model year and a GVWR of 8,500 pounds or less, except a motorcycle, a reconstructed vehicle, a 1996 or newer OBD-equipped vehicle or a constant 4-wheel drive vehicle, is required to biennially take and pass a transient loaded emissions test and an evaporative system pressure test as follows:
  - a. The transient loaded emissions test shall consist of 147 seconds of mass emissions measurement using a constant volume sampler while the vehicle is driven by an inspector through a computer-monitored driving cycle on a dynamometer with inertial weight settings appropriate for the weight of the vehicle. The driving cycle shall include the acceleration, deceleration, and idle operating modes described in Table 4. The 147 second sequence may be ended earlier using a fast pass or fast fail algorithm. A retest algorithm shall be used to determine if a test failure is due to insufficient vehicle preconditioning. As determined by the retest algorithm, up to two additional tests may be performed on a failing vehicle. Drive shall be used for automatic transmissions and first gear shall be used to begin for manual transmissions. Exhaust emissions concentrations in grams per mile for HC, CO, NO<sub>x</sub> and CO<sub>2</sub> shall be recorded continuously beginning with the first second. The inspector shall reject a vehicle with an audible or visible exhaust leak from emissions testing.
  - b. The evaporative system pressure test shall consist of the following steps in sequence:
    - i. Connect the test equipment to either the fuel tank vent hose at the canister or the fuel tank filler neck. The gas cap shall be checked to determine that cap leakage does not exceed 60 cubic centimeters of air per minute at a pressure of 30 inches of water gauge;
    - ii. Pressurize the system to  $14 \pm 0.5$  inches of water without exceeding 26 inches of water system pressure;
    - iii. Close off the pressure source, seal the evaporative system, and monitor pressure decay for no more than two minutes.
  - c. For a vehicle requiring a transient loaded emissions test under subsection (E)(2)(a), all testing and test equipment shall conform to "IM240 & Evap Technical Guidance," EPA420-R-98-010, EPA, August 1998, incorporated by reference, and no future editions or amendments, except that the transient driving cycle in Table 4 of this Article shall be used. A copy of the incorporated material is on file with the Department and the Secretary of State, and may be obtained at EPA's National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105-2498.
3. A vehicle with a 1996 or newer model year and a GVWR of 8500 pounds or less, except a motorcycle or a reconstructed vehicle, is required to biennially take and pass an OBD test and a functional gas cap test as follows:
  - a. The OBD test shall consist of:
    - i. A visual inspection of the MIL function; and
    - ii. An electronic examination of the OBD computer by connecting a scan tool to the data link connector and interrogating the OBD system to determine vehicle readiness status, MIL status, and presence of diagnostic trouble codes.
  - b. The OBD test and test equipment shall conform to "Performing Onboard Diagnostic System Checks as Part of a Vehicle Inspection and Maintenance Program," EPA420-R-01-015, EPA, June 2001, incorporated by reference, and no future editions or amendments. A copy of this incorporated material is on file with the Department and the Secretary of State, and may be obtained at the EPA's National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI, 48105-2498; and
  - c. The functional gas cap test shall comply with subsection (E)(7)(a).
4. A motorcycle, or a constant 4-wheel drive vehicle except one requiring an OBD emissions test under subsection (E)(3), shall take and pass only a curb idle test according to subsection (F)(1). An all-terrain vehicle (ATV), as defined in A.R.S. § 28-101, shall be tested as a motorcycle.
5. A vehicle with a 1975 or newer model year is required to take and pass a liquid fuel leak inspection annually or biennially according to subsections (E)(1) or (2) as follows:
  - a. For purposes of this subsection, "liquid fuel leak" means any fuel emanating from a vehicle's fuel delivery, metering or evaporation systems in liquid form that has created a visible drop or more of fuel on, around, or under a component of a vehicle's fuel delivery, metering, or evaporation system.
  - b. With the engine running, the vehicle emissions inspector shall visually inspect the following components of the vehicle, if they are exposed and visually accessible, for liquid fuel leaks:
    - i. Gasoline fuel tanks;
    - ii. Gasoline fill pipes, associated hoses and fuel tank connections;
    - iii. Gas caps;
    - iv. External fuel pumps;

- v. Fuel delivery and return lines and hoses;
  - vi. Fuel filters;
  - vii. Carburetors;
  - viii. Fuel injectors;
  - ix. Fuel pressure regulators;
  - x. Charcoal canisters; and
  - xi. Fuel vapor hoses.
  - xii. Any valves connected to any other fuel evaporative component.
- c. The liquid fuel leak inspection required by this subsection is a visual inspection only. The vehicle emissions inspector is not required to perform any disassembly of the vehicle to inspect for liquid fuel leaks. No special tools or equipment, other than a flashlight and mirror, are required and no raising, hoisting, or lifting of the vehicle is required.
- d. The vehicle emissions inspector shall indicate on the vehicle inspection report the location of any liquid fuel leak.
- e. Nothing in this subsection shall prohibit a vehicle emissions inspector from refusing to inspect a vehicle under subsections (A), (B), or (C) or from terminating an inspection if a liquid fuel leak presents a safety hazard.
- f. A vehicle operated exclusively by compressed natural gas (CNG), liquid natural gas (LNG), or liquid petroleum gas (LPG) shall be exempt from the liquid fuel leak inspection.
6. The emissions pass-fail determination for a vehicle tested under subsection (E) shall be made as follows:
- a. A vehicle tested under subsection (E)(1), that does not exceed the loaded cruise mode or curb idle mode HC and CO emissions standards listed in Table 2 for the vehicle, complies with the emissions standards in Table 2. The loaded cruise test standards in Table 2 apply to a fleet vehicle tested with the 2,500 RPM unloaded fast idle test under R18-2-1019(E).
  - b. A vehicle tested under subsection (E)(2) shall meet the standards in Table 3 and pass the evaporative system pressure test as follows:
    - i. Table 3 Standards. A vehicle shall meet either the composite standard for the whole test or the phase 2 standard for seconds 65 to 146. The Department may implement a testing algorithm for fast pass, fast fail, or both, provided that the algorithm is reliable in accurately predicting the final outcome of the entire cycle. A vehicle not meeting either the composite or phase 2 standard shall fail the emissions test.
    - ii. Evaporative System Pressure Test. A vehicle fails the emissions test if the evaporative system cannot maintain a system pressure above eight inches of water for at least two minutes after being pressurized to  $14 \pm 0.5$  inches of water. Additionally, a vehicle fails the evaporative test if the canister is missing or damaged, if a hose or electrical connection is missing, routed incorrectly, or disconnected, according to the vehicle emissions control information label, or if the gas cap is missing.
  - c. A vehicle that operates on natural gas complies with HC emissions standards if the HC emissions value does not exceed the applicable standard in subsection (E)(6)(a) or (b), if:
    - i. Multiplied by 0.19, when using an analyzer with a flame ionization detector, or
    - ii. Multiplied by 0.61, when using an NDIR analyzer.
  - d. A motorcycle or a constant 4-wheel drive vehicle, except one requiring an OBD emissions test under subsection (E)(3), that does not exceed the curb idle mode HC and CO emissions standards listed in Table 2 on either the first curb idle test or the second curb idle test passes the emissions test.
  - e. A vehicle tested under subsection (E)(3) shall:
    - i. Fail if the data link connector is missing, tampered, or otherwise inoperable during any OBD test;
    - ii. Fail if the MIL does not illuminate at all when the ignition key is turned to the key on, engine off position, or does not illuminate briefly during engine start during any OBD test;
    - iii. Fail if the MIL illuminates continuously or flashes after the engine has been started during any OBD test;
    - iv. Fail if a diagnostic trouble code is present and the MIL status, as indicated by the scan tool, is commanded on during any OBD test.
    - v. Be rejected from an initial OBD test and required to take and pass a transient loaded test under subsection (E)(2) if the number of unset readiness indicators, excluding continuous indicators, is three or more for a model year 1996-2000 vehicle, or two or more for a model year 2001 and newer vehicle.
    - vi. Be rejected from an OBD retest if the number of unset readiness indicators, excluding continuous indicators, exceeds the number allowed in subsection (v).
    - vii. Fail the functional gas cap test if the gas cap does not comply with subsection (E)(7)(a).
  - f. A vehicle tested under subsection (E)(5) shall fail the inspection if a vehicle emissions inspector detects a liquid fuel leak.
  - g. A vehicle that exceeds the applicable emissions standards for the tests described in subsections (E)(1) and (E)(2)(a), or fails the OBD test described in subsection (E)(3), fails the emissions test and shall not be reinspected until a low-emissions tune-up is performed as described in R18-2-1010. A vehicle that fails the evaporative system pressure test described in subsection (E)(2)(b) shall not be reinspected until repaired as required in R18-2-1010(D)(1) and (2). A vehicle that fails the functional gas cap test described in subsection (E)(7)(a) shall not be reinspected until repaired as required in R18-2-1009(B). A vehicle that fails the liquid fuel leak test described in subsection (E)(5) shall not be reinspected until repaired as required in R18-2-1010(E).

7. A vehicle required to take an annual emissions test in area A shall, at the time of the test, undergo a tampering inspection based on the original configuration of the vehicle as manufactured. The applicable emissions system requirements shall be verified by the "VEHICLE EMISSION CONTROL INFORMATION" label. A vehicle that fails any portion of the tampering inspection shall be repaired according to R18-2-1009 before reinspection unless the owner provides the written statement required in R18-2-1008(B). "Original configuration" for a foreign-manufactured vehicle means the design and construction of a vehicle produced by the manufacturer for original entry and sale in the United States. The tampering inspection shall consist of the following:
  - a. Any vehicle emissions tested, except one with a vented fuel system, shall have a functional test of the gas cap to determine that cap leakage does not exceed 60 cubic centimeters of air per minute at a pressure of 30 inches of water gauge. A vehicle with a vented fuel system shall be checked for the presence of a properly fitting fuel cap.
  - b. For a 1975 and newer model year vehicle:
    - i. A visual inspection to determine the presence and proper installation of each required catalytic converter, if applicable;
    - ii. An examination to determine the presence of an operational air pump, if applicable; and
    - iii. A visual inspection to determine the presence of an operational positive crankcase ventilation system and evaporative control system, if applicable.
- F. In area B, the inspection test procedures for a vehicle other than a diesel-powered vehicle shall consist of the following:
  1. An area B vehicle with a model year of 1967 through 1980 shall take and pass only a curb idle test. The curb idle test shall be performed with the vehicle in drive for automatic transmissions or in neutral for manual transmissions. Engine RPM shall be within  $\pm 100$  RPM of the manufacturer's specified idle RPM. HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized, or at the end of 30 seconds, whichever occurs first. A CO<sub>2</sub> plus CO reading of 6% or greater shall be registered to establish test validity. A CO<sub>2</sub> plus CO reading less than 6% shall be proof of exhaust sample dilution and the vehicle shall be rejected from further emissions inspection until repaired, except when tested at a fleet emissions inspection station. If the vehicle fails the curb idle test, and if permitted by the vehicle operator, the vehicle shall be conditioned according to one of the following conditioning procedures:
    - a. Fast-idle conditioning procedure. The vehicle shall be conditioned by increasing engine speed to 2,500,  $\pm 300$  RPM, for up to 30 seconds with the transmission in neutral. HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized, or at the end of 30 seconds, whichever occurs first. The conditioning procedure standards in Table 2 are for diagnostic and advisory information only. After exhaust emissions are recorded, the engine speed shall be returned to curb idle for a second idle test. The fast-idle conditioning procedure may be used on a vehicle at a state station instead of the loaded conditioning procedure if any of the following occurs:
      - i. The vehicle has a tire on a driving wheel with less than 2/32-inch tread, with metal protuberances, with visibly low tire pressure as determined by visual inspection, or any other condition that precludes loaded conditioning for reasons of personnel, equipment, or vehicle safety;
      - ii. The vehicle is driven by a person who, because of physical incapacity, is unable to yield the driver's seat to the vehicle emissions inspector;
      - iii. The driver refuses to yield the driver's seat to the vehicle emissions inspector; or
      - iv. The vehicle cannot be tested according to Table 1 because of the vehicle's inability to attain the speeds specified.
    - b. Loaded conditioning procedure. For a vehicle other than a motorcycle or a constant 4-wheel drive vehicle, the vehicle's drive wheels shall be placed on a dynamometer and the vehicle shall be operated according to Table 1, in drive for automatic transmission, or second or higher gear for manual transmission. All front wheel drive vehicles shall be driven by the inspector. HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized, or at the end of 30 seconds, whichever occurs first. The conditioning procedure standards in Table 2 are for diagnostic and advisory information only. After exhaust emissions are recorded, engine speed shall be returned to curb idle for a second idle test.
    - c. Following one of the conditioning procedures in subsection (F)(1)(a) or (b), the vehicle shall be retested according to the curb idle test procedure in subsection (F)(1).
  2. An area B vehicle with a 1981 or newer model year, except a motorcycle, a constant 4-wheel drive vehicle, or a 1996 and newer vehicle equipped with OBD, shall take and pass a loaded cruise test and curb idle test, as follows:
    - a. Loaded Cruise Test. The vehicle's drive wheels shall be placed on a dynamometer and the vehicle shall be operated according to Table 1, in drive for automatic transmission or second or higher gear for manual transmission. Overdrive shall not be used. All front wheel drive vehicles shall be driven by the inspector. HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized, or at the end of 90 seconds, whichever occurs first. After exhaust emissions are recorded, engine speed shall be returned to idle for a curb idle test.
    - b. Curb Idle Test. The test shall be performed with the vehicle in neutral. Engine RPM shall be within  $\pm 100$  RPM of the manufacturer's specified idle RPM. HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized, or at the end of 90 seconds, whichever occurs first. A CO<sub>2</sub> plus CO reading of 6% or greater shall be registered to establish test validity, except when tested at a fleet inspection station. A CO<sub>2</sub> plus CO reading less than 6% shall be proof of exhaust sample dilution and the vehicle shall be rejected from further emissions inspection until repaired.

3. A vehicle with a model year of 1996 or newer and a GVWR of 8500 pounds or less, except a motorcycle or a reconstructed vehicle, is required to annually take and pass an OBD test and a functional gas cap test as follows:
  - a. The OBD test shall consist of:
    - i. A visual inspection of the MIL function; and
    - ii. An electronic examination of the OBD computer by connecting a scan tool to the data link connector and interrogating the OBD system to determine vehicle readiness status, MIL status, and presence of diagnostic trouble codes;
  - b. The OBD test and test equipment shall conform to "Performing Onboard Diagnostic System Checks as Part of a Vehicle Inspection and Maintenance Program," EPA420-R-01-015, EPA, June 2001, incorporated by reference, and no future editions or amendments. A copy of this incorporated material is on file with the Department and the Secretary of State and may be obtained at the EPA's National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI, 48105-2498; and
  - c. The functional gas cap test shall comply with subsection (F)(7)(a).
4. A motorcycle or a constant 4-wheel drive vehicle, except one requiring an OBD emissions test under subsection (F)(3), shall take and pass only a curb idle test according to subsection (F)(1). An all-terrain vehicle (ATV), as defined in A.R.S. § 28-101, shall be tested as a motorcycle. If the vehicle fails the curb idle test, and if permitted by the vehicle operator, the vehicle shall be conditioned according to the fast idle conditioning procedure required in subsection (F)(1)(a). Following conditioning, the vehicle shall be retested according to the curb idle test procedure in subsection (F)(1).
5. A vehicle with a 1975 or newer model year and annually tested under subsections (F)(1) or (2) is required to take and pass a liquid fuel leak inspection according to subsections (E)(5)(a) through (f).
6. The emissions pass-fail determination shall be made as follows:
  - a. A vehicle with a model year of 1967 through 1980, except a motorcycle or a constant 4-wheel drive vehicle, that does not exceed the curb idle mode HC and CO emissions standards in Table 2 on either the first or second curb idle test, complies with the minimum emissions standards contained in Table 2.
  - b. A vehicle with a 1981 or newer model year, except a motorcycle or a constant 4-wheel drive vehicle, that does not exceed the loaded cruise mode or curb idle mode HC and CO emissions standards listed in Table 2, complies with the minimum emissions standards in Table 2. The loaded cruise test standards specified in Table 2 shall apply to fleet vehicles tested with the 2,500 RPM unloaded fast idle test.
  - c. A vehicle that operates on natural gas complies with HC emissions standards if the HC emissions value, as determined by an NDIR analyzer, multiplied by 0.61 does not exceed the applicable standard in subsection (F)(6)(a) or (b).
  - d. A motorcycle or a constant 4-wheel drive vehicle, except one requiring an OBD emissions test under subsection (F)(3), that does not exceed the curb idle mode HC and CO emissions standards in Table 2 on either the first or second curb idle test complies with the minimum emissions standards in Table 2.
  - e. A vehicle that exceeds the applicable emissions standards, or fails the OBD test described in subsection (F)(3), fails the emissions test and shall have a low emissions tune-up as described in R18-2-1010 before reinspection. A vehicle that fails the functional gas cap test described in subsection (F)(3)(c) shall not be reinspected until repaired as required in R18-2-1009(B).
  - f. A vehicle tested under subsection (F)(3) shall:
    - i. Fail if the data link connector is missing, tampered, or otherwise inoperable during any OBD test;
    - ii. Fail if the MIL does not illuminate at all when the ignition key is turned to the key on, engine off position, or does not illuminate briefly during engine start during any OBD test;
    - iii. Fail if the MIL illuminates continuously or flashes after the engine has been started during any OBD test;
    - iv. Fail if a diagnostic trouble code is present and the MIL status, as indicated by the scan tool, is commanded on during any OBD test;
    - v. Be rejected from an initial OBD test and required to take and pass a loaded cruise test and curb idle test under subsection (F)(2) if the number of unset readiness indicators, excluding continuous indicators, is three or more for a model year 1996-2000 vehicle, or two or more for a model year 2001 and newer vehicle;
    - vi. Be rejected from an OBD retest if the number of unset readiness indicators, excluding continuous indicators, exceeds the number allowed in subsection (v); and
    - vii. Fail the functional gas cap test if the gas cap does not comply with subsection (F)(7)(a).
  - g. A vehicle tested under subsection (F)(5) shall fail the inspection if a vehicle emissions inspector detects a liquid fuel leak. A vehicle that fails the liquid fuel leak test shall not be reinspected until repaired as required in R18-2-1010(E).
7. A vehicle required to take an emissions test in area B, except a vehicle required to take an OBD test as described in subsection (F)(3), shall at the time of the test, undergo a tampering inspection based on the original configuration of the vehicle as manufactured. The applicable emissions system requirements shall be verified by the "VEHICLE EMISSION CONTROL INFORMATION" label. A vehicle that fails any portion of the tampering inspection shall be repaired according to R18-2-1009 before reinspection unless the owner provides the written statement required in R18-2-1008(B). "Original configuration" for a foreign manufactured vehicle means the design and construction of a vehicle produced by the manufacturer for original entry and sale in the United States. The tampering inspection shall consist of the following:

- a. Any vehicle emissions tested, except one with a vented fuel system, shall have a functional test of the gas cap to determine that cap leakage does not exceed 60 cubic centimeters of air per minute at a pressure of 30 inches of water gauge. A vehicle with a non-sealing gas cap shall be checked for the presence of a properly fitting gas cap.
  - b. For a 1975 or newer model year vehicle:
    - i. A visual inspection to determine the presence and proper installation of each required catalytic converter, if applicable; and
    - ii. An examination to determine the presence of an operational air pump, if applicable.
8. Exhaust sampling in area B shall comply with the following:
- a. All CO and HC emissions analyzers shall have water traps incorporated in the sampling lines. Sampling probes shall be capable of taking undiluted exhaust samples from a vehicle exhaust system.
  - b. A vehicle, other than a diesel-powered vehicle, shall be inspected with a NDIR analyzer capable of determining concentrations of CO and HC within the ranges and tolerances specified in Table 5.
  - c. A vehicle with multiple exhaust pipes shall be inspected by collecting and averaging samples by one of the following methods:
    - i. Collect separate samples from each exhaust pipe and use the average concentration to determine the test result;
    - ii. Use manifold exhaust probes to simultaneously sample approximately equal volumes from each pipe; or
    - iii. Use manifold exhaust pipe adapters to collect approximately equal volume samples from each pipe.
- G.** The following apply to all testing under subsection (E) or (F):
- 1. A rotary piston engine shall be inspected as a 4-stroke engine with four cylinders or less;
  - 2. A turbine engine shall be inspected as a 4-stroke engine with more than four cylinders; and
  - 3. A vehicle in which a diesel engine has been replaced with a gas engine shall be inspected as a gas-powered vehicle of the same vehicle model year. The vehicle shall not pass the inspection unless each catalytic converter, air pump, gas cap, and other emissions control device applicable to the vehicle model year and the same or more recent year engine configuration is properly installed and in operating condition.
- H.** In area A, the inspection test procedure for a diesel-powered vehicle is as follows:
- 1. A diesel-powered vehicle with a GVWR greater than 8,500 pounds shall be tested with a procedure that conforms to Society of Automotive Engineers standard J1667, February 1996, incorporated by reference and on file with the Department and the Secretary of State. This incorporation by reference contains no future editions or amendments. A copy of this referenced material may be obtained at Society of Automotive Engineers, 400 Commonwealth Dr., Warrendale, PA 15096-0001. The procedure shall utilize the corrections for ambient test conditions in Appendix B of J1667 for all tests. The test results shall be reported as the percentage of smoke opacity. Emissions pass-fail determinations are as follows:
    - a. A vehicle powered by a 1991 or later model year diesel engine fails if the J1667 final test result is greater than 40%, unless the engine family is exempted from the 40% standard under subsection (H)(1)(e);
    - b. A vehicle powered by a pre-1991 model year diesel engine fails if the J1667 final test result is greater than 55%, unless the engine family is exempted from the 55% standard under subsection (H)(1)(e);
    - c. The engine model year is determined by the emission control label. If the emission control label is missing, illegible, or incorrect, the test standard shall be 40%, unless a correct, legible, emission control label replacement is attached to the vehicle within 30 days of the inspection;
    - d. A vehicle that exceeds the opacity standard in subsection (H)(1)(a) or (b) fails the emissions test. Before reinspection, the vehicle shall have a low emissions tune-up as described in R18-2-1010(H);
    - e. The Director shall exempt any engine family from the standards in subsections (H)(1)(a) or (b) if the engine manufacturer demonstrates either of the following:
      - i. The engine family exhibits smoke opacity greater than the standard when in good operating condition and adjusted to the manufacturer's specifications. The Director shall identify a technologically appropriate less stringent standard based on a review of data obtained from engines in good operating condition and adjusted to manufacturer's specifications; or
      - ii. The engine family is exempted from an equivalent standard based on J1667 by the executive officer of the California Air Resources Board (CARB). The Director shall allow the engine family to comply with any technologically appropriate less stringent standard identified by the executive officer of CARB; and
    - f. A demonstration under subsection (H)(1)(e)(i) shall be based on data from at least three vehicles. Data from official inspections under subsection (H)(1) showing that vehicles in the engine family meet the standard may be used to rebut the demonstration. The Director shall implement any new standard resulting from each exemption as soon as practicable for all subsequent tests and provide notice at all affected test stations and fleets.
  - 2. A diesel-powered vehicle with a GVWR greater than 4,000 pounds and less than or equal to 8,500 pounds shall be tested by a loaded dynamometer test by applying a single load of 30 HP,  $\pm 2$  HP, while operated at 50 MPH. A diesel-powered vehicle with a GVWR of 4,000 pounds or less shall be tested by a loaded dynamometer test by applying a single load of between 6.4 - 8.4 HP while operated at 30 MPH. For all diesel-powered vehicles with a GVWR less than or equal to 8,500 pounds:
    - a. The emissions pass-fail determination shall be made as follows:



- b. A vehicle shall be inspected with either a full-flow or sampling-type opacity meter. The opacity meter shall be a direct reading, continuous reading light extinction-type using a collimated light source and photo-electric cell, accurate to a value within  $\pm 5\%$  of filter value.
- J. All diesel-powered vehicles shall undergo a tampering inspection under subsection (E)(7).

**R18-2-1007. Evidence of Meeting State Inspection Requirements**

- A. Vehicles required to be inspected under this Article shall pass inspection before registration by meeting the requirements of R18-2-1006, unless waived under R18-2-1008.
- B. The MVD or its agent may use the MVD motor vehicles emissions database, if available, as evidence that a vehicle complies with the requirements of this Article.
- C. If the MVD motor vehicles emissions database is not available, the MVD or its agent shall accept any of the following documents, when complete, unaltered, and dated no more than 90 days before registration expiration date, as evidence that a vehicle complies with the requirements of this Article unless the MVD or its agent has reason to believe it is false. Documents accompanying a late registration may be dated subsequent to the registration expiration date:
  - 1. Certificate of compliance,
  - 2. Certificate of waiver (except from auto dealers licensed to sell used motor vehicles under Title 28),
  - 3. Certificate of exemption, or
  - 4. Director's certificate,
  - 5. The upper section of the vehicle inspection report with "PASS" in the final results block.
- D. A complete certificate of inspection dated within 12 months of registration for an annually tested vehicle and 24 months for a biennially tested vehicle shall be accepted by the MVD or its agent as evidence that a vehicle is in compliance with the requirements of this Article unless the MVD or its agent has reason to believe it is false. A certificate corrected according to R18-2-1019(F)(1)(a) shall be accepted by the MVD or its agent.
- E. Documents listed in subsection (C) and originating in area B are not acceptable for meeting the inspection requirements in area A.
- F. Government vehicles for which only weight fees are paid shall be registered without evidence of inspection.

**R18-2-1008. Procedure for Issuing Certificates of Waiver**

- A. Unless prohibited under subsection (C), (D), or (E), a certificate of waiver shall be issued subsequent to reinspection by a state inspector at a state or Department station to a vehicle that failed the emissions inspection or the emissions and tampering inspections when it is determined by repair receipts, emissions test results, evidence of repairs performed, underhood verification, or similar evidence that the requirements of R18-2-1009 and R18-2-1010 have been met, or for emissions failures only, any further repairs within the repair cost limit would be ineffective. A waiver may be denied if a waiver request is based upon repair estimates and the state inspector demonstrates that a recognized repair facility can repair or improve the vehicle's test readings within the repair cost limit.
- B. A certificate of waiver may be issued to a vehicle failing the tampering inspection if the vehicle owner provides to the Director a written statement from an automobile parts or repair business that an emission control device necessary to repair the tampering is not available and cannot be obtained from any usual source of supply, and if all requirements of R18-2-1008(A) have been met. All written statements are subject to verification for authenticity and accuracy by the Department. The Department may deny a certificate of waiver if the state inspector has any reason to believe the written statement is false or a usual source of supply exists and the device necessary to repair the tampering is available. Certificates of waiver for tampered vehicles may be issued conditionally for a specified period, not to exceed 90 days, that allows sufficient time for the procurement and installation of a proper emissions control device. A receipt or bill from a vehicle repair facility or automobile parts store shall be an acceptable proof of purchase. Before the end of the specified time period, the vehicle owner shall present to the Director proof of purchase and installation of the device. The Department shall track all issued conditional certificates of waiver and if no proof of purchase and installation is received before the end of the specified time period, the Director shall forward to the Department of Motor Vehicles an order to cancel the vehicle's registration.
- C. The Director shall not issue a waiver to a vehicle that has failed the emissions test due to the catalytic converter system. A vehicle shall have failed the emissions test due to the catalytic converter system if:
  - 1. The converter's oxidation efficiency, as measured by the Catalyst Efficiency Test Procedure in R18-2-1031(A), is less than 75%; and
  - 2. No engine or fuel system malfunctions exist that would prevent the proper operation of a catalytic converter.
- D. The Director shall not issue a waiver to a vehicle failing the emission test with an HC, CO, NO<sub>x</sub>, or opacity emission level greater than two times the pass-fail standard in R18-2-1006, unless the vehicle is repaired so that each emission level is less than two times the pass-fail standard.
- E. After January 1, 1997, the Director shall not issue a certificate of waiver to the same vehicle more than once.
- F. The fee for a certificate of waiver under this Section shall be fixed by the Director according to A.R.S. § 49-543, and shall be based upon the Director's estimated costs to the state for administering and enforcing the provisions of this Article for issuance of certificates of waiver under this Section. The fee shall be payable directly to the Department of Environmental Quality at the time the certificate of waiver is issued.

**R18-2-1009. Tampering Repair Requirements**

- A. If a vehicle fails the visual inspection for properly installed catalytic converters, the converters shall be replaced with new or reconditioned OEM converters or equivalent new aftermarket converters. The Department shall provide names of acceptable aftermarket converters at the time of inspection on the repair requirement list.
- B. If a vehicle fails the functional gas cap pressure test described in R18-2-1006(E)(7)(a) or (F)(7)(a), the gas cap shall be replaced with one that meets those specifications. If a vehicle designed with a vented system fails a visual inspection for the presence of a gas cap, a properly fitting gas cap shall be installed on the vehicle.
- C. If a vehicle fails the visual inspection for the presence of an operational air pump, a new, used, or reconditioned, operational air pump shall be properly installed on the vehicle.
- D. If a vehicle fails the visual inspection for the presence or malfunction of the positive crankcase ventilation system, the system shall be repaired or replaced with OEM or equivalent aftermarket parts.
- E. If a vehicle fails the visual inspection for the presence or malfunction of the evaporative control system, the system shall be repaired or replaced with OEM or equivalent aftermarket parts.

**R18-2-1010. Low Emissions Tune-up, Emissions and Evaporative System Repair**

- A. A low emissions tune-up on a nondiesel-powered vehicle consists of the following procedures:
  - 1. Emissions Failure Diagnosis. For a computer-controlled vehicle, the on-board-diagnostics shall be accessed and any stored trouble codes recorded. For a model year 1996 or newer vehicle equipped with an OBD system, a compatible scan tool shall be used to access and record diagnostic trouble codes. The following instruments or equipment are required to complete a low emissions tune-up:
    - a. Tachometer;
    - b. Timing light;
    - c. Engine analyzer or oscilloscope, and
    - d. A HC/CO NDIR analyzer to make final A/F adjustments, if specified by the manufacturer.
  - 2. Adjustment. All adjustments shall be made according to the manufacturer's specifications and procedures. Final adjustment shall be made on the vehicle engine only after the engine is at normal operating temperature.
  - 3. Inspection of Air Cleaner, Choke, and Air Intake System. A dirty or plugged air cleaner, stuck choke, or restricted air intake system shall be replaced or repaired as required.
  - 4. Dwell and Basic Timing Check. Dwell and basic engine timing shall be checked and adjusted, if necessary, according to manufacturer's specifications.
  - 5. Inspection of PCV Valve. The PCV valve shall be checked to ensure that it is the type recommended by the manufacturer and is correctly operating. Free flow through the PCV system passages and hoses shall be verified. Repair or replace as required.
  - 6. Inspection of Vacuum Hoses. The vacuum hoses shall be inspected for leaks, obstruction, and proper routing and connection. Repair or replace as required.
  - 7. Perform a visual inspection for leaking fuel lines or system components. Repair or replace as required.
  - 8. Idle Speed and A/F Mixture Check. The idle speed and A/F mixture shall be checked and adjusted according to manufacturer's specifications and procedures. If the vehicle is equipped with a fuel injection system or an alternate fuel (LPG or LNG), the manufacturer's recommended adjustment procedure shall be followed.
- B. A vehicle that fails reinspection does not qualify for a waiver unless a low emissions tune-up and diagnosis is performed on the vehicle.
- C. If the maximum required repair cost in subsection (F) or (G) is not exceeded after a low emissions tune-up described in subsection (A), then the following procedures apply:
  - 1. CO failure.
    - a. If a vehicle fails CO only, the vehicle shall be checked for:
      - i. Proper canister purge system operation,
      - ii. High float setting,
      - iii. Leaky power valve, and
      - iv. Faulty or worn needles, seats, jets or improper jet size.
    - b. If applicable, the following shall also be checked:
      - i. Computer,
      - ii. Engine and computer sensors,
      - iii. Engine solenoids,
      - iv. Engine thermostats,
      - v. Engine switches,
      - vi. Coolant switches,
      - vii. Throttle body or port fuel injection system,
      - viii. Fuel injectors,
      - ix. Fuel line routing and integrity,
      - x. Air in fuel system including line and pump,
      - xi. Fuel return system,
      - xii. Injection pump,
      - xiii. Fuel injection timing,
      - xiv. Routing of vacuum hoses, and

- xv. Electrical connections.
- c. The items in subsections (C)(1)(a) and (b) shall be repaired or replaced as required.
- 2. HC, or HC and CO failure.
  - a. If a vehicle fails HC, or HC and CO, the vehicle shall be checked for:
    - i. Faulty spark plugs and faulty, open, crossed, or disconnected plug wires;
    - ii. Distributor module;
    - iii. Vacuum hose routing and electrical connections;
    - iv. Distributor component malfunctions including vacuum advance;
    - v. Faulty points or condenser;
    - vi. Distributor cap crossfire;
    - vii. Catalytic converter efficiency air supply;
    - viii. Vacuum leaks at intake manifold, carburetor base gasket, EGR, and vacuum-operated components.
  - b. The items in subsection (C)(2)(a) shall be repaired or replaced as required.
- 3. NO<sub>x</sub> failure.
  - a. If a vehicle fails NO<sub>x</sub>, the vehicle shall be checked for:
    - i. Removed, plugged, or malfunctioning EGR valve, exhaust gas ports, lines, and passages;
    - ii. EGR valve electrical and vacuum control circuitry, components, and computer control, as applicable;
    - iii. Above normal engine operating temperature;
    - iv. Proper air management;
    - v. Lean A/F mixture;
    - vi. Catalytic converter efficiency; and
    - vii. Over-advanced off-idle timing.
  - b. The items in subsection (C)(3)(a) shall be repaired or replaced as required.
- 4. OBD failure. If the vehicle fails the OBD test, the vehicle shall be repaired for the items indicated on the Vehicle Emissions Report as causing the failure. If the failure results from Diagnostic Trouble Codes (DTCs) that caused the Malfunction Indicator Lamp (MIL) to be illuminated, the components or systems causing the DTCs shall be repaired or replaced. After repair of a DTC failure, and before reinspection, the vehicle shall be operated under conditions recommended by the vehicle manufacturer for the OBD computer to evaluate the repaired system.
- D.** For Evaporative System Failures, the following procedures apply:
  - 1. If a vehicle fails the evaporative system pressure test, the vehicle shall be checked for leaking or disconnected vapor hoses, line, gas cap, and fuel tank.
  - 2. If a vehicle fails a visual inspection of the evaporative system, the vehicle shall be checked for a missing or damaged canister, canister electrical and vacuum control circuits and components, disconnected, damaged, mis-routed or plugged hoses, and damaged or missing purge valves. Repair or replace as necessary.
- E.** If a vehicle fails the liquid fuel leak inspection, the vehicle shall be checked for leaking or disconnected fuel delivery, metering, or evaporation system components including those listed in R18-2-1006(E)(5)(b). Repair or replace as necessary.
- F.** The maximum required repair cost for a vehicle in area A, not including cost to repair the vehicle for failing an evaporative system pressure test due to tampering, or other tampering repair cost, is:
  - 1. For a diesel-powered vehicle with a GVWR greater than 26,000 pounds or a diesel-powered vehicle with tandem axles: \$500; and
  - 2. For a vehicle that is not a diesel-powered vehicle with a GVWR greater than 26,000 pounds and is not a diesel-powered vehicle with tandem axles:
    - a. Manufactured in or before the 1974 model year: \$200;
    - b. Manufactured in the 1975 through 1979 model years: \$300; and
    - c. Manufactured in or after the 1980 model year: \$450.
  - 3. Subsection (F) does not prevent a vehicle owner from authorizing or performing more than the required repairs. A vehicle operator who has a vehicle reinspected shall have the repair receipts available when requesting a certificate of waiver.
- G.** The maximum required repair cost for vehicles in area B, not including tampering repair cost, is:
  - 1. For a diesel-powered vehicle with a GVWR greater than 26,000 pounds or a diesel-powered vehicle with tandem axles: \$300; and
  - 2. For a vehicle that is not a diesel-powered vehicle with a GVWR greater than 26,000 pounds and is not a diesel-powered vehicle with tandem axles:
    - a. Manufactured in or before the 1974 model year: \$50;
    - b. Manufactured in the 1975 through 1979 model years: \$200; and
    - c. Manufactured in or after the 1980 model year: \$300.
  - 3. Subsection (G) does not prevent a vehicle owner from authorizing or performing more than the required repairs. A vehicle operator who has a vehicle reinspected shall have the repair receipts available when requesting a certificate of waiver.
- H.** A low emissions tune-up on a diesel-powered vehicle consists of the following procedures:
  - 1. Inspect for dirty or plugged air cleaner, or restricted air intake system. Repair or replace as required.
  - 2. Check fuel injection system timing according to manufacturer's specifications. Adjust as required.
  - 3. Check for fuel injector fouling, leaking, or mismatch. Repair or replace as required.
  - 4. Check fuel pump and A/F ratio control according to manufacturer's specifications. Adjust as required.

5. If the vehicle fails the J1667 procedure, check smoke-limiting devices, if any, including the aneroid valve and puff limiter. Repair or replace as required.

- I. Any available warranty coverage for a vehicle shall be used to obtain needed repairs before an expenditure can be counted toward the cost limits in subsection (F) and (G). If the operator of a vehicle within the age and mileage coverage of section 207(b) of the Clean Air Act presents a written denial of warranty coverage from the manufacturer or authorized dealer, warranty coverage is not considered available under this subsection.

**R18-2-1011. Vehicle Inspection Report**

- A. A vehicle inspected at a state station shall be provided a uniquely numbered vehicle inspection report of a design approved by the Director that contains, at a minimum, the following information:
1. License plate number;
  2. Vehicle identification number;
  3. Model year of vehicle;
  4. Make of vehicle;
  5. Style of vehicle;
  6. Type of fuel;
  7. Odometer reading to the nearest 1000 miles, truncated;
  8. Emissions standards for idle and loaded cruise modes, if applicable;
  9. Emissions measurements during idle and loaded cruise modes, if applicable;
  10. Opacity measurements and standards, if applicable;
  11. Emissions standards and measurements for the transient loaded test, and the evaporative system pressure test, if applicable;
  12. Results of OBD test including all diagnostic trouble codes that commanded the illumination of the malfunction indicator lamp;
  13. Tampering inspection results;
  14. Liquid fuel leak inspection results;
  15. Repair requirements;
  16. Final test results;
  17. Repairs performed;
  18. Cost of emissions-related repairs;
  19. Cost of tampering-related repairs;
  20. Name, address, and telephone number of the business or person making repairs;
  21. Signature and certification number of person certifying repairs;
  22. Date of inspection;
  23. Test results of the previous inspection if the inspection is a reinspection;
  24. Inspection station, lane locators; and
  25. Test number and time of test.
- B. A vehicle failing the initial inspection shall receive an inspection report supplement approved by the Department containing, at a minimum, the following:
1. Diagnostic and tampering information including acceptable replacement units, and
  2. Applicable maximum repair costs.
- C. The inspection report shall provide a 3-inch by 5-inch tear-out section that may be used as a certificate of compliance for vehicles passing the inspection or as a certificate of waiver, if applicable.
1. The tear-out section shall be a certificate of compliance when the word "compliance" appears in the appropriate location on the printout.
  2. The tear-out section shall be a certificate of waiver when the word "waiver" appears in the appropriate location on the printout.
  3. The tear-out section shall contain all of the following information:
    - a. License plate number,
    - b. Vehicle identification number,
    - c. Final results,
    - d. Serial number of the inspection report,
    - e. Date of inspection,
    - f. Model year,
    - g. Make,
    - h. Date of initial inspection, and
    - i. Inspection fee.
- D. At the time of registration or reregistration, the certificate of compliance or certificate of waiver may be submitted to the Arizona Department of Transportation Motor Vehicle Division as evidence of meeting the requirements of this Article.

**R18-2-1012. Inspection Procedures and Fee**

- A. A vehicle that is inspected by a state station must be accompanied by a document such as a registration renewal notice, registration, certificate of title, or bill of sale that identifies the vehicle by make, model year, identification number, and license plate if applicable.
- B. If the vehicle inspection report from the previous test is used, it shall be retained by the test lane inspector.
- C. The fees for emissions inspections at a state station shall be specified in the contract between the contractor and the state of Arizona according to A.R.S. § 49-543, and shall include the full cost of the vehicle emissions inspection program including administration, implementation, and enforcement. Each fee is payable directly to the contractor at the time and place of inspection in cash or by check approved by the contractor. The amount collected by the contractor to defray the cost of the inspection shall be retained by the contractor. The amount collected to defray the cost of the administration, implementation, and enforcement of the vehicle emissions inspection program shall be remitted to the Department. Amounts collected shall be recorded and reported to the Department monthly. The contractor shall submit to the state of Arizona on a monthly basis, by the 10th day of each month, a report showing the number of inspections performed and the amount of fees collected.
- D. Each subsequent inspection, if needed, shall be treated by the state and the contractor in the same manner as an initial inspection and reinspection, providing for a free reinspection according to R18-2-1013, if needed, following a paid inspection. The fee for each paid reinspection shall be the full fee as provided for in the contract with the contractor.
- E. A state station emissions inspector shall not recommend repairs or repair facilities.

**R18-2-1013. Reinspections**

- A. A vehicle failing the initial inspection or any subsequent paid inspection is entitled to one reinspection at no additional charge under the following conditions:
  - 1. The vehicle is presented for inspection within 60 calendar days of the initial or any subsequent paid inspection, if the vehicle operator presents the vehicle inspection report from the previous inspection, indicating the itemization of the repairs performed.
  - 2. Emissions-related repairs or adjustments and any tampering repairs have been made.
  - 3. The vehicle is accompanied by the entire vehicle inspection report from the initial or subsequent inspection with the following information filled in on the reverse side:
    - a. Emissions-related and tampering-related repairs made;
    - b. Cost of emissions related and tampering related repairs as reflected by receipts or bills;
    - c. Name, address, telephone number, and type of facility making repairs;
    - d. Signature of person certifying the repairs;
    - e. Date of repairs; and
    - f. The state certification number of the technician making repairs, if applicable.
- B. A vehicle shall be retested after repair for any portion of the inspection the vehicle failed on the previous test to determine if the repairs are effective. To the extent that repair to correct a previous failure could cause failure of another portion of the test, that portion shall also be retested. Evaporative system repairs shall trigger an exhaust emissions retest.
- C. A vehicle failing the reinspection shall be provided a vehicle inspection report and a vehicle inspection report supplement.

**R18-2-1016. Licensing of Inspectors**

- A. The Department shall license a person as a vehicle emissions inspector if the applicant passes a practical and a written examination with a score equal to or greater than 80% in the following areas:
  - 1. For nondiesel-powered fleet vehicle emissions inspectors:
    - a. Equipment used in the inspection and the control of emissions;
    - b. Types of emission inspection failures;
    - c. Corrective procedures for excessive HC emissions;
    - d. Corrective procedures for excessive CO emissions;
    - e. Corrective procedures for excessive NO<sub>x</sub> emissions, for inspectors in area A;
    - f. Proper fuel system adjustment procedures;
    - g. Computerized engine control systems; and
    - h. Regulations governing fleet stations;
  - 2. For diesel-powered fleet vehicle emissions inspectors:
    - a. Equipment used in the inspection and the control of opacity and emissions;
    - b. Corrective procedures for excessive opacity;
    - c. Proper fuel injection system adjustment procedures;
    - d. Proper use of tools required by the vehicle manufacturer for field setting of fuel injectors, inlet and exhaust valve clearance, governors, and throttle controls;
    - e. Computerized engine control systems; and
    - f. Regulations governing fleet stations;
  - 3. For state station vehicle emission inspectors:
    - a. Air pollution causes and effects;
    - b. Purpose, function, and goals of the inspection program;
    - c. State inspection regulations;
    - d. Test procedures and rationale for their design;
    - e. Emission control devices, configuration, and inspection;

- f. Test equipment operation, calibration, and maintenance;
  - g. Proficiency in driving the transient test cycle in Table 4;
  - h. Quality control procedures;
  - i. Public relations; and
  - j. Safety and health issues related to the inspection process.
4. For the practical portion of the examination an applicant shall demonstrate the ability to conduct a proper emissions inspection, including proper use of equipment and procedures, to pass. If an inspector fails to demonstrate such ability in an audit, either covert or overt, the inspector's license shall be suspended. The suspended licensee shall demonstrate to the Department the skills required by this subsection within 30 days of suspension or such license shall be revoked.
- B.** If an applicant for a nondiesel-powered vehicle emissions inspector license fails the written examination, the applicant shall successfully complete the vehicle emissions inspector state training program before reexamination for licensure.
  - C.** Applications may be obtained from the Department. The application shall contain the following:
    1. The type of license requested;
    2. The applicant's name;
    3. The applicant's home address;
    4. The applicant's phone number;
    5. The name of the applicant's employer;
    6. The phone number of the applicant's employer;
    7. The applicant's signature; and
    8. The date of the license request.
  - D.** All completed applications shall be returned to the Department.
  - E.** Licenses issued to vehicle emissions inspectors shall be renewed annually on or before the expiration date. An inspector whose license has expired may not inspect vehicles.
  - F.** Applications for renewal of vehicle emissions fleet inspector's licenses shall be submitted within 30 days before the current license expiration date.
  - G.** The Department may suspend, revoke, or refuse to renew a license if the licensee has violated any provision of A.R.S. Title 49, Chapter 3, Article 5 or any provision of this Article or fails to continue to demonstrate proficiency to the Department as required in subsection (A).
  - H.** A vehicle emissions inspector shall notify the Department of any change in employment status, due to retirement, resignation or termination, within seven days of the change. The notification shall include the name and license number of the emissions inspector, a statement declaring the employment change, and the effective date of the employment change.
  - I.** The Department shall assign a single, unique, nontransferable inspector's number to each vehicle emissions inspector.

**R18-2-1017. Inspection of Government Vehicles**

- A.** Inspection of government vehicles operated in areas A and B shall be conducted as follows:
  1. At a licensed fleet station operated by the government entity;
  2. At a state station upon payment of the fee;
  3. At a state station upon payment of the contracted fee, either singly or in combination with other government fleet operators.
- B.** A government vehicle except a federally owned vehicle that is excluded from the definition of motor vehicle under 40 CFR 85.1703, shall be inspected according to this Article and shall have a Government Vehicle Certificate of Inspection affixed to the vehicle if in compliance with state inspection requirements.
  1. The vehicle emissions inspector performing the inspection shall punch out the appropriate year and month on the Government Vehicle Certificate of Inspection to designate date of the vehicle's next annual or biennial inspection. The vehicle emissions inspector, at the time of inspection, shall record the serial number of the Government Vehicle Certificate of Inspection on the vehicle inspection report. If the vehicle emissions inspection is performed at a fleet station, the emissions inspector, at the time of inspection, shall record the serial number in the block labeled "Certificate of Inspection No." on the "Fleet Vehicle Inspection Report/Monthly Summary." Each Government Vehicle Certificate of Inspection shall be used in serial number order. Presence of a current Government Vehicle Certificate of Inspection indicates a government vehicle has met the state of Arizona emissions inspection requirements.
  2. A government vehicle, with the exception of a motorcycle or an undercover law enforcement vehicle, shall have the Government Vehicle Certificate of Inspection affixed to the lower left side of the rear window as determined from a position facing the window, from outside the vehicle. If a vehicle does not have a rear window, the Government Vehicle Certificate of Inspection shall be affixed to the lower left corner of the windshield as determined from the driver's position.
  3. A government motorcycle shall have the Government Vehicle Certificate of Inspection affixed to the lower left-hand corner of the windscreen as determined from the driver's position. If the Government Vehicle Certificate of Inspection cannot be affixed to the lower left-hand corner of the windscreen, the Government Vehicle Certificate of Inspection may be affixed to a visible position on the front or left side of the left front fork of the motorcycle. The fork shall be determined from the driver's position.
- C.** The Government Vehicle Certificate of Inspection shall be purchased from the Department in lots of 25.
  1. The fee for a certificate of inspection shall be fixed by the Director according to A.R.S. § 49-543, and shall be based upon the Director's estimated costs to the state of administering and enforcing the provisions of this Article as they apply

to issuance of certificates of inspections. Payment for certificates shall be included with an application for certificates. Checks shall be made payable to the Department of Environmental Quality.

2. Only the Department may sell or otherwise transfer certificates of inspection.
- D. All Government Vehicle Certificates of Inspection shall be designed, issued, and administered to ensure compliance with this Article. The Department shall be the only source of supply for Government Vehicle Certificates of Inspection.
- E. Government entity fleet stations shall inspect the fleet vehicles according to R18-2-1019 except that a government vehicle certificate of inspection shall only be used for government vehicles.
- F. A government entity fleet station shall send a quarterly statement identifying vehicles and test results to the Department within 10 business days following the end of the quarter.

#### **R18-2-1018. Certificate of Inspection**

- A. A fleet station other than a government entity fleet station shall use completed certificates of inspection as evidence that its vehicles meet the requirements of this Article unless inspection data is electronically transmitted to MVD under A.R.S. § 49-542(Q). If a fleet vehicle is inspected at a state station, the vehicle inspection report provided under R18-2-1011 shall be used.
- B. A certificate of inspection shall contain the following information:
  1. VIN,
  2. Model year,
  3. License number,
  4. If applicable, a statement that the inspection meets area A requirements,
  5. Owner of vehicle,
  6. Date of expiration, according to R18-2-1019(F)(1)(b),
  7. Fleet station permit number, and
  8. Inspector's signature and license number.
- C. A certificate of inspection issued to a fleet vehicle is transferable to an auctioneer licensed as a used motor vehicle dealer to sell the vehicle. The certificate of inspection is valid for a period not to exceed 180 days after the transfer unless the vehicle is reregistered with a new owner, in which case the vehicle shall be inspected according to this Article before the reregistration.
- D. A certificate of inspection, complete or incomplete, is not transferable except as provided in subsection (C) or except when submitted to MVD for the purpose of vehicle registration.
- E. Only a person who meets the requirements of R18-2-1019(D)(4) is authorized to purchase certificates of inspection, certificates of waiver, or Government Vehicle Certificates of Inspection.

#### **R18-2-1019. Fleet Station Procedures and Permits**

- A. The following requirements apply to issuance of fleet station permits:
  1. An owner or lessee of a fleet of 25 or more nonexempt vehicles whose place of business is located in area A or B may apply to the Director for a permit to establish a fleet station. A dealer's business inventory of vehicles held for resale, counted cumulatively over the previous 12 months at the time of application review by the Department shall be used to determine compliance with this subsection. A newly established dealer shall certify that it will comply with the 25 nonexempt vehicles requirement.
  2. An application form for a fleet station permit shall be obtained from the Department. All completed applications shall be submitted to the Department. An application shall be considered administratively complete when:
    - a. The Department receives a completed application form and fleet agent designation form;
    - b. The applicant or designated employee successfully completes the fleet agent examination; and
    - c. The Department conducts a site inspection.
  3. Before an application for a fleet station permit may be approved, a state inspector shall inspect the premises to determine compliance with subsections (B) and (C).
  4. A fleet station permit shall not expire.
  5. A fleet station permit shall only be applicable to the fleet's inspection facility located at the address shown on the fleet station permit. If a fleet owner or lessee requests a permit for inspection facilities at more than one address, the fleet owner or lessee shall apply for a permit for each facility.
  6. A fleet station permit issued by the Director is non-transferable.
  7. If the name or address of the permitted fleet facility changes and the name or address change does not involve a change of ownership, the permit shall be returned to the Department for cancellation and a new permit application shall be submitted. The Director shall cancel the returned permit and issue a new permit.
  8. In the event of loss, destruction, or mutilation of the permit, the person to whom it was issued may obtain a duplicate upon furnishing satisfactory proof of loss, destruction, or mutilation. If a fleet owner or lessee obtains a duplicate permit and then finds the original, the fleet owner or lessee shall immediately surrender the original permit to the Department.
- B. A fleet station permit applicant or fleet station permit holder, or its employees, shall own or lease the following equipment for testing and repair of a fleet vehicle, and maintain the equipment in good working condition:
  1. If the permit is for the inspection of a vehicle required to take an idle only, or an idle plus 2500 RPM unloaded test:
    - a. An NDIR CO and HC emissions analyzer that complies with the requirements of R18-2-1006(F)(8) to conduct the emissions inspection;
    - b. Pressure test equipment for the functional gas cap test that complies with the requirements of R18-2-1006(E)(7)(a); and

- c. An ignition-operated tachometer.
  - 2. If the permit is for the inspection of a vehicle required to take a steady-state loaded test:
    - a. An NDIR CO and HC emissions analyzer that complies with the requirements of R18-2-1006(F)(8) to conduct the emissions inspection;
    - b. Pressure test equipment for the functional gas cap test that complies with the requirements of R18-2-1006(E)(7)(a);
    - c. A dynamometer to operate the vehicle under load; and
    - d. An ignition-operated tachometer.
  - 3. If the permit is for the inspection of a vehicle required to take a transient loaded test:
    - a. Equipment to perform a transient loaded emissions test as required in R18-2-1006(E)(2);
    - b. Equipment to perform the evaporative system pressure test as required in R18-2-1006(E)(2)(b);
    - c. Equipment to perform the maintenance and quality control requirements of R18-2-1006(E)(2) and "IM240 and Evap Technical Guidance;" and
    - d. Pressure test equipment for the functional gas cap test that complies with the requirements of R18-2-1006(E)(7)(a).
  - 4. If the permit is for the inspection of a vehicle required to take an OBD test:
    - a. A scan tool used to perform the OBD test that complies with the Society of Automotive Engineers Recommended Practice J1979, September 1997, incorporated by reference and no future editions or amendments. A copy of this referenced material is on file with the Department and the Secretary of State and may be obtained at Society of Automotive Engineers, 400 Commonwealth Dr., Warrendale, PA 15096-0001; and
    - b. Pressure test equipment for the functional gas cap test that complies with the requirements of R18-2-1006(E)(7)(a).
  - 5. If the permit is for the inspection of a vehicle required to take a diesel test:
    - a. Opacity meter: A meter used in area A shall comply with the requirements of R18-2-1006(H) for the applicable test procedure. A meter used in area B shall comply with the requirements of R18-2-1006(I)(6)(b); and
    - b. A dynamometer for testing any light-duty diesel vehicle in area A or for testing any diesel vehicle in area B.
- C. A fleet's inspection facility shall comply with the following requirements:
  - 1. The facility shall include space devoted principally to maintaining or repairing the fleet's motor vehicles. The space shall be large enough to conduct maintenance or repair of at least one fleet motor vehicle.
  - 2. The facility shall be exclusively rented, leased, or owned by the permit applicant or permit holder.
- D. A fleet owner or lessee shall employ the following personnel:
  - 1. If the facility is for the repair of nondiesel-powered vehicles, at least one person to perform tune-ups of engines and replacement or repair of fuel system and ignition components.
  - 2. If the facility is for the repair of diesel-powered vehicles, at least one person to perform tune-ups and replacement or repair of diesel fuel systems in the vehicle fleet.
  - 3. A licensed vehicle emissions inspector who will perform the necessary inspections. This inspector may be the same person required by subsection (D)(1) or (2).
  - 4. A fleet agent, who shall be in charge of the day-to-day operation of the fleet and who demonstrates proficiency by passing a Department-administered examination annually, with a score equal to or greater than 80%, on the statutes and rules governing the operation and administration of a fleet emissions inspection station. The fleet owner or lessee shall designate the fleet agent on a form obtained from the Department.
- E. Unless inspected at a state station, a vehicle owned by or leased to a holder of a fleet emissions inspection station permit shall be inspected according to R18-2-1006(D) through (J), except as follows:
  - 1. A dealer fleet vehicle in area A held for resale and an area B fleet vehicle, with a model year of 1981 or newer, and other than diesel-powered, shall be required to take and pass both the curb idle test specified in R18-2-1006(F)(2)(b) and a 2,500 RPM unloaded fast idle test as follows:
    - a. The vehicle's engine shall be operated at 2,500,  $\pm$  300 RPM, for no more than 30 seconds with the transmission in neutral.
    - b. HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized or at the end of 30 seconds, whichever occurs first, and compared to the loaded cruise standards in Table 2. The curb idle test standards in Table 2 shall apply for the idle test.
  - 2. A dealer fleet vehicle in area A held for resale, and an area B vehicle, with a model year of 1980 or older and other than diesel-powered, shall be required to take and pass a curb idle test as specified in R18-2-1006(F)(1). The curb idle test standards in Table 2 shall apply.
  - 3. A dealer fleet vehicle in area A held for resale with a model year of 1975 or newer and other than diesel-powered, shall be required to take and pass a tampering inspection as specified in R18-2-1006(E)(7).
  - 4. A dealer fleet vehicle in area B held for resale with a model year of 1975 or newer and other than diesel-powered, shall be required to take and pass a tampering inspection as specified in R18-2-1006(F)(7).
  - 5. A consignment vehicle shall be tested at a state inspection station according to R18-2-1005(A)(3).
- F. The vehicle emissions inspector shall complete and process the forms for vehicle inspection as follows, except a government entity fleet shall issue and process each government vehicle certificate of inspection under R18-2-1017:
  - 1. A certificate of inspection shall be processed as follows:
    - a. A certificate of inspection shall be completed and signed by the vehicle emissions inspector performing the inspection at the time the vehicle passes inspection. The vehicle emissions inspector who performed the inspection

- may correct a certificate by drawing a single line through the mistake, writing the correct information directly above the mistake, and initialing and dating the correction. Each certificate shall be issued in numerical order;
- b. For an inspection that does not include a biennial test, the expiration date shall be one year from the date the vehicle passes the mandatory vehicle emissions inspection. For a vehicle required to pass a biennial test, the expiration date shall be two years after the pass date;
  - c. All copies of a certificate of inspection shall be legible;
  - d. Unless inspection data is electronically transmitted under A.R.S. § 49-542(Q), the original completed certificate shall be presented to MVD for processing the vehicle's application for title and registration or the Arizona registration card. MVD may accept a signed certificate of inspection as evidence that the vehicle is a fleet-inspected vehicle and meets the inspection requirements of this Article;
  - e. The vehicle emissions inspector shall forward the second copy of each completed certificate of inspection, along with the second copy of the "Fleet Vehicle Inspection Report/Monthly Summary," to the Department monthly, not later than two weeks after the last day of the month in which the inspection is conducted;
  - f. The third copy of each completed certificate of inspection, along with the original "Fleet Vehicle Inspection Report/Monthly Summary," shall be retained for two years from the date of inspection;
  - g. Vehicle emissions certificates shall be purchased from the Department in lots of 25. Excess certificates may be returned to the Department for refund or may be used in subsequent years;
  - h. The fee for a certificate of inspection shall be fixed by the Director according to A.R.S. § 49-543, and shall be based upon the Director's estimated costs to the state of administering and enforcing the provisions of this Article as they apply to issuance of a certificate of inspection. Payment for certificates shall be included with an application for certificates. Checks shall be made payable to the Department of Environmental Quality.
  - i. Only the Department shall sell or otherwise transfer a certificate of inspection. This subsection does not apply to the submission of a certificate of inspection to MVD for the purpose of vehicle registration;
  - j. The fleet station owner shall be responsible for the security and accountability of the fleet's certificates and fleet vehicle emissions inspection records. Certificates and fleet vehicle emissions inspection records shall be maintained at the fleet station and shall be made available for review by a state inspector during normal business hours of the fleet station;
  - k. If any certificate is discovered lost or stolen, the fleet station owner shall notify the Department in writing within 24 hours, indicating the number of certificates lost or stolen and each serial number. The Department may revoke a fleet station permit for refusal or failure to report a lost or stolen certificate within 24 hours;
  - l. In the event of loss, destruction, or mutilation of an original completed certificate of inspection, a Director's certificate may be obtained from the Department by hand-delivery of the following:
    - i. The second or third copy of the lost, destroyed, or mutilated certificate of inspection;
    - ii. The original of the "Fleet Vehicle Inspection Report/Monthly Summary;"
    - iii. A cover letter from the fleet agent explaining the situation that caused the loss, destruction, or mutilation of the original certificate of inspection; and
    - iv. Payment of a fee to cover the cost of issuance of the Director's certificate. The fee for a Director's certificate shall be fixed by the Director according to A.R.S. § 49-543, and shall be based upon the Director's estimated cost to the state of administering and enforcing the provisions of this Article as they apply to issuance of a Director's certificate. Checks shall be made payable to the Department of Environmental Quality; and
  - m. If an original certificate of inspection is voided by a fleet station, the original of the voided certificate shall be matched to the corresponding third copy of the certificate and retained at the fleet station for two years from the date of inspection.
2. The fleet agent or vehicle emissions inspector shall obtain the "Fleet Vehicle Inspection Report/Monthly Summary" form from the Department. The vehicle emissions inspector performing the inspection shall record the following information on the form at the time of inspection:
    - a. The VIN of the vehicle passing inspection;
    - b. The vehicle's license number, if applicable;
    - c. The HC content of the undiluted exhaust recorded at idle, if applicable;
    - d. The CO content of the undiluted exhaust recorded at idle, if applicable;
    - e. The HC content of the undiluted exhaust recorded at 2,500 rpm, if applicable;
    - f. The CO content of the undiluted exhaust recorded at 2,500 rpm, if applicable;
    - g. Results of a tampering check, if applicable;
    - h. Liquid fuel leak inspection results;
    - i. The vehicle model year;
    - j. The vehicle make;
    - k. The GVWR for a vehicle certified under federal truck standards;
    - l. The date of inspection;
    - m. The license number of the vehicle emissions inspector conducting the inspection;
    - n. The signature of the inspector making the entry;
    - o. The serial number of the certificate of inspection, recorded in numerical order;

- p. For a vehicle required to take the transient loaded emissions test, the inspector shall record the total HC, CO, CO<sub>2</sub> and NO<sub>x</sub> measured in grams/mile, and the evaporative system pressure test result, if applicable;
  - q. The registration number of the registered analyzer or opacity meter used to perform the inspection;
  - r. For a light-duty diesel vehicle, the inspector shall record opacity rather than undiluted HC and CO;
  - s. For a heavy-duty diesel vehicle, instead of undiluted HC and CO:
    - i. The time of the inspection;
    - ii. The ambient temperature;
    - iii. The corrected barometric pressure;
    - iv. The relative humidity at the time of inspection;
    - v. The engine year and cubic inch or liter displacement;
    - vi. The GVWR;
    - vii. The diameter of the exhaust stack; and
    - viii. The corrected opacity reading.
  - t. For a vehicle required to take an OBD test, the inspector shall record the OBD results rather than HC, CO, and NO<sub>x</sub>.
3. A certificate of waiver may be issued by a fleet vehicle emissions inspector unless the fleet owner or lessee is an auto dealer licensed to sell used motor vehicles under A.R.S. Title 28. The certificate of waiver may be issued according to the following procedure if the requirements of R18-2-1008(A), R18-2-1009, and R18-2-1010 are met:
- a. A certificate of waiver shall be completed and signed by the vehicle emissions inspector performing the inspection after completion of a fleet inspection waiver report. The report shall be forwarded to the Department within three business days from the date of issuance of the certificate of waiver. A fleet inspection waiver report shall be provided by the Department with the purchase of each certificate of waiver. The report shall contain a description of the vehicle, test results, and repairs performed.
  - b. The expiration date of the certificate of waiver shall be two years from the date that the waiver is issued for a vehicle required to take the transient loaded emissions test, and one year for all other vehicles.
  - c. All information required on the certificate of waiver shall be legible.
  - d. The vehicle emissions inspector issuing the certificate of waiver shall initial all corrections.
  - e. Only the vehicle emissions inspector performing the inspection may sign or initial a certificate of waiver.
  - f. Unless inspection data is electronically transmitted under A.R.S. § 49-542(Q), the original completed certificate shall be presented to MVD for processing of either the vehicle's application for title and registration or the Arizona registration card. MVD may accept the signed certificate of waiver as evidence that the vehicle is a fleet inspected vehicle and meets the inspection requirements of this Article if the certificate is complete and the expiration date has not passed.
  - g. The second copy of each completed certificate of waiver shall accompany the completed fleet inspection waiver report.
  - h. The third copy of each completed certificate of waiver, along with a copy of the fleet inspection waiver report, shall be retained by the fleet station owner for two years from the date of inspection.
  - i. The fee for a certificate of waiver shall be fixed by the Director according to A.R.S. § 49-543, and shall be based upon the Director's estimated cost to the state of administering and enforcing the provisions of this Article as they apply to issuance of a certificate of waiver. Payment for certificates shall be included with an application for certificates. Checks shall be made payable to the Department of Environmental Quality.
  - j. Only the Department shall sell or otherwise transfer a certificate of waiver. This subsection does not apply to the submission of a certificate of waiver to MVD for the purpose of vehicle registration.
  - k. The fleet station owner shall be responsible for the security and accountability of the fleet's certificates.
  - l. If a certificate is discovered lost or stolen, the fleet station owner shall notify the Department in writing within 24 hours and indicate the number of certificates lost or stolen and each serial number. The Department may revoke a fleet station permit for refusal or failure to report a lost or stolen certificate within 24 hours of discovery.
  - m. In the event of loss, destruction, or mutilation of an original completed certificate of waiver, a Director's certificate may be obtained from the Department by hand delivery of the following:
    - i. The second or third copy of the lost, destroyed, or mutilated certificate of waiver;
    - ii. The original of the "Fleet Vehicle Inspection Report/Monthly Summary;"
    - iii. A cover letter from the fleet agent explaining the situation that caused the loss, destruction, or mutilation of the original certificate of waiver; and
    - iv. Payment of a fee to cover the cost of issuance of the Director's certificate. The fee for a Director's certificate shall be fixed by the Director according to A.R.S. § 49-543, and shall be based upon the Director's estimated cost to the state of administering and enforcing the provisions of this Article as they apply to issuance of a Director's certificate. Checks shall be made payable to the Department of Environmental Quality.
  - n. In the event an original certificate of waiver is voided by a fleet station, the original of the voided certificate shall be matched to the corresponding third copy of the certificate and retained by the fleet for two years from the date of inspection.
4. Upon request, a state inspector shall be allowed access to and shall be permitted to photocopy, on or off the premises, any original "Fleet Vehicle Inspection Report/Monthly Summary," the second copy of a certificate of inspection, and any other related documents.

- G.** The fleet shall comply with the following general operating requirements:
1. The fleet station permit and the licenses of all inspectors employed at the station shall be prominently displayed at the fleet's inspection facility.
  2. A fleet station shall only certify a vehicle owned by or leased to the holder of the fleet station permit.
  3. The inspection equipment shall be operated, calibrated, and maintained as follows:
    - a. All test equipment and instrumentation shall be maintained in accurate working condition as required by the manufacturer. An instrument requiring periodic calibration shall be calibrated according to instructions and recommendations of the instrument or equipment manufacturer. An NDIR emissions analyzer shall be registered and calibrated according to R18-2-1027. Calibration records for each instrument, except an NDIR emissions analyzer, shall be maintained by the fleet station. The calibration records shall be signed and dated by the technician performing each calibration.
    - b. The instrument calibration records shall be available for review by the Department.
    - c. Working gases used by the fleet station shall be subject to analysis and comparison to the Department's standard gases at any time.
    - d. Fleet station equipment shall be subject to both scheduled and unscheduled checks for accuracy and condition by the Department.
  4. A fleet emissions inspection station that is unable to test at least 25 vehicles according to R18-2-1006 and subsection (A) shall surrender its permit.
  5. A motor vehicle dealer with a fleet station permit shall comply with A.R.S. § 49-542.03.
  6. If a fleet station fails to meet any requirement of subsection (B), (C), or (D), it shall immediately cease operating as a fleet station until the requirement is met. If the fleet is cited for failure to have the necessary equipment under subsection (B), it shall not resume operation as a fleet emissions inspection station until compliance is verified by the Department.
  7. A fleet station shall notify the Department in writing within seven days of the end or start of employment of any vehicle emissions inspector. The written notification shall include the name and license number of the vehicle emissions inspector, a statement declaring the employment change, and the effective date of the employment change. A fleet station that does not employ a vehicle emissions inspector shall immediately cease operating as a fleet station and notify the Department immediately by telephone and within seven days in writing. All unused vehicle certificates of inspection shall be returned to the Department for a refund within seven days after operations cease.
  8. A fleet station that does not employ a fleet agent, as described in subsection (D)(4), shall immediately cease operating as a fleet station and shall notify the Department immediately by telephone and within seven days in writing. The written notification shall include the name and license number of the fleet agent, a statement declaring the employment change, and the effective date of the employment change. The fleet station may resume fleet station operation after the permit applicant or other designated employee takes and passes the examination required in subsection (D)(4), if the responsibility of the day-to-day operation of the fleet station and a fleet agent designation form has been filed with the Department.
- H.** A fleet's activities shall be governed by the following compliance and enforcement rules:
1. Subsections (B) through (G) apply at all times after the issuance of a fleet station permit. In addition, subsections (B), (C), and (D) apply before a permit can be issued or removed from suspension.
  2. The Director may suspend or revoke a fleet station permit according to A.R.S. § 49-546(F) and A.R.S. Title 41, Chapter 6, if the permittee, or any person employed by the permittee:
    - a. Violates any provision of A.R.S. Title 49, Chapter 3, Article 5 or any provision of this Article;
    - b. Misrepresents a material fact in obtaining a permit;
    - c. Fails to make, keep, and submit to the Department records for a vehicle tested as a permittee; or
    - d. Does not provide a state inspector access to the information required by this Article.
  3. If a fleet station permit is surrendered, suspended or revoked, all unused vehicle certificates of inspection shall be returned to the Department for a refund.
  4. A fleet vehicle is subject to inspection by a state inspector.
  5. Surrender of a permit under subsection (A)(8) or (G)(4) shall not prevent the Department from carrying out an investigative or disciplinary proceeding against the permit holder for a violation before surrender.

**R18-2-1020. Licensing of Third Party Agents; Issuing Alternative Fuel Certificates**

- A.** Licensing of Third Party Agents. The Department shall accept an application for a third party agent license to issue Alternative Fuel Certificates from any person who demonstrates all of the following:
1. The applicant has knowledge of all laws and rules governing the inspection of alternative fuel vehicles;
  2. The applicant has training or experience in inspecting alternative fuel vehicles; and
  3. The applicant agrees to conduct inspections in accordance with the laws and rules for the inspection of alternative fuel vehicles.
- B.** A third party agent license is valid for a period of five years.
- C.** Issuing Alternative Fuel Certificates. The Department or its agent shall issue an Alternative Fuel Certificate according to A.R.S. § 28-2416 if the vehicle is currently powered by an alternative fuel as defined in A.R.S. § 1-215(4).

**R18-2-1022. Procedure for Waiving Inspections Due to Technical Difficulties**

A vehicle emissions station manager employed by an official emissions inspection station may issue a Director's certificate for a vehicle that cannot be inspected as required by this Article because of technical difficulties inherent in the manufacturer's design or construction of the vehicle.

**R18-2-1023. Certificate of Exemption for Out-of-State Vehicles**

- A. If a vehicle being registered or reregistered in area A or area B requires an emission test and will not be available for inspection within the state during the 90-day period before the emissions compliance expiration date, and an emissions inspection is not available for that class of vehicle at an official inspection station in the area where the vehicle is located, the owner or owner's agent may apply in writing to the Department for a certificate of exemption.
- B. The owner or owner's agent shall complete the owner portion of the certificate of exemption form, and a law enforcement official shall complete the vehicle verification portion. The owner or owner's agent shall submit the completed form to the Department.
- C. The Department shall issue a certificate of exemption:
  - 1. For a vehicle that meets the requirements of subsection (A) as indicated by the form completed under subsection (B).
  - 2. For a vehicle that has passed an official emissions inspection in another state during the 90 days before emissions compliance expiration upon submission of the inspection compliance document issued by the government entity conducting the inspection program.
- D. The fee for a certificate of exemption shall be fixed by the Director according to A.R.S. § 49-543 and shall be based upon the Director's estimated costs to the state of administering and enforcing the provisions of this Article as they apply to issuance of certificates of exemption. The payment for the certificates shall be included with the application for certificates. Checks shall be made payable to the Department of Environmental Quality.

**R18-2-1025. Inspection of Contractor's Equipment and Personnel**

- A. State stations shall be inspected by state inspectors as follows:
  - 1. In Area A:
    - a. Automated emission analyzers, calibrated and maintained according to "IM240 and Evap Technical Guidance," shall be inspected using state station field calibration gases at least once every other month.
    - b. Opacity meters shall be inspected for accuracy using a neutral density filter at least once each month.
    - c. During audits, a check shall be made for equipment tampering, worn instrumentation, blocked filters, and other conditions that would impair accurate sampling.
  - 2. In Area B:
    - a. Automated emission analyzers shall be inspected using state station field calibration gases at least two times each month.
    - b. Opacity meters shall be inspected for accuracy using a neutral density filter at least two times each month.
    - c. During audits, a check shall be made for tampering, worn instrumentation, blocked filters, and other conditions that would impair accurate sampling.
    - d. Functional checks of dynamometer accuracy including roll speed and power absorption shall be performed at least quarterly.
- B. Equipment used to perform a transient loaded emissions test, shall be audited at least twice a year for all of the following:
  - 1. Constant volume sampler critical flow and calibration;
  - 2. Optimization of the flame ionization detector fuel to air ratio using methane;
  - 3. Proper dynamometer coast down, roll distance, and inertia weight;
  - 4. Ability to detect background pollutant concentrations;
  - 5. Evaporative pressure test system for accuracy, response time, and other criteria consistent with "IM240 and Evap Technical Guidance;" and
  - 6. Functional gas cap analysis equipment.
- C. If an equipment audit of an inspection lane in either area A or area B indicates that a state station analyzer is not operating within contractually specified tolerance, the state inspector shall immediately re-audit the failing equipment. If the equipment fails the second audit, the inspector shall immediately notify the station manager. The station manager shall either replace or repair the failing equipment or close the affected lane until the equipment is repaired and its accuracy verified. The state inspector shall provide a copy of the analyzer's failing results to the station manager.
- D. A state station analyzer removed by the contractor may be returned to service upon its repair and written verification of a passing calibration audit. The contractor shall immediately notify the Department in writing of the analyzer's return to service. The contractor's calibration audit of the analyzer shall be provided to the Department within seven calendar days after the analyzer's return to service.
- E. State inspectors shall conduct performance audits to determine whether vehicle emissions inspectors are correctly performing all inspections and functions related to inspections as follows:
  - 1. Overt audits at least two times each year for each inspection lane:
    - a. Check for proper document security;
    - b. Check for required recordkeeping including vehicle emissions inspector licenses; and
    - c. Observation and written evaluation of each vehicle emissions inspector's ability to perform an inspection.
  - 2. State station and vehicle emissions inspector records shall be reviewed at least monthly to assess station performance and identify any problems, potential fraud, or incompetence.

3. If a vehicle emissions inspector fails an audit under subsection (E)(1) or (E)(2), the vehicle emissions inspector's license may be suspended or revoked according to R18-2-1016(A)(4).
- F.** On-road emissions analyzers shall be inspected by a state inspector at least monthly using dry-gas analysis equipment.
- G.** If an equipment audit indicates that an on-road emissions analyzer is not operating within contractually specified tolerance, the state inspector shall immediately re-audit the failing equipment. If the equipment fails the second audit, the inspector shall immediately notify the contractor and the contractor shall repair or replace the equipment according to subsections (C) and (D).

**R18-2-1026. Inspection of Fleet Stations**

- A.** Equipment used by fleet stations shall be inspected by state inspectors for accuracy as follows:
1. Emission analyzers shall be inspected using field calibration gases at least quarterly.
  2. Opacity meters shall be inspected using a neutral density filter at least quarterly.
  3. Equipment for transient loaded emissions tests shall be inspected according to R18-2-1025(A) and (B).
- B.** A fleet station's emissions analyzer shall not be used for an official emissions inspection if:
1. The state's field calibration gases are not read within the tolerances prescribed by subsection (J);
  2. There is a leak in the sampling systems or the calibration port; or
  3. The sample handling system is restricted.
- C.** The fleet station is responsible for calibration of the fleet station emission analyzer.
- D.** A state inspector may, at the inspector's discretion, allow a fleet station employee, or someone authorized by the fleet station, to calibrate the analyzer utilizing the state's field calibration gases.
- E.** The Department shall assign HC and CO concentrations to a calibration gas submitted by a fleet station emission analyzer technician and purchased from a private source.
- F.** A state inspector shall tag a fleet station emission analyzer if the analyzer does not meet the requirements of this Section. The fleet vehicle emissions inspector shall not use the analyzer for inspection until the tag is removed by a state inspector or an analyzer repair person certified under R18-2-1028. The tag shall be in the form of a U.S. postcard and contain the information listed in R18-2-1027(E).
- G.** An analyzer tagged under subsection (F) shall not be returned to service until its accuracy is verified by a state inspector or an emissions analyzer repair person certified under R18-2-1028.
- H.** A fleet station is responsible for periodic maintenance and calibrations of its emissions analyzers. Repair and maintenance requirements are prescribed in R18-2-1019.
- I.** If a state inspector has approved its use, a fleet station may lease or borrow an emission analyzer for official inspections for up to six months while the station's approved analyzer is being repaired.
- J.** Fleet station analyzers used for transient loaded tests shall comply with and be quality control checked according to "IM240 and Evap Technical Guidance." All other fleet station emission analyzers used for emissions inspections are required to read the calibration gases within the following tolerances:
1. Within plus 0.50% CO to minus 0.25% CO in the range from 0 to 2% CO;
  2. Within plus 1.00% CO to minus 0.50% CO in the range from 2% to 10% CO;
  3. Within plus 60 PPM HC to minus 30 PPM HC in the range from 0 to 500 PPM HC when read as N-HEXANE; and
  4. Within plus 200 PPM HC to minus 100 PPM HC in the range from 500 to 2,000 PPM HC when read as N-HEXANE.
- K.** A fleet station opacity meter used for emission inspections is required to read the equivalent opacity value of neutral density filter within  $\pm 5\%$  opacity at any point in the range of the meter.
- L.** A state inspector shall conduct performance audits to determine whether a vehicle emissions inspector is correctly performing inspections and functions related to inspections as follows:
1. Overt audits at least two times each year for each facility:
    - a. Check for proper document security;
    - b. Check for required recordkeeping including vehicle emissions inspector licenses; and
    - c. Observe and make a written evaluation of each vehicle emissions inspector's ability to perform an inspection.
  2. Fleet station and vehicle emissions inspector records shall be reviewed at least monthly to assess fleet performance and identify any problems, potential fraud, or incompetence.

**R18-2-1027. Registration and Inspection of Emissions Analyzers and Opacity Meters**

- A.** An automotive repair facility may apply to the Department at no charge for registration of NDIR HC and CO analyzers, and opacity meters. NDIR emission analyzers and opacity meters used by fleet inspection stations shall be registered for the fleet station permit approval. Application forms for analyzer or opacity meter registration are available from the Department. Completed application forms shall be submitted to the Department. For purposes of 18 A.A.C. 1, the application components for registration of an analyzer or opacity meter are:
1. The Department receives a completed application form;
  2. The applicant or employee successfully completes the "Certified Technician" examination described in R18-2-1028(A)(2); and
  3. The Department inspects the analyzer.
- B.** A registered analyzer shall be calibrated at least monthly, by a certified technician, with calibration gases approved by the Department. A registered opacity meter shall be calibrated according to manufacturer's specifications before performing the first vehicle emissions inspection in any month.

- C. A registered analyzer shall meet the requirements of R18-2-1006(F)(8)(a). Calibration shall be verified by a state inspector before the analyzer is registered. The analyzer shall read the value of the calibration gases within the following tolerances:
  - 1. Plus 0.50% CO to minus 0.25% CO in the range from 0 to 2% CO;
  - 2. Plus 1.00% CO to minus 0.50% CO in the range from 2% to 10% CO;
  - 3. Plus 60 PPM HC to minus 30 PPM HC in the range from 0 to 500 PPM HC when read as N-HEXANE; and
  - 4. Plus 200 PPM HC to minus 100 PPM HC in the range from 500 to 2,000 PPM HC when read as N-HEXANE.
- D. Each registered opacity meter and analyzer shall have a unique registration number assigned by the Department. The technician shall maintain a repair and calibration log for each registered opacity meter and analyzer on a form provided by the Department. The log shall be made available to a state inspector on request.
- E. A state inspector shall tag a registered opacity meter or analyzer if the opacity meter or analyzer does not meet the requirements of this Section. A tagged opacity meter or analyzer shall not be used for the purposes of R18-2-1010 or R18-2-1019 until the tag is removed by a state inspector or an emission analyzer repair person certified under R18-2-1028 after accuracy is verified.
  - 1. The tag shall be in the form of a U.S. postcard and contain the following information:
    - a. Analyzer registration number or opacity meter registration number,
    - b. Brief statement that the analyzer does not meet state operating requirements for registered analyzers,
    - c. Reason for tagging,
    - d. Date the analyzer was tagged and the signature of state inspector issuing the tag,
    - e. Details of repairs performed to correct the failure,
    - f. CO and HC concentrations of calibration gases used to verify analyzer accuracy,
    - g. Analyzer readings when gases were introduced into the analyzer sampling probe, and
    - h. Repair person's certificate number and signature or signature of state inspector removing the tag and date accuracy is verified.
  - 2. The tag shall be returned to the Department within two business days after accuracy is verified.
- F. An owner of a registered emission analyzer or opacity meter shall notify the Department within seven business days of the retirement, resignation, or termination of any licensed vehicle emissions inspector or certified technician. The Department shall revoke the registration of an emission analyzer or opacity meter if the owner of the analyzer or meter does not employ an inspector licensed under R18-2-1019 or a technician certified under R18-2-1028.

**R18-2-1028. Certification of Users of Registered Analyzers and Analyzer Repair Persons**

- A. A person may be certified to use a registered analyzer and opacity meter if:
  - 1. The person completes the application form and submits it to the Department; and
  - 2. The person demonstrates proficiency by scoring 80% or higher on a Department-administered examination in the following areas:
    - a. Equipment used in the inspection and control of emissions;
    - b. Types of emissions inspection failures;
    - c. Correction procedures for excessive HC emissions;
    - d. Correction procedures for excessive CO emissions;
    - e. Proper carburetor adjustment procedures; and
    - f. Diesel fuel injection systems.
- B. Certification under subsection (A) shall be valid for one year from date of issue and may be renewed, under the conditions of subsection (A), by submitting a renewal application to the Department 30 days before the current certification expiration date.
- C. A person certified under subsection (A) shall notify the Department within seven business days of the person's retirement, resignation, or termination from employment.
- D. A person may be certified to repair and remove tags from an emission analyzer under R18-2-1027 if:
  - 1. Application is made to the Department;
  - 2. The person demonstrates proficiency by scoring 80% or higher on a Department-administered examination in the following areas:
    - a. State and federal regulations governing emissions analyzers,
    - b. Fundamentals of emission analyzer operation, repair and preventive maintenance,
    - c. Theory of operation of vehicle emissions control devices.
- E. Certification under subsection (D) shall be valid for one year from date of issue and may be renewed, under the conditions of subsection (D), by submitting a renewal application to the Department 30 days before the current certification expiration date.
- F. Each person certified under this Section shall receive a unique nontransferable certification number.
- G. The Department may suspend, revoke or refuse to renew the certification issued under subsection (A) if:
  - 1. The person's actions demonstrate a lack of proficiency in the areas listed under subsection (A)(2); or
  - 2. The person has willfully violated any provision of this Article.
- H. The Department may suspend, revoke, or refuse to renew the certification issued under subsection (D) if:
  - 1. The person's actions demonstrate a lack of proficiency in the areas listed under subsection (D)(2); or
  - 2. The person has willfully violated any provision of this Article.

**R18-2-1029. Vehicle Emission Control Devices**

For the purposes of A.R.S. §§ 28-955 and 49-447, a registered motor vehicle shall have in operating condition all emission control devices installed by the vehicle manufacturer to comply with federal requirements for motor vehicle emissions or equivalent aftermarket replacement parts or devices.

**R18-2-1030. Visible Emissions; Mobile Sources**

- A. A vehicle other than a diesel-powered vehicle or 2-stroke vehicle that emits any visible emissions for 10 consecutive seconds or more is “excessive” for the purposes of A.R.S. § 28-955(C).
- B. A diesel-powered vehicle shall not emit any visible emissions in excess of:
  - 1. Twenty percent visual opacity for 10 consecutive seconds or more at or below 2,000 feet elevation;
  - 2. Thirty percent visual opacity for 10 consecutive seconds or more above 2,000 feet and at or below 4,000 feet elevation; and
  - 3. Forty percent visual opacity for 10 consecutive seconds above 4,000 feet elevation.
- C. A vehicle that exceeds the standards in subsection (B) fails the inspection under R18-2-1006 and is considered to have “excessive” emissions under A.R.S. § 28-955(C).

**R18-2-1031. Standards for Evaluating the Oxidation Efficiency of a Catalytic Converter**

- A. Except for a vehicle requiring an Idle-Only Inspection, a gasoline-powered vehicle requiring a catalytic converter test under R18-2-1008(C) shall be tested using the following Catalyst Efficiency Test Procedure:
  - 1. Immediately after a vehicle completes an Inspection and Maintenance (I/M) test in the waiver lane, the exhaust sampling cone shall be removed from the tailpipe. The vehicle shall remain on the dynamometer with the engine idling and the transmission in neutral. The vehicle engine must be at normal operating temperature.
  - 2. For the catalyst test, the dynamometer and the constant volume sampler shall remain at the settings used for the vehicle’s I/M test.
  - 3. The inspector shall insert the sampling tube for the A/F analyzer into the tailpipe of the vehicle.
  - 4. The inspector shall accelerate the vehicle to  $40 \pm 2.5$  MPH and maintain a steady-state operating mode for the duration of the test. Once the vehicle obtains the test speed, the test shall begin.
  - 5. Once the test begins, a two-minute stabilization period shall take place, during which the inspector shall monitor the A/F analyzer to ensure that the A/F is 14.0 or greater. If the mean A/F is less than 14.0, the inspector shall abort the test.
  - 6. If the A/F is 14.0 or greater, the exhaust sampling cone shall be repositioned for exhaust sampling.
  - 7. After the stabilization period ends, the total hydrocarbon and methane concentrations and the A/F ratio shall be continuously recorded for two minutes.
  - 8. At the end of the two-minute sampling period, the inspector shall stop the vehicle, remove the exhaust sampling cone and the A/F analyzer sampling probe from the tailpipe, and remove the vehicle from the dynamometer.
  - 9. The mean total hydrocarbon concentration shall be divided by the mean methane concentration for the recorded values of the test, to produce a ratio (R) of total hydrocarbon to methane. The ratio, R, shall be applied to the formula: Catalyst Efficiency (%) =  $-3(R) + 100$ .
  - 10. A vehicle passes the test if the Catalyst Efficiency (%) is 75% or greater.
  - 11. The test result for a non-passing vehicle with a mean A/F equal to, or less than, 14.3 shall be inconclusive.
  - 12. A vehicle fails the Catalyst Efficiency Test Procedure if the A/F is greater than 14.3 and the Catalyst Efficiency (%) is less than 75%. The failing vehicle cannot be granted a waiver according to R18-2-1008(C)(1).
- B. Analytical equipment required to perform the Catalyst Efficiency Test Procedure shall meet the following requirements:
  - 1. Analyzer Specifications:
    - a. An analyzer shall meet performance specifications of 40 CFR 86 subparts B, D, and N with respect to accuracy, precision, drift, interference, and noise. 40 CFR, subparts B, D, and N, adopted as of July 1, 1998, are incorporated by reference and on file with the Department and the Secretary of State. This incorporation contains no future editions or amendments. A copy of this referenced material may be obtained from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington D.C. 20402-9328.
    - b. Total hydrocarbon analysis shall be determined by a flame ionization detector. The analyzer shall be single range with a calibration curve covering at least 0 to 300 ppm carbon.
    - c. Methane analysis shall be determined by a flame ionization detector equipped with a non-methane cutter capable of oxidizing 98% of the hydrocarbons (except methane) while more than 90% of the methane remains unchanged. The analyzer shall be single range with a calibration curve covering at least 0 to 30 ppm.
    - d. Engine A/F mixture analysis shall be determined by a Universal Exhaust Gas Oxygen Sensor. The range shall be 8.0 to 25.5 A/F for gasoline with an accuracy of  $\pm 2\%$  of point and a response time of less than 150 milliseconds.
  - 2. Analyzer Performance Verification and Calibration:
    - a. The operator of an analyzer under this Section shall verify analyzer performance according to manufacturer recommendations.
    - b. Upon initial installation, and monthly thereafter, the operator of an analyzer under this Section shall generate a 10-point calibration curve for each total hydrocarbon and methane analyzer. A gas divider employing equally spaced points may be used to generate the calibration curve.
      - i. Each calibration curve generated shall fit the data within  $\pm 2.0\%$  at each calibration point.

- ii. Each calibration curve shall be verified for each analyzer with a confirming calibration standard between 15-80% of full scale that is not used for curve generation. Each confirming standard shall be measured by the curve within  $\pm 2.5\%$ .

## 1-215. Definitions

In the statutes and laws of this state, unless the context otherwise requires:

1. "Action" includes any matter or proceeding in a court, civil or criminal.
2. "Adopted rule" means a final rule as defined in section 41-1001.
3. "Adult" means a person who has attained eighteen years of age.
4. "Alternative fuel" means:
  - (a) Electricity.
  - (b) Solar energy.
  - (c) Liquefied petroleum gas, natural gas, hydrogen or a blend of hydrogen with liquefied petroleum or natural gas that complies with any of the following:
    - (i) Is used in an engine that is certified to meet at a minimum the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section 88.104-94 or 88.105-94.
    - (ii) Is used in an engine that is certified by the engine modifier to meet the addendum to memorandum 1-A of the United States environmental protection agency as printed in the federal register, volume 62, number 207, October 27, 1997, pages 55635 through 55637.
    - (iii) Is used in an engine that is the subject of a waiver for that specific engine application from the United States environmental protection agency's memorandum 1-A addendum requirements and that waiver is documented to the reasonable satisfaction of the director of the department of environmental quality.
  - (d) Only for vehicles that use alcohol fuels before August 21, 1998, alcohol fuels that contain not less than eighty-five per cent alcohol by volume.
  - (e) A combination of at least seventy per cent alternative fuel and no more than thirty per cent petroleum based fuel that operates in an engine that meets the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section 88.104-94 or 88.105-94 and that is certified by the engine manufacturer to consume at least seventy per cent alternative fuel during normal vehicle operations.
5. "Bribe" means anything of value or advantage, present or prospective, asked, offered, given, accepted or promised with a corrupt intent to influence, unlawfully, the person to whom it is given in that person's action, vote or opinion, in any public or official capacity.
6. "Child" or "children" as used in reference to age of persons means persons under eighteen years of age.
7. "Clean burning fuel" means:
  - (a) An emulsion of water-phased hydrocarbon fuel that contains not less than twenty per cent water by volume and that complies with any of the following:
    - (i) Is used in an engine that is certified to meet at a minimum the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section 88.104-94 or 88.105-94.
    - (ii) Is used in an engine that is certified by the engine modifier to meet the addendum to memorandum 1-A of the United States environmental protection agency as printed in the federal register, volume 62, number 207, October 27, 1997, pages 55635 through 55637.

(iii) Is used in an engine that is the subject of a waiver for that specific engine application from the United States environmental protection agency's memorandum 1-A addendum requirements and that waiver is documented to the reasonable satisfaction of the director of the department of environmental quality.

(b) A diesel fuel substitute that is produced from nonpetroleum renewable resources if the qualifying volume of the nonpetroleum renewable resources meets the standards for California diesel fuel as adopted by the California air resources board pursuant to 13 California Code of Regulations sections 2281 and 2282 in effect on January 1, 2000, the diesel fuel substitute meets the registration requirement for fuels and additives established by the United States environmental protection agency pursuant to section 211 of the clean air act as defined in section 49-401.01 and the use of the diesel fuel substitute complies with the requirements listed in 10 Code of Federal Regulations part 490, as printed in the federal register, volume 64, number 96, May 19, 1999.

(c) A diesel fuel that complies with all of the following:

(i) Contains a maximum of fifteen parts per million by weight of sulfur.

(ii) Meets ASTM D975.

(iii) Meets the registration requirements for fuels and additives established by the United States environmental protection agency pursuant to section 211 of the clean air act as defined in section 49-401.01.

(iv) Is used in an engine that is equipped or has been retrofitted with a device that has been certified by the California air resources board diesel emission control strategy verification procedure, the United States environmental protection agency voluntary diesel retrofit program or the United States environmental protection agency verification protocol for retrofit catalyst, particulate filter and engine modification control technologies for highway and nonroad use diesel engines.

(d) A blend of unleaded gasoline that contains at minimum eighty-five per cent ethanol by volume or eighty-five per cent methanol by volume.

(e) Neat methanol.

(f) Neat ethanol.

8. "Corruptly" means a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person.

9. "Daytime" means the period between sunrise and sunset.

10. "Depose" includes every manner of written statement under oath or affirmation.

11. "Federal poverty guidelines" means the poverty guidelines as updated annually in the federal register by the United States department of health and human services.

12. "Grantee" includes every person to whom an estate or interest in real property passes, in or by a deed.

13. "Grantor" includes every person from or by whom an estate or interest in real property passes, in or by a deed.

14. "Includes" or "including" means not limited to and is not a term of exclusion.

15. "Inhabitant" means a resident of a city, town, village, district, county or precinct.

16. "Issue" as used in connection with descent of estates includes all lawful, lineal descendants of the ancestor.

17. "Knowingly":

- (a) Means only a knowledge that the facts exist that bring the act or omission within the provisions of the statute using such word.
- (b) Does not require any knowledge of the unlawfulness of the act or omission.
18. "Magistrate" means an officer having power to issue a warrant for the arrest of a person charged with a public offense and includes the chief justice and justices of the supreme court, judges of the superior court, judges of the court of appeals, justices of the peace and judges of a municipal court.
19. "Majority" or "age of majority" as used in reference to age of persons means eighteen years of age or more.
20. "Malice" and "maliciously" mean a wish to vex, annoy or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.
21. "Minor" means a person under the age of eighteen years.
22. "Minor children" means persons under the age of eighteen years.
23. "Month" means a calendar month unless otherwise expressed.
24. "Neglect", "negligence", "negligent" and "negligently" import a want of such attention to the nature or probable consequence of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.
25. "Nighttime" means the period between sunset and sunrise.
26. "Oath" includes an affirmation or declaration.
27. "Peace officers" means sheriffs of counties, constables, marshals, policemen of cities and towns, commissioned personnel of the department of public safety, personnel who are employed by the state department of corrections and the department of juvenile corrections and who have received a certificate from the Arizona peace officer standards and training board, peace officers who are appointed by a multicounty water conservation district and who have received a certificate from the Arizona peace officer standards and training board, police officers who are appointed by community college district governing boards and who have received a certificate from the Arizona peace officer standards and training board, police officers who are appointed by the Arizona board of regents and who have received a certificate from the Arizona peace officer standards and training board, police officers who are appointed by the governing body of a public airport pursuant to section 28-8426 and who have received a certificate from the Arizona peace officer standards and training board, peace officers who are appointed by a private postsecondary institution pursuant to section 15-1897 and who have received a certificate from the Arizona peace officer standards and training board and special agents from the office of the attorney general, or of a county attorney, and who have received a certificate from the Arizona peace officer standards and training board.
28. "Person" includes a corporation, company, partnership, firm, association or society, as well as a natural person. When the word "person" is used to designate the party whose property may be the subject of a criminal or public offense, the term includes the United States, this state, or any territory, state or country, or any political subdivision of this state that may lawfully own any property, or a public or private corporation, or partnership or association. When the word "person" is used to designate the violator or offender of any law, it includes corporation, partnership or any association of persons.
29. "Personal property" includes money, goods, chattels, things in action and evidences of debt.
30. "Population" means the population according to the most recent United States decennial census.
31. "Process" means a citation, writ or summons issued in the course of judicial proceedings.
32. "Property" includes both real and personal property.

33. "Real property" is coextensive with lands, tenements and hereditaments.
34. "Registered mail" includes certified mail.
35. "Seal" as used in reference to a paper issuing from a court or public office to which the seal of such court or office is required to be affixed means an impression of the seal on that paper, an impression of the seal affixed to that paper by a wafer or wax, a stamped seal, a printed seal, a screened seal or a computer generated seal.
36. "Signature" or "subscription" includes a mark, if a person cannot write, with the person's name written near it and witnessed by a person who writes the person's own name as witness.
37. "State", as applied to the different parts of the United States, includes the District of Columbia, this state and the territories.
38. "Testify" includes every manner of oral statement under oath or affirmation.
39. "United States" includes the District of Columbia and the territories.
40. "Vessel", as used in reference to shipping, includes ships of all kinds, steamboats, steamships, barges, canal boats and every structure adapted to navigation from place to place for the transportation of persons or property.
41. "Wilfully" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or believes that the person's conduct is of that nature or that the circumstance exists.
42. "Will" includes codicils.
43. "Workers' compensation" means workmen's compensation as used in article XVIII, section 8, Constitution of Arizona.
44. "Writ" means an order or precept in writing issued in the name of the state or by a court or judicial officer.
45. "Writing" includes printing.

### 15-1444. General powers and duties of district governing boards

A. Except as otherwise provided, the district board shall:

1. Maintain each community college for a period of not less than eight months in each year and, if the funds of the district are sufficient, maintain each community college for a longer period.
2. Adopt policies in a public forum to offer programs that meet the educational needs of the population served by the community college.
3. Enforce the courses of study prescribed by the district board.
4. Visit each community college under its jurisdiction and examine carefully into its management, conditions and needs.
5. Exclude from each community college all books, publications or papers of a sectarian, partisan or denominational character intended for use as textbooks.
6. Appoint and employ a chancellor or chancellors, vice-chancellors, a president or presidents, vice-presidents, deans, professors, instructors, lecturers, fellows and such other officers and employees it deems necessary. The district board may enter into employment contracts with chancellors, vice-chancellors and presidents for a duration of more than one year but not more than five years.
7. Determine the salaries of persons it appoints and employs.
8. Remove any officer or employee if in its judgment the interests of education in this state require the removal.
9. Award degrees, certificates and diplomas on the completion of courses and curricula as it deems appropriate.
10. Appoint or employ, if it deems necessary, police officers who shall have the authority and power of peace officers. The police officers who have received a certificate from the Arizona peace officer standards and training board are eligible for membership in and benefits under either title 38, chapter 5, article 2 or the public safety personnel retirement system under title 38, chapter 5, article 4.
11. Determine the location within the district of a community college and purchase, receive, hold, make and take leases of, sell and convey real or personal property for the benefit of the community colleges under its jurisdiction.
12. Obtain insurance or be self-insured, or a combination of insurance and self-insurance, against loss, to the extent it is determined necessary on community college buildings of the district. The local district shall have an insurable interest in the buildings.

B. The district board may:

1. Administer trusts declared or created for the district and receive by gift or devise and hold in trust or otherwise property wheresoever located, and if not otherwise provided, dispose of the property for the benefit of the district.
2. Lease real property, as lessor or as lessee. If a district is the lessee, the lease may contain an option to purchase the property. The district board may adopt policies as are deemed necessary and may delegate in writing to the chancellor or president of the district, or their designees, all or any part of its authority to lease property under this paragraph. Any delegation by the district board pursuant to this paragraph may be rescinded in whole or in part at any time by the district board.
3. Sue and be sued.

4. Contract. The district board may adopt such policies as are deemed necessary and may delegate in writing to the chancellor or president of the district, or their designees, all or any part of its authority to contract under this paragraph. Any delegation of authority under this paragraph may be rescinded by the district board at any time in whole or in part.
5. Construct, remodel and repair buildings.
6. In conjunction with other districts, establish policies for procurement of goods and services.
7. Provide a plan or plans for employee benefits, which may include optional retirement programs pursuant to section 15-1451, subsection A, which allow for participation in a cafeteria plan that meets the requirements of the United States internal revenue code of 1986.
8. Accept grants or donations of monies from the United States, from any of its agencies, departments or officers, from this state, political subdivisions of this state, from tribal governments, school districts, special taxing districts or from persons, corporations, foundations or associations. A district board shall deposit the monies into a specific fund or account and a district board shall administer the monies in accordance with the purpose of the grant or donation with specific policies or restrictions as described or stipulated in the grant or donation. In the case of personal property granted or donated to or for the benefit of a community college district, a district board shall immediately transfer possession and ownership of the property to the designated district. Monies received pursuant to this paragraph are not considered local revenues for the purposes of article IX, section 21, Constitution of Arizona.
9. Enter into intergovernmental agreements or contracts pursuant to section 11-952.01 for participation in programs offered by public agency pools or separately contract with a trustee or board of trustees that provides a common self-insurance program with pooled funds and risks pursuant to section 15-382, subsection B, paragraph 2. The district board is not required to engage in competitive procurement in order to make the decision to participate in these programs.
10. Name a building or a group of buildings that is located on a community college campus on behalf of a person or entity that has made a significant contribution of monies or other property to the community college or the community college district.
11. Enter into research and development agreements, royalty agreements, development agreements, licensing agreements and profit-sharing agreements concerning the research, development, production, storing or marketing of new products developed or to be developed through community college district research. Monies received pursuant to this paragraph are not considered local revenues for the purposes of article IX, section 21, Constitution of Arizona.
12. Enter into an intergovernmental agreement pursuant to section 15-1747 to participate in a reciprocity agreement subject to the terms of the reciprocity agreement.
13. Engage in entrepreneurial and commercial activities. Monies received pursuant to this paragraph not considered local revenues for the purposes of article IX, section 21, Constitution of Arizona.
14. Collect auxiliary fees, including cafeteria fees, food service fees, bookstore fees and dormitory fees. Monies received pursuant to this paragraph are not considered local revenues for the purposes of article IX, section 21, Constitution of Arizona.
15. Provide goods and services pursuant to a contract with a political subdivision of this state or with a tribal government. Monies received pursuant to this paragraph are not considered local revenues for the purposes of article IX, section 21, Constitution of Arizona.

C. If a district acquires real or personal property, whether by purchase, exchange, condemnation, gift or otherwise, the district shall pay to the county treasurer any taxes on the property that were unpaid as of the date

of acquisition, including penalties and interest. The lien for unpaid delinquent taxes, penalties and interest on property acquired by the district:

1. Is not abated, extinguished, discharged or merged in the title to the property.
2. Is enforceable in the same manner as other delinquent tax liens.

D. In a district whose boundaries encompass a vehicle emissions control area as defined in section 49-541, the district board shall require all out-of-county and out-of-state students to sign an affidavit at the time of course registration that the student's vehicle meets the requirements of section 49-542. The district board on property under its jurisdiction within a vehicle emissions control area shall prohibit the parking of those vehicles that fail to comply with section 49-542.

E. A community college district and a joint technical education district governing board may enter into agreements for the provision of administrative, operational and educational services and facilities.

F. Each district may establish a program for the exchange of students between the community colleges under its jurisdiction and colleges and universities located in Sonora, Mexico. The program may provide for in-state tuition for Sonora students at the community colleges under the jurisdiction of the district in exchange for similar tuition provisions for Arizona students enrolled or seeking enrollment in Sonora colleges and universities. The community colleges may work in conjunction with the Arizona-Mexico commission in the governor's office to coordinate recruitment and admissions activities to provide for in-state tuition for up to fifty Sonora students at the community colleges under the jurisdiction of the district in exchange for similar tuition provisions for up to fifty total Arizona students enrolled or seeking enrollment in Sonora colleges and universities.

G. Each district shall facilitate transfer articulation coordination pursuant to section 15-1824.

15-1627. Control of vehicles and nonpedestrian devices on university property; sanctions; compliance with emissions inspection; definition

A. Each university may adopt rules for the control of vehicles and nonpedestrian devices on its property with respect to the following only: maximum speed of vehicles and nonpedestrian devices, direction of travel, authorized hours of travel, required stops in traffic, place of parking, method of parking, time of parking, nonparking areas, restricted areas, prohibition of parking in vehicle emissions control areas as defined in section 49-541 of those vehicles which fail to comply with section 49-542 and designation of special parking areas for students, faculty, staff and the general public. Each university may prescribe and collect reasonable fees for specially designated parking areas. Each university shall cause signs and notices to be posted upon the property for the regulation of vehicles and nonpedestrian devices.

B. The rules adopted by each university pursuant to subsection A of this section shall be enforced administratively by each university. As to students, faculty and staff, these procedures may, but need not, involve both student and faculty adjudicating bodies, as long as all procedures give the individual notice and an opportunity to be heard concerning the alleged infractions and any sanction to be imposed upon him. Administrative and disciplinary sanctions may be imposed upon students, faculty and staff for a violation of the rules including, but not limited to: a reasonable monetary penalty, impoundment, regular institutional discipline, withdrawal or suspension of campus parking privileges, encumbrances of records or grades, or both, and oral or written reprimand. Habitual or flagrant disregard of rules shall be a ground for suspension or expulsion from the university for a student and may be taken into consideration as to faculty and staff in regard to amount of salary and continuation of employment.

C. Members of the general public who park their vehicles in an unauthorized manner upon the property of a university shall be warned concerning their unauthorized parking and, if they continue, or if such persons habitually park in such an unauthorized manner, the vehicles so parked may be impounded by the institution and a reasonable fee exacted for the cost of impoundment and storage.

D. Members of the general public who violate a rule adopted by the university pursuant to subsection A of this section regarding the use of nonpedestrian devices shall be warned of a violation and any nonpedestrian devices may be impounded by the university and a reasonable fee may be exacted for the cost of impoundment and storage.

E. Any person who has received a final administrative ruling concerning a sanction imposed upon him as a result of a violation of a rule pursuant to subsection A of this section shall have the right to have that ruling reviewed by the superior court in the county in which the institution involved is situated, in accordance with the provisions of the administrative review act, title 12, chapter 7, article 6.

F. This section shall be considered supplemental in nature to the general common law and statutory powers of institutions under control of the board as to the internal control and activities of their students, faculty and staff.

G. An institution under the jurisdiction of the board of regents and which is located in a vehicle emissions control area as defined in section 49-541 shall prohibit the issuance of annual permits to park on property under its jurisdiction until the applicant submits an affidavit or shows proof that his vehicle meets the requirements of section 49-542.

H. For the purposes of this section, "nonpedestrian devices" includes bicycles, tricycles, unicycles, skateboards, roller skates and equines.

## 28-101. Definitions

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 sixty-five or fewer inches in width.
    - (iii) Has an unladen weight of one thousand eight hundred pounds or less.
    - (iv) Travels on four or more nonhighway tires.
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 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.
25. "Farm" means any lands primarily used for agriculture production.
26. "Farm tractor" means a motor vehicle designed and used primarily as a farm implement for drawing implements of husbandry.
27. "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.
28. "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.
29. "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.
30. "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.
31. "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.
32. "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.
33. "Local authority" means any county, municipal or other local board or body exercising jurisdiction over highways under the constitution and laws of this state.
34. "Manufacturer" means a person engaged in the business of manufacturing motor vehicles, trailers or semitrailers.
35. "Moped" means a bicycle 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.
36. "Motor driven cycle" means a motorcycle, including every motor scooter, with a motor that produces not more than five horsepower.
37. "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 motorized wheelchair, an electric personal assistive mobility device or a motorized skateboard. For the purposes of this subdivision:
    - (i) "Motorized skateboard" means a self-propelled device 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.
38. "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.
39. "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 and a moped.
40. "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.

41. "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.

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

43. "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.

44. "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.

45. "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.

46. "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.

47. "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.

48. "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.

49. "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.

50. "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.

51. "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.

52. "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.

53. "Semitrailer" means a vehicle that is with or without motive power, other than a pole trailer, 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.

54. "State" means a state of the United States and the District of Columbia.

55. "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.

56. "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.

57. "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.

58. "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.

59. "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.

60. "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.

61. "Trailer" means a vehicle that is with or without motive power, other than a pole trailer, 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.

62. "Transportation network company" has the same meaning prescribed in section 28-9551.

63. "Transportation network company vehicle" has the same meaning prescribed in section 28-9551.

64. "Transportation network service" has the same meaning prescribed in section 28-9551.

65. "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.

66. "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.

67. "Vehicle" means a device in, on or by which a person or property is or may be transported or drawn on a public highway, excluding devices moved by human power or used exclusively on stationary rails or tracks.

68. "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.

28-2051. Application for certificate of title; vision screening test

A. A person shall apply to the department on a form prescribed or authorized by the department for a certificate of title to a motor vehicle, trailer or semitrailer. The person shall make the application within fifteen days after the purchase or transfer of the vehicle, trailer or semitrailer except that a licensed motor vehicle dealer shall make the application within thirty days after the purchase or transfer. All transferees shall sign the application, except that one transferee may sign the application if both of the following apply:

1. The application is for the purposes of converting an out-of-state certificate of title to a certificate of title issued pursuant to this article.
2. The ownership or legal status of the motor vehicle, trailer or semitrailer does not change.

B. The application shall contain:

1. The transferee's full name and either the driver license number of the transferee or a number assigned by the department.
2. The transferee's complete residence address.
3. A brief description of the vehicle to be issued a certificate of title.
4. The name of the manufacturer of the vehicle.
5. The serial number of the vehicle.
6. The last license plate number if applicable and if known and the state in which the license plate number was issued.
7. If the application is for a certificate of title to a new vehicle, the date of sale by the manufacturer or dealer to the person first operating the vehicle.
8. If the application is in the name of a lessor:
  - (a) The lessor shown on the application as the owner or transferee.
  - (b) At the option of the lessor, the lessee shown on the application as the registrant.
  - (c) The address of either the lessor or lessee.
  - (d) The signature of the lessor.
9. If the application is for a certificate of title to a specially constructed, reconstructed or foreign vehicle, a statement of that fact. For the purposes of this paragraph, "specially constructed vehicle" means a vehicle not originally constructed under a distinctive name, make, model or type by a generally recognized manufacturer of vehicles.
10. If an applicant rents or intends to rent the vehicle without a driver, a statement of that fact.
11. Other information required by the department.

C. Unless subsection B, paragraph 8 of this section applies, on request of an applicant, the department shall allow the applicant to provide on the certificate of title of a motor vehicle, trailer or semitrailer a post office box address that is regularly used by the applicant.

D. A person shall submit the following information with an application for a certificate of title:

1. To a vehicle previously registered:

(a) The odometer mileage disclosure statement prescribed by section 28-2058.

(b) If the applicant is applying for a certificate of title pursuant to section 28-2060, the applicant's statement of the odometer reading as of the date of application.

2. To a new vehicle:

(a) A manufacturer's certificate of origin showing the date of sale to the dealer or person first receiving the vehicle from the manufacturer. Before the department issues a certificate of title to a new vehicle, a manufacturer's certificate of origin shall be surrendered to the department.

(b) The name of the dealer or person.

(c) A description sufficient to identify the vehicle.

(d) A statement certifying that the vehicle was new when sold.

(e) If sold through a dealer, a statement by the dealer certifying that the vehicle was new when sold to the applicant.

E. The department may request that an applicant who appears in person for a certificate of title of a motor vehicle, trailer or semitrailer satisfactorily complete the vision screening test prescribed by the department.

**28-2233. Interstate commercial fleet registration; application; restrictions**

A. In lieu of the registration required by section 28-2153, in lieu of the full payment of fees prescribed by sections 28-2003 and 28-5433 and notwithstanding section 28-2321, a resident or nonresident engaged in operating one or more fleets of commercial vehicles in this state and another jurisdiction may register and license each fleet for operation in this state.

B. The director may refuse to permit proportional registration of vehicles based in a jurisdiction that does not grant proportional registration privileges to fleet vehicles based in this state.

C. A person may proportionally register and license a vehicle pursuant to this article by filing an application with the director. The execution of the application is subject to penalties of perjury for false statements. The application shall contain the following information and other information pertinent to vehicle registration as the director requires:

1. Total fleet miles determined as follows:

(a) The total number of miles operated in all jurisdictions during the preceding year by the power units in the fleet.

(b) If a fleet is composed entirely of trailers or semitrailers, the total number of miles that the vehicles were towed on the highways of all jurisdictions during the preceding year.

2. In-state miles determined as follows:

(a) The total number of miles operated in this state during the preceding year by the power units in the fleet.

(b) If a fleet is composed entirely of trailers or semitrailers, the total number of miles that the vehicles were towed on the highways of this state during the preceding year.

3. A description and identification of each vehicle of the fleet that is to be proportionally registered in this state during the registration year for which proportional fleet registration is requested.

4. For proportional registration of an interstate fleet to be operated in this state for the first time:

(a) The mileage data with respect to the fleet for the preceding year in other jurisdictions and the estimated annual mileage for the fleet in this state.

(b) If no operations were conducted with the fleet during the preceding year, a full statement of the proposed method of operation and estimates of annual mileage in this state and other jurisdictions.

5. The United States department of transportation number and the federal taxpayer identification number.

D. The application shall not include as a proportionally registered fleet vehicle a vehicle that is operated exclusively in this state or a vehicle if the sole purpose of its operation in this state is for use in the conduct of intrastate business.

E. The department shall not register a vehicle under this article unless it has been or will be proportionally or otherwise properly registered in at least one other jurisdiction during the period for which proportional registration is sought in this state.

F. From the applications submitted for proportional registration of an interstate fleet to be operated in this state for the first time, the director shall fix the in-state and total fleet miles to be used in determining the mileage proportion for the fleet and may evaluate and adjust the estimate in the application if the director is not satisfied the estimate is correct.

#### 49-541. Definitions

In this article, unless the context otherwise requires:

1. "Area A" means the area delineated as follows:

(a) In Maricopa county:

Township 8 north, range 2 east and range 3 east

Township 7 north, range 2 west through range 5 east

Township 6 north, range 5 west through range 6 east

Township 5 north, range 5 west through range 7 east

Township 4 north, range 5 west through range 8 east

Township 3 north, range 5 west through range 8 east

Township 2 north, range 5 west through range 8 east

Township 1 north, range 5 west through range 7 east

Township 1 south, range 5 west through range 7 east

Township 2 south, range 5 west through range 7 east

Township 3 south, range 5 west through range 1 east

Township 4 south, range 5 west through range 1 east

(b) In Pinal county:

Township 1 north, range 8 east and range 9 east

Township 1 south, range 8 east and range 9 east

Township 2 south, range 8 east and range 9 east

Township 3 south, range 7 east through range 9 east

(c) In Yavapai county:

Township 7 north, range 1 east and range 1 west through range 2 west

Township 6 north, range 1 east and range 1 west

2. "Area B" means the area delineated in Pima county as township 11 and 12 south, range 12 through 14 east; township 13 through 15 south, range 11 through 16 east; township 16 south, range 12 through 16 east, excluding any portion of the Coronado national forest and the Saguaro national park.

3. "Certificate of inspection" means a serially numbered device or symbol, as may be prescribed by the director, indicating that a vehicle has been inspected pursuant to the provisions of section 49-546 and has passed inspection.

4. "Certificate of waiver" means a uniquely numbered device or symbol, as may be prescribed by the director, indicating that the requirement of passing reinspection has been waived for a vehicle pursuant to the provisions of this article.
5. "Conditioning mode" means either a fast idle test or a loaded test.
6. "Curb idle test" means an exhaust emissions test conducted with the engine of a vehicle running at the manufacturer's specified idle speed plus or minus one hundred revolutions per minute but without pressure exerted on the accelerator.
7. "Emissions inspection station permit" means a certificate issued by the director authorizing the holder to perform vehicular inspections pursuant to this article.
8. "Fast idle test" means an exhaust emissions test conducted with the engine of the vehicle running under an accelerated condition to an extent prescribed by the director.
9. "Fleet emissions inspection station" means any inspection facility operated under a permit issued to a qualified fleet owner or lessee as determined by the director.
10. "Golf cart" means a motor vehicle which has not less than three wheels in contact with the ground, has an unladen weight of less than thirteen hundred pounds, is designed to be and is operated at not more than fifteen miles an hour and is designed to carry golf equipment and persons.
11. "Gross weight" has the same meaning prescribed in section 28-5431.
12. "Independent contractor" means any person, business, firm, partnership or corporation with which the director may enter into an agreement providing for the construction, equipment, maintenance, personnel, management and operation of official emissions inspection stations pursuant to section 49-545.
13. "Loaded test" means an exhaust emissions test conducted at cruise or transient conditions as prescribed by the director.
14. "Official emissions inspection station" means an inspection facility, other than a fleet emissions inspection station, whether placed in a permanent structure or in a mobile unit for conveyance among various locations within this state, for the purpose of conducting emissions inspections of all vehicles required to be inspected pursuant to this article.
15. "Tampering" means removing, defeating or altering an emissions control device which was installed at the time a vehicle was manufactured.
16. "Vehicle" means any automobile, truck, truck tractor, motor bus or self-propelled or motor-driven vehicle registered or to be registered in this state and used upon the public highways of this state for the purpose of transporting persons or property, except implements of husbandry, road rollers or road machinery temporarily operated upon the highway.
17. "Vehicle emissions control area" means area A or area B.

49-542. Emissions inspection program; powers and duties of director; administration; periodic inspection; minimum standards and rules; exceptions; definition

(L14, Ch. 89, sec. 2)

A. The director shall administer a comprehensive annual or biennial emissions inspection program that shall require the inspection of vehicles in this state pursuant to this article and applicable administrative rules. Such inspection is required for vehicles that are registered in area A and area B, for those vehicles owned by a person who is subject to section 15-1444 or 15-1627 and for those vehicles registered outside of area A or area B but used to commute to the driver's principal place of employment located within area A or area B. Inspection in other counties of the state shall commence on the director's approval of an application by a county board of supervisors for participation in such inspection program. In all counties with a population of three hundred fifty thousand or fewer persons, except for the portion of counties that contain any portion of area A, the director shall as conditions dictate provide for testing to determine the effect of vehicle related pollution on ambient air quality in all communities with a metropolitan area population of twenty thousand persons or more. If such testing detects the violation of state ambient air quality standards by vehicle related pollution, the director shall forward a full report of such violation to the president of the senate, the speaker of the house of representatives and the governor.

B. The state's annual or biennial emissions inspection program shall provide for vehicle inspections at official emissions inspection stations or at fleet emissions inspection stations. Each inspection station in area A shall employ at least one technical assistant who is available during the station's hours of operation to provide assistance for persons who fail the emissions test. An official or fleet emissions inspection station permit shall not be sold, assigned, transferred, conveyed or removed to another location except on such terms and conditions as the director may prescribe.

C. Vehicles required to be inspected and registered in this state, except those provided for in section 49-546, shall be inspected, for the purpose of complying with the registration requirement pursuant to subsection D of this section, in accordance with the provisions of this article no more than ninety days prior to each registration expiration date. A vehicle may be submitted voluntarily for inspection more than ninety days before the registration expiration date on payment of the prescribed inspection fee. Such voluntary inspection shall not be considered as compliance with the registration requirement pursuant to subsection D of this section.

D. A vehicle shall not be registered until such vehicle has passed the emissions inspection and the tampering inspection prescribed in subsection G of this section or has been issued a certificate of waiver. A certificate of waiver shall only be issued one time to a vehicle after January 1, 1997. If any vehicle to be registered is being sold by a dealer licensed to sell motor vehicles pursuant to title 28, the cost of any inspection and any repairs necessary to pass the inspection shall be borne by the dealer. A dealer who is licensed to sell motor vehicles pursuant to title 28 and whose place of business is located in area A or area B shall not deliver any vehicle to the retail purchaser until the vehicle passes any inspection required by this article or the vehicle is exempt under subsection J of this section.

E. On the registration of a vehicle that has complied with the minimum emissions standards pursuant to this section or is otherwise exempt under this section, the registering officer shall issue an air quality compliance sticker to the registered owner that shall be placed on the vehicle as prescribed by rule adopted by the department of transportation or issue a modified year validating tab as prescribed by rule adopted by the department of transportation. Those persons who reside outside of area A or area B but who elect to test their vehicle or are required to test their vehicle pursuant to this section and who comply with the minimum emissions standards pursuant to this section or are otherwise exempt under this section shall remit a compliance form, as prescribed by the department of transportation, and proof of compliance issued at an official emissions

inspection station to the department of transportation along with the appropriate fees. The department of transportation shall then issue the person an air quality compliance sticker which shall be placed on the vehicle as prescribed by rule adopted by the department of transportation. The registering officer or the department of transportation shall collect an air quality compliance fee of twenty-five cents. The registering officer or the department of transportation shall deposit, pursuant to sections 35-146 and 35-147, the air quality compliance fee in the state highway fund established by section 28-6991. The department of transportation shall deposit, pursuant to sections 35-146 and 35-147, any emissions inspection fee in the emissions inspection fund. The provisions of this subsection do not apply to those vehicles registered pursuant to title 28, chapter 7, article 7 or 8, the sale of vehicles between motor vehicle dealers or vehicles leased to a person residing outside of area A or area B by a leasing company whose place of business is in area A or area B.

F. The director shall adopt minimum emissions standards pursuant to section 49-447 with which the various classes of vehicles shall be required to comply as follows:

1. For the purpose of determining compliance with minimum emissions standards in area B:

(a) A motor vehicle manufactured in or before the 1980 model year, other than a diesel powered vehicle, shall be required to take and pass the curb idle test. A diesel powered vehicle is subject to only a loaded test. The conditioning mode, at the option of the vehicle owner or owner's agent, shall be administered only after the vehicle has failed the curb idle test. On completion of such conditioning mode, a vehicle that has failed the curb idle test may be retested in the curb idle test. If the vehicle passes such retest, it shall be deemed in compliance with minimum emissions standards unless the vehicle fails the tampering inspection pursuant to subsection G of this section.

(b) A motor vehicle manufactured in or after the 1981 model year, other than a diesel powered vehicle, shall be required to take and pass the curb idle test and the loaded test or an onboard diagnostic check as may be required pursuant to title II of the clean air act.

2. For the purposes of determining compliance with minimum emissions standards and functional tests in area A:

(a) Motor vehicles manufactured in or after model year 1981 with a gross vehicle weight rating of eighty-five hundred pounds or less, other than diesel powered vehicles, shall be required to take and pass a transient loaded emissions test or an onboard diagnostic check as may be required pursuant to title II of the clean air act.

(b) Motor vehicles other than those prescribed by subdivision (a) of this paragraph and other than diesel powered vehicles shall be required to take and pass a steady state loaded test and a curb idle emissions test.

(c) A diesel powered motor vehicle applying for registration in area A shall be required to take and pass an annual emissions test conducted at an official emissions inspection station or a fleet emissions inspection station as follows:

(i) A loaded, transient or any other form of test as provided for in rules adopted by the director for vehicles with a gross vehicle weight rating of eight thousand five hundred pounds or less.

(ii) A test that conforms with the society for automotive engineers standard J1667 for vehicles with a gross vehicle weight rating of more than eight thousand five hundred pounds.

(d) Motor vehicles by specific class or model year shall be required to take and pass any of the following tests:

(i) An evaporative system purge test.

(ii) An evaporative system integrity test.

(e) An onboard diagnostic check may be required pursuant to title II of the clean air act.

3. Any constant four-wheel drive vehicle shall be required to take and pass a curb idle emissions test or an onboard diagnostic check as required pursuant to title II of the clean air act.

4. Fleet operators in area B must comply with this section, except that used vehicles sold by a motor vehicle dealer who is a fleet operator and who has been issued a permit under section 49-546 shall be tested as follows:

(a) A motor vehicle manufactured in or before the 1980 model year shall take and pass only the curb idle test, except that a diesel powered vehicle is subject to only a loaded test.

(b) A motor vehicle manufactured in or after the 1981 model year shall take and pass the curb idle test and a twenty-five hundred revolutions per minute unloaded test.

5. Vehicles owned or operated by the United States, this state or a political subdivision of this state shall comply with this subsection without regard to whether those vehicles are required to be registered in this state, except that alternative fuel vehicles of a school district that is located in area A shall be required to take and pass the curb idle test and the loaded test.

6. Fleet operators in area A shall comply with this section, except that used vehicles sold by a motor vehicle dealer who is a fleet operator and who has been issued a permit pursuant to section 49-546 for the purposes of determining compliance with minimum emission standards in area A shall be tested as follows:

(a) A motor vehicle manufactured in or before the 1980 model year shall take and pass the curb idle test, except that a diesel powered vehicle is subject to only a loaded test.

(b) A motor vehicle manufactured in or after the 1981 model year shall take and pass the curb idle test and a two thousand five hundred revolutions per minute unloaded test.

7. Except for any registered owner or lessee of a fleet of less than twenty-five vehicles, a diesel powered motor vehicle with a gross vehicle weight of more than twenty-six thousand pounds and for which gross weight fees are paid pursuant to title 28, chapter 15, article 2 in area A shall not be allowed to operate in area A unless it was manufactured in or after the 1988 model year or is powered by an engine that is certified to meet or surpass emissions standards contained in 40 Code of Federal Regulations section 86.088-11 in effect on July 1, 1995. This paragraph does not apply to vehicles that are registered pursuant to title 28, chapter 7, article 7 or 8.

8. For any registered owner or lessee of a fleet of less than twenty-five vehicles, a diesel powered motor vehicle with a gross vehicle weight of more than twenty-six thousand pounds and for which gross weight fees are paid pursuant to title 28, chapter 15, article 2 in area A shall not be allowed to operate in area A unless it was manufactured in or after the 1988 model year or is powered by an engine that is certified to meet or surpass emissions standards contained in 40 Code of Federal Regulations section 86.088-11 in effect on July 1, 1995. This paragraph does not apply to vehicles that are registered pursuant to title 28, chapter 7, article 7 or 8.

G. In addition to an emissions inspection, a vehicle is subject to a tampering inspection as prescribed by rules adopted by the director if the vehicle was manufactured after the 1974 model year.

H. Vehicles required to be inspected shall undergo a functional test of the gas cap to determine if the cap holds pressure within limits prescribed by the director, except for any vehicle that is subject to an evaporative system integrity test.

I. Motor vehicles failing the initial or subsequent test are not subject to a penalty fee for late registration renewal if the original testing was accomplished before the expiration date and if the registration renewal is received by the motor vehicle division or the county assessor within thirty days of the original test.

J. The director may adopt rules for purposes of implementation, administration, regulation and enforcement of the provisions of this article including:

1. The submission of records relating to the emissions inspection of vehicles inspected by another jurisdiction in accordance with another inspection law and the acceptance of such inspection for compliance with the provisions of this article.

2. The exemption from inspection of:

(a) Except as otherwise provided in this subdivision, a motor vehicle manufactured in or before the 1966 model year. If the United States environmental protection agency issues a vehicle emissions testing exemption for motor vehicles manufactured in or before the 1974 model year for purposes of the state implementation or maintenance plan for air quality, a motor vehicle manufactured in or before the 1974 model year is exempt from inspection.

(b) New vehicles originally registered at the time of initial retail sale and titling in this state pursuant to section 28-2153 or 28-2154.

(c) Vehicles registered pursuant to title 28, chapter 7, article 7 or 8.

(d) New vehicles before the sixth registration year after initial purchase or lease.

(e) Vehicles that are outside of this state at the time of registration, except the director by rule may require testing of those vehicles within a reasonable period of time after those vehicles return to this state.

(f) Golf carts.

(g) Electrically-powered vehicles.

(h) Vehicles with an engine displacement of less than ninety cubic centimeters.

(i) The sale of vehicles between motor vehicle dealers.

(j) Vehicles leased to a person residing outside of area A or area B by a leasing company whose place of business is in area A or area B.

(k) Collectible vehicles.

(l) Motorcycles.

3. Compiling and maintaining records of emissions test results after servicing.

4. A procedure that shall allow the vehicle service and repair industry to compare the calibration accuracy of its emissions testing equipment with the department's calibration standards.

5. Training requirements for automotive repair personnel using emissions measuring equipment whose calibration accuracy has been compared with the department's calibration standards.

6. Any other rule that may be required to accomplish the provisions of this article.

K. The director, after consultation with automobile manufacturers and the vehicle service and repair industry, shall establish by rule a definition of "vehicle maintenance and repairs" for motor vehicles subject to inspection under this article. The definition shall specify repair procedures that, when implemented, will reduce vehicle emissions.

L. The director shall adopt rules that specify that the estimated retail cost of all recommended maintenance and repairs shall not exceed the amounts prescribed in this subsection, except that if a vehicle fails a tampering inspection there is no limit on the cost of recommended maintenance and repairs. The director shall issue a certificate of waiver for a vehicle if the director has determined that all recommended maintenance and repairs

have been performed and that the vehicle has failed any reinspection that may be required by rule. If the director has determined that the vehicle is in compliance with minimum emissions standards or that all recommended maintenance and repairs for compliance with minimum emissions standards have been performed, but that tampering discovered at a tampering inspection has not been repaired, the director may issue a certificate of waiver if the owner of the vehicle provides to the director a written statement from an automobile parts or repair business that an emissions control device that is necessary to repair the tampering is not available and cannot be obtained from any usual source of supply before the vehicle's current registration expires. Rules adopted by the director for the purpose of establishing the estimated retail cost of all recommended maintenance and repairs pursuant to this subsection shall specify that:

1. In area A the cost shall not exceed:

(a) Five hundred dollars for a diesel powered vehicle with a gross weight in excess of twenty-six thousand pounds.

(b) Five hundred dollars for a diesel powered vehicle with tandem axles.

(c) For a vehicle other than a diesel powered vehicle with a gross weight in excess of twenty-six thousand pounds and other than a diesel powered vehicle with tandem axles:

(i) Two hundred dollars for such a vehicle manufactured in or before the 1974 model year.

(ii) Three hundred dollars for such a vehicle manufactured in the 1975 through 1979 model years.

(iii) Four hundred fifty dollars for such a vehicle manufactured in or after the 1980 model year.

2. In area B the cost shall not exceed:

(a) Three hundred dollars for a diesel powered vehicle with a gross weight in excess of twenty-six thousand pounds.

(b) Three hundred dollars for a diesel powered vehicle with tandem axles.

3. For a vehicle other than a diesel powered vehicle with a gross weight in excess of twenty-six thousand pounds and other than a diesel powered vehicle with tandem axles:

(a) Fifty dollars for such a vehicle manufactured in or before the 1974 model year.

(b) Two hundred dollars for such a vehicle manufactured in the 1975 through 1979 model years.

(c) Three hundred dollars for such a vehicle manufactured in or after the 1980 model year.

M. Each person whose vehicle has failed an emissions inspection shall be provided a list of those general recommended repair and maintenance procedures for vehicles that are designed to reduce vehicle emissions levels.

N. Notwithstanding any other provisions of this article, the director may adopt rules allowing exemptions from the requirement that all vehicles must meet the minimum standards for registration.

O. The director of environmental quality shall establish, in cooperation with the assistant director for the motor vehicle division of the department of transportation:

1. An adequate method for identifying bona fide residents residing outside of area A or area B to ensure that such residents are exempt from compliance with the inspection program established by this article and rules adopted under this article.

2. A written notice that shall accompany the vehicle registration application forms that are sent to vehicle owners pursuant to section 28-2151 and that shall accompany or be included as part of the vehicle emissions test results that are provided to vehicle owners at the time of the vehicle emissions test. This written notice shall describe at least the following:

(a) The restriction of the waiver program to one time per vehicle and a brief description of the implications of this limit.

(b) The availability and a brief description of the vehicle repair and retrofit program established pursuant to section 49-474.03.

(c) Notice that many vehicles carry extended warranties for vehicle emissions systems, and those warranties are described in the vehicle's owner's manual or other literature.

(d) A description of the catalytic converter replacement program established pursuant to section 49-474.03.

P. Notwithstanding any other law, if area A or area B is reclassified as an attainment area, emissions testing conducted pursuant to this article shall continue for vehicles registered inside that reclassified area, vehicles owned by a person who is subject to section 15-1444 or 15-1627 and vehicles registered outside of that reclassified area but used to commute to the driver's principal place of employment located within that reclassified area.

Q. A fleet operator who is issued a permit pursuant to section 49-546 may electronically transmit emissions inspection data to the department of transportation pursuant to rules adopted by the director of the department of transportation in consultation with the director of environmental quality.

R. The director shall prohibit a certificate of waiver pursuant to subsection L of this section for any vehicle which has failed inspection in area A or area B due to the catalytic converter system.

S. The director shall establish provisions for rapid testing of certain vehicles and to allow fleet operators, singly or in combination, to contract directly for vehicle emissions testing.

T. Each vehicle emissions inspection station in area A shall have a sign posted to be visible to persons who are having their vehicles tested. This sign shall state that enhanced testing procedures are a direct result of federal law.

U. The initial adoption of rules pursuant to this section shall be deemed emergency rules pursuant to section 41-1026.

V. The director of environmental quality and the director of the department of transportation shall implement a system to exchange information relating to the waiver program, including information relating to vehicle emissions test results and vehicle registration information.

W. Any person who sells a vehicle that has been issued a certificate of waiver pursuant to this section after January 1, 1997 and who knows that a certificate of waiver has been issued after January 1, 1997 for that vehicle shall disclose to the buyer before completion of the sale that a certificate of waiver has been issued for that vehicle.

X. Vehicles that fail the emissions test at emission levels higher than twice the standard established for that vehicle class by the department pursuant to section 49-447 are not eligible for a certificate of waiver pursuant to this section unless the vehicle is repaired sufficiently to achieve an emissions level below twice the standard for that class of vehicle.

Y. If an insurer notifies the department of transportation of the cancellation or nonrenewal of collectible vehicle or classic automobile insurance coverage for a collectible vehicle, the department of transportation shall cancel

the registration of the vehicle and the vehicle's exemption from emissions testing pursuant to this section unless evidence of coverage is presented to the department of transportation within sixty days.

Z. For the purposes of this section, "collectible vehicle" means a vehicle that complies with both of the following:

1. Either:

(a) Bears a model year date of original manufacture that is at least fifteen years old.

(b) Is of unique or rare design, of limited production and an object of curiosity.

2. Meets both of the following criteria:

(a) Is maintained primarily for use in car club activities, exhibitions, parades or other functions of public interest or for a private collection and is used only infrequently for other purposes.

(b) Has a collectible vehicle or classic automobile insurance coverage that restricts the collectible vehicle mileage or use, or both, and requires the owner to have another vehicle for personal use.

49-543. Emissions inspection costs; disposition; fleet inspection; certificates

- A. The director shall fix, regulate and alter in accordance with this section the fees required to be paid for the full costs of the vehicle emissions inspection program pursuant to this article including administration, implementation and enforcement.
- B. Except as provided in section 49-542.05, the registration renewal notice required for the second through fifth registration year of a new vehicle shall include a notice to the vehicle owner that even though an emissions inspection test is not required pursuant to section 49-542, subsection J, paragraph 2, subdivision (d) the owner may choose to have an emissions inspection because of vehicle emissions performance warranty limitations on emissions components of the vehicle.
- C. The fees charged for official emissions inspection shall be uniform as applied to each class of vehicle, which shall be defined by the director. Except for fees collected by the director pursuant to section 49-546, the inspection fees required to be paid pursuant to this article may be collected with the registration fee by the registering officer at the time and place of motor vehicle registration pursuant to title 28, chapter 7, article 5 and deposited, pursuant to sections 35-146 and 35-147, in the emissions inspection fund in accordance with the rules adopted by the director or may be collected by the independent contractor at the time of inspection.
- D. Any person, except a person who has been issued a certificate of waiver pursuant to section 49-542, subsection L, whose vehicle has been inspected at an official emissions inspection station, if the vehicle was not found to comply with the minimum standards, shall have the vehicle repaired, including recommended repair or replacement of emissions control devices as a result of tampering, and have the right within sixty consecutive calendar days but not thereafter to return the vehicle for one reinspection without charge. The department may provide for additional reinspections without charge. A vehicle shall not be deemed to pass a reinspection unless the tampering discovered during the tampering inspection is repaired with new or reconditioned emissions control devices.
- E. The department shall issue certificates of inspection to owners of fleet emissions inspection stations. Each certificate shall be validated by the fleet emissions inspection stations in a manner required by the director at the time that each owner's fleet vehicle has been inspected or has passed inspection. The validated certificate of inspection shall indicate at the time of registration that the owner's fleet vehicle has been inspected and that the vehicle has passed inspection.
- F. The director shall fix an emissions inspection fee before inspection certificates may be issued to the owner of any fleet emissions inspection station. Such fee shall be uniform for each inspection certificate issued and shall be based on the director's estimated costs to the state of administering and enforcing this article as it applies to fleet emissions inspection stations and the vehicles inspected in fleet emissions inspection stations. The director shall deposit, pursuant to sections 35-146 and 35-147, all such monies collected by the director pursuant to this article in the emissions inspection fund.

**DEPARTMENT OF ENVIRONMENTAL QUALITY (R-19-0205)**

Title 18, Chapter 8, Article 1, Remedial Action Requirements; Article 2, Hazardous Wastes

**Amend:** R18-8-101; R18-8-260; R18-8-261; R18-8-262; R18-8-263; R18-8-264;  
R18-8-265; R18-8-266; R18-8-268; R18-8-270; R18-8-271; R18-8-273;  
R18-8-280

# GOVERNOR'S REGULATORY REVIEW COUNCIL

## STAFF MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** February 5, 2019

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

**FROM:** Council Staff

**DATE:** January 22, 2019

**SUBJECT: DEPARTMENT OF ENVIRONMENTAL QUALITY (R-19-0205)**  
Title 18, Chapter 8, Article 1, Remedial Action Requirements; Article 2,  
Hazardous Wastes

**Amend:** R18-8-101; R18-8-260; R18-8-261; R18-8-262; R18-8-263;  
R18-8-264; R18-8-265; R18-8-266; R18-8-268; R18-8-270;  
R18-8-271; R18-8-273; R18-8-280

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This rulemaking, from the Arizona Department of Environmental Quality (Department or ADEQ), seeks to amend 13 rules in A.A.C. Title 18, Chapter 8, related to hazardous wastes. The Department is incorporating changes in federal regulations implementing Subtitle C of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). ADEQ is adopting changes to federal regulations in effect as of July 1, 2018 and updating the general incorporation date from July 1, 2013 to July 1, 2018.

The Department is also making technical corrections and accounting for procedural changes inside the Department:

- The Department has eliminated its longstanding requirement that certain generators and Hazardous Waste Treatment, Storage, or Disposal (TSD) facilities submit annual reports, compared to the EPA requirement for biennial reports. As such, the requirement is being removed from R18-8-261(J), R18-8-262(H), R18-8-264(I) and R18-8-265(I).
- R18-8-260(M) is amended to provide that the small quantity generator fee in A.R.S. § 49-931 applies to those very small quantity generators who become small quantity generators because of the Environmental Protection Agency's (EPA) new episodic event procedures.
- R18-8-260, R18-8-262, R18-8-263, R18-8-264, and R18-8-265 are amended to require certain submissions and registrations to be submitted through ADEQ's online portal.
- In R18-8-270, the Department has removed permit fee appeal language leading to a hearing under R18-1-202, which expired in 2017.

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

The Department is amending the state's hazardous waste rules to incorporate changes in federal regulations implementing Subtitle C of the Resources and Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA).

The EPA granted "final" authorization to Arizona in 1985 to operate its hazardous waste program in Arizona in lieu of the federal hazardous waste program, subject to the limitations imposed by HSWA. ADEQ regularly compares Arizona's hazardous waste rules to the federal regulations and amends the Arizona rules, as necessary, to comply with state statute and to facilitate continued authorization. Without continued authorization, EPA, rather than ADEQ, would administer parts of the hazardous waste program in Arizona. ADEQ believes that regular incorporation of changes and additions to federal language into Arizona rules simplifies and facilitates continued authorization.

ADEQ's Hazardous Waste Program regulates a universe of 2,700 active facilities, including metal platers; chemical manufactures; laboratories; explosive and munition manufacturers; pesticide manufacturers; hazardous waste treatment, storage, and disposal (TSD) facilities; and military installations. There are currently 13 permitted TSD facilities, 338 large quantity generators, 644 small quantity generators, 1,372 very small quantity generators, and 314 transporters in Arizona. ADEQ records show that over 40,000 tons of hazardous waste were generated in Arizona in 2017.

**4. 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?**

ADEQ analyzed the costs and benefits of the rulemaking and concluded that the benefits of the rulemaking are greater than the costs. According to ADEQ, these directives express the general ongoing assumption of the legislature that the impacts of incorporating required federal rules will be less than the impact of not incorporating them and having EPA implement the hazardous waste program in Arizona. The Department has determined that there are no less intrusive or less costly methods of achieving the purposes of the rule.

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

ADEQ believes that in Arizona the average per facility cost of the EPA regulation will be initially more than the average per facility cost savings, since more stringent changes outnumber the less stringent changes. Additionally, compliance with the more stringent changes was required on the effective date of the rule. Nevertheless, ADEQ believes that the net average per facility impact of the EPA regulation will be minimal. The Department believes that there will be no direct impact on consumers. This rulemaking will have no effect on state revenues. No existing fees are increased or reduced, and no new fees are established.

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

The Department indicates that it received no public comments on the rulemaking.

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

No. No changes have been made between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

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

The Department notes that Arizona's rules have been more stringent than the EPA's in the areas of reports and manifests, as authorized under A.R.S. § 49-922(B), since the EPA's first authorization of Arizona's hazardous waste program in 1985. These more stringent requirements have been removed in this rulemaking.

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

Yes. The regulatory permits issued under Article 2 are not general permits, but the Department indicates that the permits are consistent with A.R.S. § 41-1037(A)(1) and (2). The Department notes that a specific alternative permit is authorized by A.R.S. § 49-922(B)(5) and "general permits" as defined by A.R.S. § 41-1001 are not recognized under federal hazardous waste regulations with which the Department is required to be consistent.

**10. 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?**

No. The Department indicates that it did not review or rely on any study for this rulemaking.

## **11. Conclusion**

The Department requests an immediate effective date for the rulemaking, in order to eliminate an annual report that would otherwise be required on March 1, 2019. The Department cites to A.R.S. § 41-1032(A)(5) as justification for the immediate effective date. Council staff believes that A.R.S. § 41-1032(A)(1) provides proper justification, as the rulemaking preserves the public peace, health or safety. Council staff recommends approval of the rulemaking.



Douglas A. Ducey  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Misael Cabrera  
Director

December 14, 2018

Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 N. 15th Avenue, Suite 402  
Phoenix, Arizona 85007

Re: 18 A.A.C. 8, Department of Environmental Quality – Hazardous Waste Management

Dear Ms. Sornsin:

Today I am sending you a final ADEQ rule package and request that you place it on the Council agenda for approval. Pursuant to A.A.C. R1-6-201, I provide the following information:

- The close of record date was December 13, 2018.
- Parts of the rulemaking are related to a five-year-review report approved by the Council on May 5, 2015.
- The rule does not include any new or increased fees.
- An immediate effective date is requested and information is included in the preamble showing that the rule qualifies under A.R.S. § 41-1032.

I certify that the preamble contains a reference to any study relevant to the rules that ADEQ reviewed and either did or did not rely on in our evaluation and justification for the rule. No new full-time employees are necessary to implement and enforce the rule, and no competitiveness analysis was submitted. No comments were received on the proposed rule. Electronic copies of have been provided of the following:

- The Notice of Final Rulemaking
- The Economic, Small Business and Consumer Impact Statement
- Material incorporated by reference
- The general and specific statutes authorizing the rule
- Definitions of terms used in the rulemaking that are contained in statutes or other rules
- The existing rule, for the subsections listed as "no change."

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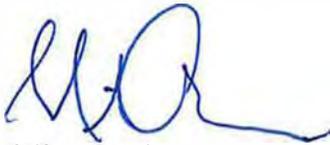
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Nicole Sornsin, Chair  
Page 2 of 2

As required by the Administrative Procedure Act, the Notice of Rulemaking Docket Opening and Notice of Proposed Rulemaking were filed with the Secretary of State, and published in the Arizona Administrative Register on May 25, 2018, and November 9, 2018, respectively.

Please do not hesitate to contact me, or Mark Lewandowski, at 602-771-2230, if there are any questions we can answer for you.

Sincerely,



Misael Cabrera  
Director

Electronic enclosures:  
Notice of Final Rulemaking  
Economic, small business and consumer impact statement  
Material incorporated by reference  
Copy of definitions used in rules  
Authorizing statutes  
Existing rules

**NOTICE OF FINAL RULEMAKING**  
**TITLE 18. ENVIRONMENTAL QUALITY**  
**CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**HAZARDOUS WASTE MANAGEMENT**

**PREAMBLE**

<b><u>1. Article, Part or Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
R18-8-101	Amend
R18-8-260	Amend
R18-8-261	Amend
R18-8-262	Amend
R18-8-263	Amend
R18-8-264	Amend
R18-8-265	Amend
R18-8-266	Amend
R18-8-268	Amend
R18-8-270	Amend
R18-8-271	Amend
R18-8-273	Amend
R18-8-280	Amend

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

Authorizing Statutes:                   A.R.S. §§ 41-1003 and 49-104

Implementing Statute:                 A.R.S. § 49-922

**3. The effective date of the rule:**

Date filed with the Secretary of State

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

Immediate. The elimination of the annual report to ADEQ is less stringent and would otherwise have been due March 1, 2019.

A.R.S. § 41-1032(A)(5): To adopt a rule that is less stringent than the rule that is currently in effect and that does not have an impact on the public health, safety, welfare or environment, or that does not affect the public involvement and public participation process.

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

Not applicable

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

Notice of Rulemaking Docket Opening: 24 A.A.R. 1587, May 25, 2018

Notice of Proposed Rulemaking: 24 A.A.R. 3146, November 9, 2018

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

Name: Mark Lewandowski

Address: Arizona Department of Environmental Quality

Waste Programs Division

1110 W. Washington St.

Phoenix, Arizona 85007

Telephone: (602) 771-2230, or (800) 234-5677, enter 771-2230 (Arizona only)

Fax: (602) 771-4272

E-mail: lewandowski.mark@azdeq.gov

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

Summary. The Arizona Department of Environmental Quality (ADEQ) is amending the state's hazardous waste rules to incorporate changes in federal regulations implementing Subtitle C of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). The amendments in this rule adopt changes to federal regulations that were in effect as of July 1, 2018 and update the general incorporation date in Arizona hazardous waste rules from July 1, 2013 to July 1, 2018. ADEQ-initiated technical corrections and procedural changes are also included. EPA's 2008, 2015 and 2018 regulations relating to the definition of solid waste are not incorporated in this rulemaking.

Background. Congress passed RCRA in 1976 to establish a national "cradle to grave" regulatory system to control the generation, transportation, treatment, storage and disposal of hazardous wastes. Similar to other national environmental laws, states are encouraged to assume most of the responsibility for the program and become "authorized" to implement RCRA and its underlying regulations. This process ensures national consistency and minimum standards while providing flexibility to states to implement the national standards with state and local solutions.

The requirements for state hazardous waste program authorization are found in 40 CFR 271.

Federal hazardous waste regulations change from year to year, so states with authorization such as Arizona have a continuing obligation to revise their programs to keep up with federal changes and remain authorized states. [40 CFR 271.21(e)(1)]

Arizona's hazardous waste rules are found in 18 A.A.C. 8, Article 2 and have been in effect since 1984. EPA first granted “final” authorization to Arizona in 1985, to operate its hazardous waste program in Arizona in lieu of the federal hazardous waste program, subject to the limitations imposed by HSWA (see 50 FR 47736, November 20, 1985). EPA last authorized revisions to Arizona’s hazardous waste program on December 21, 2017. (82 FR 60550) Due largely to federal and Arizona requirements mandating equivalency with federal regulations (see 42 U.S.C. 6926(b) and A.R.S. § 49-922(A)), Arizona’s hazardous waste rules incorporate the federal hazardous waste regulations by reference and are mostly identical to the federal regulations. ADEQ regularly compares Arizona’s hazardous waste rules to the federal regulations and amends the Arizona rules, as necessary, to comply with state statute and to facilitate continued authorization. Without continued authorization, EPA, rather than ADEQ, would administer parts of the hazardous waste program in Arizona. ADEQ’s objective with this rulemaking is to continue administering the federal hazardous waste program in Arizona in place of EPA. ADEQ believes that regular incorporation of changes and additions to federal language into Arizona rules simplifies and facilitates continued authorization.

#### Background to this Notice of Final Rulemaking

ADEQ is using a new rulemaking model which significantly expands stakeholder dialogue prior to the formal proposed rule when compared to previous ADEQ rulemakings. From June through September, 2018, ADEQ held a number of public stakeholder meetings and Webex seminars related to EPA’s e-Manifest and generator improvements rules, as well as ADEQ’s plans for the proposed rule. The meetings were well attended and were extremely helpful in answering many early questions stakeholders had, especially in relation to the details of the e-Manifest system.

Effective date of rule amendments. ADEQ requested the Governor's Regulatory Review Council (GRRC) for an immediate effective date for these rules so that they became effective

immediately upon filing with the Office of the Secretary of State pursuant to A.R.S. § 41-1032(A)(5). This statute provides that a rule may be effective immediately if the rule is less stringent than the rule that is currently in effect and does not have an impact on the public health, safety, welfare or environment, and does not affect the public involvement and public participation process. The elimination of the annual report to ADEQ is less stringent and would otherwise have been due March 1, 2019. The request was granted.

Subsections not amended listed as “No change”. In the proposed rule, ADEQ made use of the option in R1-1-502(B)(18)(f) to list some of the subsections not amended as “No change” rather than showing long sections of text that are not being changed. Certain subsections of unchanged text were shown to provide context for nearby proposed changes. No comments were received on these subsections.

#### What EPA regulations are incorporated into Arizona rules?

The following is a list of changes in federal hazardous waste regulations that were effective as federal law as of July 1, 2018 and that are incorporated into Arizona rules. They are discussed more fully later in this preamble.

- Conditional Exclusion for Carbon Dioxide (CO<sub>2</sub>) Streams in Geologic Sequestration Activities; 79 FR 350, January 3, 2014.
- Modification of the Hazardous Waste Manifest System; Electronic Manifests (e-Manifests I); 79 FR 7518, February 7, 2014.
- Revisions to the Export Provisions of the Cathode Ray Tube (CRT) Rule; 79 FR 36220, June 26, 2014.
- Disposal of Coal Combustion Residuals From Electric Utilities; 80 FR 21302, April 17, 2015.
- Hazardous Waste Export-Import Revisions; 81 FR 85696, November 28, 2016.

- Hazardous Waste Generator Improvements Rule; 81 FR 85732, November 28, 2016.
- Confidentiality Determinations for Hazardous Waste Export and Import Documents; 82 FR 60894, December 26, 2017.
- User Fees for the Electronic Hazardous Waste Manifest System and Amendments to Manifest Regulations (e-Manifests II); 83 FR 420, January 3, 2018.

One EPA rule that became final after July 1, 2013 was incorporated by ADEQ in its last hazardous waste rulemaking: Conditional Exclusions from Solid Waste and Hazardous Waste for Solvent-Contaminated Wipes (eff. January 31, 2014). For that reason it is not included in this rulemaking. ADEQ's last hazardous waste rulemaking was published at 21 A.A.R. 1246, September 5, 2015.

#### Descriptions of EPA regulations incorporated

- Conditional Exclusion for Carbon Dioxide (CO<sub>2</sub>) Streams in Geologic Sequestration Activities; 79 FR 350, January 3, 2014. In this action, EPA revised its hazardous waste management regulations under RCRA to conditionally exclude carbon dioxide (CO<sub>2</sub>) streams that are hazardous from the definition of hazardous waste, provided these hazardous CO<sub>2</sub> streams are captured from emission sources, are injected into Underground Injection Control (UIC) Class VI wells for purposes of geologic sequestration, and meet certain other conditions. EPA considers the exclusion to be less stringent than the current federal program and therefore states are not required to adopt this provision. The EPA rulemaking amended 40 CFR Parts 9, 260 and 261. In this rulemaking, ADEQ has incorporated into state rule all of the amendments to 260 and 261, without modification.

EPA notes that when such a conditionally excluded waste is transported interstate, the exclusion must be must be active in the state where it is generated, any states that it passes through, and the state where the Class VI injection well is located.

- Modification of the Hazardous Waste Manifest System; Electronic Manifests (e-Manifests I); 79 FR 7518, February 7, 2014. In this rule, EPA established electronic manifests (or e-Manifests) as a means to track offsite shipments of hazardous waste from a generator's site to the site of the receipt and disposition of the hazardous waste. The rule also implemented certain provisions of the Hazardous Waste Electronic Manifest Establishment Act, Public Law 112–195, which directed EPA to establish a national e-Manifest system, and to impose reasonable user service fees as a means to fund the development and operation of the e-Manifest system. It described procedures for users who elect to opt out of the e-Manifest system and specified how issues of public access to manifest information will be addressed when manifest data are submitted and processed electronically. The rule announced that final electronic manifest requirements will be implemented in all states on the same effective date for the national e-Manifest system. (June 30, 2018, as announced in e-Manifests II, also incorporated, see below)

Authorized states must adopt program revisions equivalent to and consistent with the federal requirements, but EPA will implement these electronic manifest regulations until the states are fully authorized to implement them in lieu of EPA. EPA made changes to 40 CFR Parts 260, 262, 263, 264, 265, and 271. ADEQ has adopted all of the changes in this rule, except as modified by the second e-Manifest rule.

- Revisions to the Export Provisions of the Cathode Ray Tube (CRT) Rule; 79 FR 36220, June 26, 2014. In this rule, EPA revised certain export provisions of the CRT final rule published on July 28, 2006. The revisions were intended to allow EPA to better track exports of CRTs for reuse and recycling in order to ensure safe management of these materials. Although EPA does not

authorize states to administer federal import/export functions in any section of the RCRA hazardous waste regulations, state programs are still required to adopt provisions in this rule that are more stringent than existing federal requirements to maintain their equivalency with the federal program. The final rule contained amendments to §§ 261.39 and 261.41 that were more stringent than previous federal law. Therefore, states that had adopted these provisions, such as Arizona, are required to adopt these amendments. In this rule, EPA made changes to 40 CFR 260 and 261. ADEQ has adopted all the changes without modification.

- Disposal of Coal Combustion Residuals From Electric Utilities; 80 FR 21302, April 17, 2015. In this rule EPA made the determination to regulate the disposal of coal combustion residuals (CCR) as solid waste under subtitle D of RCRA rather than subtitle C as hazardous waste. The rule listed a new set of exclusions under 40 CFR 261.4(b)(4). Almost all of the rule established new requirements for CCR units in 40 CFR 257. ADEQ has adopted the changes to 40 CFR 261 without modification.
- Hazardous Waste Export-Import Revisions; 81 FR 85696, November 28, 2016.

EPA amended existing regulations regarding the export and import of hazardous wastes from and into the United States. EPA made these changes to: 1) make existing export and import related requirements more consistent with the current import-export requirements for shipments between members of the Organization for Economic Cooperation and Development (OECD); 2) enable electronic submittal to EPA of all export and import-related documents (e.g., export notices, export annual reports); and 3) enable electronic validation of consent in the Automated Export System (AES) for export shipments subject to RCRA export consent requirements prior to exit.

Although states do not receive authorization to administer EPA's export-import regulations, state programs are required to adopt these provision to maintain equivalency with the federal

program. 40 CFR 271.10(e). ADEQ has adopted all of the regulation's amendments without modification, except for the changes related to EPA's Standardized Permit in Part 267.

- Hazardous Waste Generator Improvements Rule; 81 FR 85732, November 28, 2016.

In this action, EPA revised the RCRA hazardous waste generator regulatory program to: 1) reorganize the hazardous waste generator regulations to make them more user-friendly and improve their usability by the regulated community; 2) provide a better understanding of how the RCRA hazardous waste generator regulatory program works; 3) address gaps in the existing regulations to strengthen environmental protection; and 4) provide greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner.

This rule amended certain sections of the hazardous waste generator regulations in Parts 260 through 265, 268, 270, 273, and 279, and contains provisions that were both more and less stringent than current federal hazardous waste regulations. ADEQ is required to adopt those that are more stringent to maintain authorization, but has adopted all of the changes without modification, except for the changes to Part 279. Part 279 is incorporated by reference in statute in A.R.S. § 49-802(A).

- Confidentiality Determinations for Hazardous Waste Export and Import Documents; 82 FR 60894, December 26, 2017.

In this rule, EPA amended hazardous waste export-import regulations so that confidential business information (CBI) claims cannot be made for documents related to the export, import, and transit of hazardous waste, and export of excluded cathode ray tubes (CRTs). EPA noted that this is consistent with the categorical determination it made in its e-Manifest rule that individual manifested records and aggregate data are essentially public information and not subject to CBI claims. Although states do not receive authorization to administer EPA's export-import

regulations, state programs are required to adopt these provision to maintain equivalency with the federal program. 40 CFR 271.10(e). EPA amended Parts 260, 261, and 262. ADEQ has adopted all of these changes without modification.

- User Fees for the Electronic Hazardous Waste Manifest System and Amendments to Manifest Regulations (e-Manifests II); 83 FR 420, January 3, 2018.

In this rule, EPA modified and added to its 2014 e-Manifest rule by 1) establishing the methodology it will use to determine and revise the user fees applicable to the electronic and paper manifests to be submitted to the national e-Manifest system; 2) announcing the date (June 30, 2018) when EPA expected the system to be operational and available to users; 3) allowing changes to the transporters designated on a manifest while the shipment is en route; 4) describing how data corrections may be made to existing manifest records in the system; and 5) amending the previous e-Manifest regulation to allow the use, in certain instances, of a mixed paper and electronic manifest to track a hazardous waste shipment.

#### What regulations are not being incorporated in this rule?

- Standardized Permit Rule; 70 FR 53419, September 8, 2005. In this rule, EPA finalized revisions to the RCRA hazardous waste permitting program to allow for a “standardized permit”. In the past several hazardous waste rulemakings, ADEQ discussed but did not propose to incorporate the Standardized Permit rule. No facilities have thus far indicated an interest in a standardized permit. At this time, ADEQ has decided to continue with this position, and not burden the hazardous waste rules with an extra set of procedures for a class of permits no one is interested in.
- EPA Revisions to the Solid Waste Definition; 73 FR 64668, October 30, 2008; 80 FR 1694, January 13, 2015; and 83 FR 24664, May 30, 2018. EPA first revised the definition of solid waste to exclude certain hazardous secondary materials from regulation under Subtitle C of

RCRA effective December 29, 2008. Litigation followed and EPA issued a revised rule on January 13, 2015. Follow-up court action resulted in a ‘vacatur’ rule issued on May 30, 2018.

Due to the continuing litigation, ADEQ did not request permission from the Governor, under Executive Order 2018-2, to adopt EPA’s Definition of Solid Waste (DSW) rules in this rulemaking at the time ADEQ requested permission in March of 2018. ADEQ is also aware that a Petition for Review was filed in the U.S. Court of Appeals for the District of Columbia Circuit in June challenging EPA's 2018 rule revisions on DSW mandated by the court. ADEQ anticipates including DSW in a future hazardous waste rulemaking once the litigation concludes.

What other changes were made to Arizona hazardous waste rules?

Technical corrections. ADEQ has removed more than 200 occurrences of “as incorporated by” in the hazardous waste rules and replace them with a comprehensive universal declaration in R18-8-260(A). ADEQ believes this will make the rules easier to read while insuring that appropriate legal text preserves the concept that every federal citation refers only to the incorporated version.

ADEQ has removed the remaining performance track language in its rules. EPA terminated its Performance Track program on May 14, 2009 (74 FR 22741) but failed to remove all of the remaining pieces from its rules. ADEQ has since used those remaining pieces as part of its Arizona Performance Track Program. The Arizona Performance Track Program has now been superseded by ADEQ’s Voluntary Environmental Stewardship Program, which is implemented outside of rules.

ADEQ has restored the phrase “kilogram, an inhalation LC 50 toxicity (rat) of less than 2 milligrams per” in the current R18-8-261(K), which was apparently deleted by mistake at some

point in time after 1990. That oral LD 50 toxicity would not be expressed in units of milligrams per liter is the key indicator that this was not an intentional change.

EPA, Region IX reviewed the August 20<sup>th</sup> draft proposed rule sent by ADEQ to stakeholders and made a number of technical comments reflected in many of the changes throughout this final rule, especially in R18-8-260 and R18-8-262. EPA also pointed out an opportunity for states to fix internal drafting errors that EPA made in their Import Export and Generator Improvements regulations. Although ADEQ stated it would not make these types of corrections in the preamble to the proposed rule, ADEQ has reconsidered and elected to fix the erroneous EPA citations in added subsections or in regulatory text in the Arizona rules. ADEQ believes that this will be helpful since otherwise some incorporated EPA regulations will refer to other sections of the regulations that EPA removed. Once EPA corrects these incorrect citations, which they occasionally do through a ‘Technical Corrections’ rulemaking, ADEQ will remove these corrections from the ADEQ rules in a regular rulemaking.

These corrections to EPA regulations were made at the following places in this final rule: the definition of “final closure” in R18-8-260(F), R18-8-261(D), R18-8-261(F) in paragraph (a)(3)(i)(A), R18-8-261(H) and (I), R18-8-262(J) and (K), R18-8-264(M) and (N), R18-8-265(G), R18-8-266(B) in paragraph (c)(3), R18-8-266(C), and R18-8-273(B) and (C).

#### Procedural changes.

- ADEQ has eliminated its longstanding requirement that certain generators and TSD facilities submit annual reports, compared to the EPA requirement for biennial reports. ADEQ eliminated this requirement at the following previous rule locations: R18-8-261(J), R18-8-262(H), R18-8-264(I) and R18-8-265(I). ADEQ will access the reports sent to EPA by Arizona entities as needed.

In addition, ADEQ made other clarifying and minor procedural changes in this rule, as authorized under A.R.S. § 49-922(A):

- In R18-8-260(M), ADEQ clarifies that the small quantity generator fee provided for in A.R.S. § 49-931 will apply to those very small quantity generators who become small quantity generators by reason of EPA's new episodic event procedures.
- At several other locations, ADEQ is requiring that certain submissions and registrations are required to be submitted through ADEQ's online portal, myDEQ. These changes are at R18-8-260(M), R18-8-262(I), R18-8-263(B), R18-8-264(D), and R18-8-265(D).
- In R18-8-270(G)(7) and (8), ADEQ has removed permit fee appeal language leading to a hearing under R18-1-202, which was intentionally expired by ADEQ effective April 28, 2017. In its place, ADEQ has used language currently in the water permits rules at R18-14-106.

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

None

**8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule 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:**

Identification of the rulemaking. 18 A.A.C. 8, Articles 1 and 2. This rulemaking impacts persons mainly in the areas of hazardous waste manifests and hazardous waste generator requirements. The impacts are primarily the result of 3 EPA regulations and one ADEQ deregulatory change. For further information, see Part 6 of the preamble.

Under A.R.S. § 49-922 and federal law, Arizona's Hazardous Waste Program is responsible for ensuring that all regulated hazardous waste in Arizona is stored, transported, and disposed of safely and properly. It is largely a preventative program to keep hazardous waste from entering the environment. The program maintains an inventory of hazardous waste generators, transporters and treatment, storage, and disposal (TSD) facilities in Arizona. Permits are issued, managed, and maintained for TSD facilities. This activity includes permit modifications, renewals, closure plans, and financial assurance reviews. Generators, transporters and TSD facilities are inspected periodically. Hazardous waste complaints are investigated. Compliance and hazardous waste generator data is collected and stored and hazardous waste is tracked from generation to disposal. Compliance assistance is provided, enforcement actions are pursued against significant violators, and oversight is provided for the remediation of contaminated sites.

ADEQ's Hazardous Waste Program regulates a universe of over 2700 active facilities, including metal platers, chemical manufacturers, laboratories, explosive and munition manufacturers, pesticide manufacturers, hazardous waste TSD facilities, and military installations. There are currently 13 permitted TSD facilities, 338 large quantity generators, 644 small quantity generators, 1372 very small quantity generators, and 314 transporters in Arizona. An unknown fraction of these are small businesses. ADEQ records show that over 40,000 tons of hazardous waste were generated in Arizona in 2017. Until June 30, 2018, ADEQ received and processed over 35,000 manifests tracking this waste annually. Under EPA's new e-Manifest system, which ADEQ has incorporated in this rulemaking, these manifests are no longer sent to ADEQ, and ADEQ is not processing them. ADEQ now has access to these manifests through the e-Manifest system.

Impact of EPA regulations incorporated by reference. Overall, this final rule incorporated by reference eight separate federal regulations, spanning five years through July 1, 2018. ADEQ believes that three of the eight EPA rules will have the most economic impact in Arizona because they affect virtually the entire community of hazardous waste handlers: generators, transporters, and TSD facilities. These three rules are the Generator Improvements rule and the two e-Manifest rules. These rules impact the more than 2700 Arizona hazardous waste handlers. Although the potential impact is considerable due to the number of affected entities, ADEQ

believes that the actual economic impact of these federal rules will be a mixture of minor positive and negative impacts, with a relatively low net impact.

With EPA's new e-Manifest rules, the most noticeable new impact is the new EPA fee for filing each manifest, whether using the e-Manifest or a paper manifest. Prior to June 30, 2018, when the EPA fees became effective nationwide, there was no manifest fee payable to either EPA or ADEQ for manifests filed. The new EPA fees are initially \$15 for a paper manifest and \$5 for an electronic manifest (the fees are for year 1, the fees can be adjusted later). For simplicity and other reasons, EPA determined that these fees would be paid by the hazardous waste "receiving facilities", otherwise known as TSD facilities. EPA assumed that these facilities could and would pass these fees through to their generator customers.

EPA's e-Manifest rules did not change who had to manifest hazardous waste shipments. The rules merely authorized the use of electronic manifests as equivalent to paper manifests and added the fees for each type of manifest a facility may choose to use. Generators of hazardous waste may either participate in the electronic manifest system through the involvement of the transporters or facilities that service their wastes, or, they will continue to use paper manifests. Likewise, transporters and TSD facilities may elect to continue to use paper manifests, although there could be competitive pressure on those small transporters or facilities that continue to supply paper manifests to their customers.

Through June 30, 2018, ADEQ received paper manifests at the rate of approximately 35,000 per year. Based on the most recent information, the Department believes that the majority of manifest filers are now using e-Manifest. If all 35,000 paper manifests were replaced by e-Manifests, there would be a hypothetical new cost distributed to Arizona 2700 hazardous waste handlers of \$175,000, or an average of about \$65 per entity per year. It is not clear that all entities were able to make the switch to the less costly e-Manifest on June 30<sup>th</sup>, but the cost differential provides some incentive for all but the smallest filers to do so reasonably soon. In addition, e-Manifests also save filers money because the e-Manifests can normally be processed more cheaply and efficiently, with no paper related costs such as purchase of the forms, filing

and storage, and mailing to ADEQ. The fee revenue is paid to EPA to compensate for the costs of developing, operating and maintaining the e-Manifest system.

An additional substantial positive impact of the e-Manifest system will be savings for ADEQ. ADEQ's tracking of hazardous waste activity previously included entering complete manifests into ADEQ's database, ARID (Arizona RCRA Information Database). ADEQ estimates that approximately 1750 hours per year of manifest processing labor has been eliminated by the e-Manifest system. ADEQ will still be able to track hazardous waste activity by accessing manifests through the EPA database.

EPA's Generator Improvements rule also affects Arizona's 2700+ hazardous waste handlers. The impacts of incorporating this rule are based on the content of the EPA regulation itself and a significant deregulatory change in reporting requirements that ADEQ has made in response.

EPA prepared an economic impact statement assessing impacts of this rule nationally. ADEQ believes that the impacts in Arizona will be similar but proportionally smaller. EPA estimated the national costs to industry to comply with the more stringent provisions of the new rule at between \$5.9 and \$13.3 million. EPA also calculated the cost savings or benefits for facilities opting to take advantage of two voluntary programs created under the new rule as slightly higher than the costs (e.g., consolidation of very small quantity generator waste by large quantity generators under the same ownership, and generators who would not be required to change generator status as a result of an episodic event). ADEQ believes that in Arizona the average per facility costs of the EPA regulation will be initially more than the average per facility cost savings, since the more stringent changes outnumber the less stringent changes, and since the more stringent changes had to be complied with on the effective date of the rule. Nevertheless, ADEQ believes that the net average per facility impact of the EPA regulation will be minimal.

In conjunction with the incorporation of EPA's Generator Improvements rule, ADEQ has eliminated the annual reporting requirement that has existed in Arizona rules since the beginning of the program in the 1980's. Only EPA's biennial reporting requirement remains. ADEQ believes that the improved recordkeeping and reporting infrastructure created by the

Generator Improvements rule in combination with the e-Manifests rule will allow this relaxation in ADEQ rules without compromising program authorization. ADEQ notes that its three decades of experience in the hazardous waste area and the current full staffing of hazardous waste inspectors is also helpful in allowing this change. Generators and TSD facilities will experience significant savings through not having to create and process these reports to ADEQ. There will be moderate savings for ADEQ through not having to upload these reports to EPA's database.

In the proposed rule, ADEQ requested information from generators and TSD facilities regarding the savings they could expect through the switch from annual to biennial reports. ADEQ's preliminary estimate of the impact used a report preparation cost of \$1000. No information was received on the cost of these reports. Using this amount as an example, if the extra reports are eliminated for 200 facilities, reports would only have to be filed with EPA every other year. The estimated annual savings would be \$200,000 every other year, or an average of \$500 per facility per year.

Looking at the rest of the eight EPA rules incorporated by reference, ADEQ believes the following three EPA rules will have minimal direct impact in Arizona:

Imports and Exports of Hazardous Waste. This EPA rule harmonized EPA's export and import provisions with Organization for Economic Cooperation and Development (OECD) procedures, and enabled electronic submittals and electronic validation of consent for these hazardous waste shipments. States are required to adopt these rules for consistency but have no role in implementing them. EPA estimated quantifiable national industry costs for this rule at less than \$2 million per year, but also listed certain benefits that could not be quantified, such as "increased efficiency and convenience of electronic submission, enhanced tracking of hazardous waste transportation recognized trader activities, increased regulatory efficiency, consistency with trade requirements for OECD countries, reduction of risks associated with the treatment and disposal of hazardous wastes, and improved ability to acquire information regarding exports and imports of hazardous waste."

Disposal of Coal Combustion Residuals (CCR) from Electric Utilities: The 2015 EPA rule removed this waste from regulation as a hazardous waste in Part 261 and created new CCR solid waste regulations in Part 257. Incorporation of the hazardous waste rule portion of the rule in Part 261 by ADEQ was a necessary step in reducing potential hazardous waste costs by millions of dollars for affected facilities. The economic impacts of any ADEQ rulemaking related to the Part 257 regulations will be evaluated in a future ADEQ rulemaking in another Chapter of Title 18.

Revisions to the Export Provisions of the Cathode Ray Tube (CRT) Rule. ADEQ is not aware of any CRT exporters in Arizona. EPA estimated annual costs to CRT exporters and EPA for the reporting and recordkeeping requirements to be from \$9,777 to \$17,362 per year. Additionally, CRT exporters were estimated to incur a one-time cost of \$42,904 in the first year following promulgation of the rule to familiarize themselves with the new CRT rule requirements.

The following 2 rules are predicted to have little or no direct impact on Arizona businesses:

CO<sub>2</sub> Geologic Sequestration. ADEQ is not aware of activities planned in Arizona in this area.

Confidentiality Determinations for Hazardous Waste Export and Import Documents. ADEQ believes the economic impact of not allowing confidential business information claims for documents related to the export, import and transportation of hazardous waste and export of excluded CRTs is somewhat subjective, and case-specific. EPA observed that it has only received 4 requests for these nationally, the earliest one going back to 1994, and noted that “there are no costs associated with this action”.

#### Impact of ADEQ Initiated Procedural changes

- In R18-8-260(M), ADEQ clarified that the small quantity generator fee provided for in A.R.S. § 49-931 will apply to those very small quantity generators (VSQGs) who become small quantity generators by reason of EPA’s new episodic event procedures. Arizona has an estimated 1372 VSQGs. For purposes of impact analysis, ADEQ estimates that 5% of these will have episodic events, and that in one half of these cases the VSQG will fail to meet conditions that would

prevent it from being classified for the year as a SQG. Approximately 34 VSQGs would become SQGs and be subject to the rule's language clarifying that they will be subject to the small quantity generator fee of \$67.50 per ton of hazardous waste generated. At an estimated average of 2 tons generated annually for each of the 34 generators, the extra impact will average \$135 per generator for a total of \$4590.

- At several other locations, ADEQ is requiring that certain submissions and registrations will be required to be submitted through ADEQ's online portal, myDEQ. These changes are at R18-8-260(M), R18-8-262(G), R18-8-263(B), R18-8-264(D), and R18-8-265(D). This requirement is designed to save processing time for ADEQ personnel, but it is unknown whether there will be any economic impact for regulated entities. ADEQ requested hazardous waste handlers to review their procedures and submit any additional anticipated costs to ADEQ. No information was received on this issue.

Reduction of Impact on Small Businesses. A.R.S. § 41-1035 requires state agencies to reduce the impact of a rulemaking on small businesses, if legal and feasible in meeting the statutory objectives of the rule. As discussed previously, ADEQ rules have to be as stringent as EPA's to be authorized to implement the hazardous waste program in Arizona. In addition, other than the elimination of the annual report to ADEQ that is already carried out by this rulemaking, ADEQ is not aware of any manifest or generator procedural requirements where ADEQ is more stringent than EPA that could be relaxed for small businesses. Those more stringent procedural requirements have been eliminated in this rulemaking and the changes are beneficial for large and small businesses alike. For similar reasons, the Department has determined there are no less intrusive or less costly methods of achieving the purposes of the rule.

This rulemaking will have no effect on state revenues. No existing fees are increased or reduced and no new fees are established.

Cost/benefit analysis

In A.R.S. § 49-922(A), the legislature has given ADEQ twin directives regarding Arizona hazardous waste rules: 1) maintain program authorization by being consistent with and equivalent to the federal rules, including when changes to federal rules make them more stringent than the previous federal rules, and 2) Arizona hazardous waste rules should not conflict with or be more stringent than EPA in nonprocedural areas.

These directives express the general ongoing assumption of the legislature that the impacts of incorporating required federal rules will be less than the impact of not incorporating them and having EPA implement the hazardous waste program in Arizona. In the proposed rule, ADEQ provided a preliminary summary of the impacts on ADEQ and businesses of incorporating certain federal rules and making other changes as an aid to regulated entities and others in understanding the proposed rule revisions. ADEQ requested input on the accuracy of that summary. Information provided to ADEQ by regulated entities can help ADEQ make adjustments to the incorporated federal rules if such adjustments remain equivalent to and consistent with the federal program. No information or data was received and no adjustments were possible for this rulemaking.

The table below summarizes the impacts. Based on the table and the facts described in this rulemaking, ADEQ has concluded that the benefits of this rule are greater than the costs.

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/Increased Revenue
A. State and Local Government Agencies			
ADEQ	Direct effect of incorporating EPA rules: continued implementation of the state HW program by ADEQ. -----	--- Moderate ----	Significant
	Direct effect: not processing and uploading annual reports	-----	Moderate
	Indirect effect: EPA rules eliminate manifest processing	-----	Substantial

	Staff learning time for new requirements of Generator Improvements and e-Manifest rules -----	---	Moderate
County agencies acting as regulatory authorities and other government agencies (Pima County)	None	NA	NA
<b>B. Privately Owned Businesses</b>			
Hazardous waste generators, such as metal platers, chemical manufacturers, laboratories, explosive and munition manufacturers, pesticide manufacturers, hazardous waste TSD facilities, and military installations	Direct effects: both more stringent and less stringent requirements due to Generator Improvements rule	Minimal per site	Minimal per site
	Direct: ADEQ elimination of annual reports -----	-----	Moderate per site
	Indirect: EPA imposed fees on e-Manifests-----	Minimal per site	
	Increased efficiency in preparing and filing manifests -----	-----	Minimal per site
<b>C. Consumers</b>			
No direct effects	None	NA	NA
Minimal	Moderate	Substantial	Significant
\$1,000 or less	\$1,000 to \$10,000	\$10,001 or more	Cost/Burden cannot be calculated, but the Department expects it to be significant.

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

No changes were made at the time the final rule was submitted to the Governor’s Regulatory Review Council (GRRC).

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

ADEQ received no public or stakeholder comments about the rulemaking during the comment period.

**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:**

A.R.S. § 41-1037(A)(1) and (2). This rulemaking amends an existing rule that requires a regulatory permit. This rulemaking does not require a general permit because:

- 1) A specific alternative permit is authorized by state statute under A.R.S. § 49-922(B)(5) and;
- 2) General permits as defined as defined by A.R.S. § 41-1001 are not recognized under federal hazardous waste regulations with which ADEQ is required to be consistent.

However, it should be noted that ADEQ has adopted a federal general permit rule that is similar to Arizona general permits. 40 CFR 270.60, "Permits by Rule", applies to 3 types of facilities: 1) ocean disposal barges or vessels; 2) injection wells; and 3) publicly owned treatment works.

Under the federal rule, these three types of facilities are "deemed to have a RCRA permit if the conditions listed are met." Only the third category exists in Arizona, and ADEQ has only incorporated the federal permit by rule for publicly owned treatment works in R18-2-270(A).

Note: The hazardous waste standardized permit not incorporated in this rule is not a general permit as defined by A.R.S. § 41-1001, since each standardized permit applies to just one facility.

**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 are not more stringent than corresponding federal laws, except where there is statutory authority. Since EPA's first authorization of Arizona's hazardous waste program in 1985, Arizona rules have been more stringent than EPA's in the areas of reports and manifests. (See 50 FR at 47736, November 20, 1985) This was authorized under A.R.S. § 49-922(B) which states that DEQ may not adopt a nonprocedural standard that is more stringent than EPA. Both of these more stringent requirements have been removed in this final rule.

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

No person has submitted a competitiveness analysis under A.R.S. § 41-1055(I).

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

<u>Incorporated Federal Citation</u>	<u>Location</u>
40 CFR 260	R18-8-260(C)
40 CFR 261	R18-8-261(A)
40 CFR 262	R18-8-262(A)
40 CFR 263	R18-8-263(A)
40 CFR 264	R18-8-264(A)
40 CFR 265	R18-8-265(A)
40 CFR 266	R18-8-266(A)
40 CFR 268	R18-8-268

40 CFR 270	R18-8-270(A)
40 CFR 124	R18-8-271(A)
40 CFR 273	R18-8-273

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

Not applicable

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

**TITLE 18. ENVIRONMENTAL QUALITY**  
**CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS**  
**WASTE MANAGEMENT**

**ARTICLE 1. REMEDIAL ACTION REQUIREMENTS**

Section

R18-8-101. Remedial Action Requirements; Level and Extent of Cleanup

**ARTICLE 2. HAZARDOUS WASTES**

Section

R18-8-260. Hazardous Waste Management System: General

R18-8-261. Identification and Listing of Hazardous Waste

R18-8-262. Standards Applicable to Generators of Hazardous Waste

R18-8-263. Standards Applicable to Transporters of Hazardous Waste

R18-8-264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

R18-8-265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

R18-8-266. Standards for the Management of Specific Hazardous Wastes and Specific Hazardous Waste Management Facilities

R18-8-268. Land Disposal Restrictions

R18-8-270. Hazardous Waste Permit Program

R18-8-271. Procedures for Permit Administration

R18-8-273. Standards for Universal Waste Management

R18-8-280. Compliance

## ARTICLE 1. REMEDIAL ACTION REQUIREMENTS

### **R18-8-101. Remedial Action Requirements; Level and Extent of Cleanup**

- A. This Article is applicable to Chapter 8 of this Title.
- B. In any instance where soil remediation is done under this Chapter, it shall be conducted in accordance with ~~A.A.C. R18-7-201 through R18-7-209~~ 18 A.A.C. 7, Article 2.

## ARTICLE 2. HAZARDOUS WASTES

### **R18-8-260. Hazardous Waste Management System: General**

- A. All Federal regulations cited in this Article are those revised as of July 1, ~~2013~~ 2018 (and no future editions), unless otherwise noted, and are applicable only as incorporated by this Article. 40 CFR 124, 260 through 266, 268, 270 and 273 or portions of these regulations, are incorporated by reference, as noted in the text. Federal statutes and regulations that are cited within 40 CFR 124, 260 through 270, and 273 that are not incorporated by reference may be used as guidance in interpreting federal regulatory language.
- B. Any reference or citation to 40 CFR 124, 260 through 266, 268, 270, and 273, or portions of these regulations, appearing in the body of this Article and regulations incorporated by reference, includes any modification to the CFR section made by this Article. When federal regulatory language that has been incorporated by reference has been amended, brackets [ ] enclose the new language. The subsection labeling in this Article may or may not conform to the Secretary of State's formatting requirements, because the formatting reflects the structure of the incorporated federal regulations.
- C. All of 40 CFR 260 ~~and the accompanying appendix~~, revised as of ~~January 31, 2014~~ July 1, 2018, (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the Department of Environmental Quality (DEQ) with the exception of the following:
  - 1. 40 CFR 260.1(b)(4) through (6), 260.20(a), 260.21, 260.22, 260.30, 260.31, 260.32, and 260.33;
  - 2. The revisions for standardized permits as published at 70 FR 53419; and
  - 3. The revisions to the solid waste definition as published at 73 FR 64668, 80 FR 1694, and 83 FR 24664. ~~4. The revisions for the gasification rule as published at 73 FR 57.~~ Copies of 40 CFR 260 are available at ~~www.gpoaccess.gov/cfr/index.html~~ https://www.eCFR.gov. Copies of the Federal Register (FR) are available at https://www.federalregister.gov/.
- D. § 260.2, titled "Availability of information; confidentiality of information" is amended by the following:
  - 1. § 260.2(a). Any information provided to [the DEQ] under [~~R18-8-260 et seq. through R18-8-266 and R18-8-268~~ shall] be made available to the public to the extent and in the manner authorized by the [Hazardous Waste Management Act (HWMA), A.R.S. § 49-921 et seq.; the Open Meeting Law, A.R.S. § 38-431 et seq.; the Public Records Statute, A.R.S. § 39-121 et seq.; the Administrative Procedure Act, A.R.S. § 41-1001 et seq.; and rules promulgated pursuant to the above-referenced statutes], as applicable.
  - 2. § 260.2(b) is replaced with the following:
    - a. The DEQ shall make a record or other information, such as a document, a writing, a photograph, a drawing, sound or a magnetic recording, furnished to or obtained by the

DEQ pursuant to the HWMA and regulations promulgated thereunder, available to the public to the extent authorized by the Public Records Statute, A.R.S. §§ 39-121 et seq.; the Administrative Procedure Act, A.R.S. §§ 41-1001 et seq.; and the HWMA, A.R.S. §§ 49-921 et seq. Specifically, the DEQ shall disclose the records or other information to the public unless:

- i. A statutory exemption authorizes the withholding of the information; or
  - ii. The record or other information contains a trade secret concerning processes, operations, style of work, or apparatus of a person, or other information that the Director determines is likely to cause substantial harm to the person's competitive position.
- b. Notwithstanding subsection (a):
- i. The DEQ shall make records and other information available to the EPA upon request without restriction;
  - ii. As required by the HWMA and regulations promulgated thereunder the DEQ shall disclose the name and address of a person who applies for, or receives, a HWM facility permit;
  - iii. The DEQ and any other appropriate governmental agency may publish quantitative and qualitative statistics pertaining to the generation, transportation, treatment, storage, or disposal of hazardous waste; and
  - iv. An owner or operator may expressly agree to the publication or to the public availability of records or other information.
- c. A person submitting records or other information to the DEQ may claim that the information contains a confidential trade secret or other information likely to cause substantial harm to the person's competitive position. In the absence of such claim, the DEQ shall make the information available to the public on request without further notice. No claim of confidentiality may be asserted by any person with respect to information entered on a Hazardous Waste Manifest (EPA Form 8700-22), a Hazardous Waste Manifest Continuation Sheet (EPA Form 8700-22A), or an electronic manifest format that may be prepared and used in accordance with 40 CFR 262.20(a)(3). EPA will make any electronic manifest that is prepared and used in accordance with § 262.20(a)(3), or any paper manifest that is submitted to the system under §§264.71(a)(6) or 265.71(a)(6) available to the public under this section when the electronic or paper manifest is a complete and final document. Electronic manifests and paper manifests submitted to the system are considered by EPA to be complete and final documents and publicly available information after 90 days have passed since the delivery to the designated facility of the hazardous waste shipment identified in the manifest. A person making a claim of confidentiality shall assert the claim:
- i. At the time the information is submitted to, or otherwise obtained by, the DEQ;
  - ii. By either stamping or clearly marking the words "confidential trade secret" or "confidential information" on each page of the material containing the information. The person may assert the claim only for those portions or pages that actually contain a confidential trade secret or confidential information; and
  - iii. During the course of a DEQ inspection, or other observation, pursuant to the administration of the HWMA Program, by clearly indicating to the inspector which specific processes, operations, styles of work, or apparatus constitute a trade secret.

The inspector shall record the claim on the inspection report and the claimant shall sign the report.

- d. The Director shall provide the claimant with an opportunity to submit written comments to demonstrate that the information constitutes a legitimate confidential trade secret or confidential information. The comments shall be limited to confidential use by the DEQ pursuant to A.R.S. § 49-928. Pertinent factors to be considered by the Director for making a determination of confidentiality, and that the claimant may address in the claimant's written comments, include the following:
  - i. Whether the information is proprietary;
  - ii. Whether the information has been disclosed to persons other than the employees, agents, or other representatives of the owner; and
  - iii. Whether public disclosure would harm the competitive position of the claimant.
- e. The Director shall make a determination of each confidentiality claim using the following procedures:
  - i. When a claim of confidentiality is asserted for information submitted as part of a HWM facility permit application:
    - (1) The claimant shall submit written comments demonstrating the legitimacy of the claim of confidentiality; and
    - (2) The Director shall evaluate the confidentiality claim and notify the claimant of the result of that determination as part of the completeness review pursuant to § ~~124.3(e)~~ (as incorporated by R18-8-271(C)).
  - ii. When a claim of confidentiality is asserted for information submitted or obtained during an inspection, or for any other information submitted to or obtained by the DEQ pursuant to this Article, but not as part of a HWM facility permit application:
    - (1) The claimant may submit written comments demonstrating the legitimacy of the claim of a confidential trade secret or other confidential information within 10 working days of asserting the confidentiality claim; and
    - (2) If a request for disclosure is made, the Director shall evaluate the confidentiality claim and notify the claimant of the result of that determination. In all other instances, the Director may, on the Director's own initiative, evaluate the confidentiality claim and notify the claimant of the result of that determination within 20 working days after the time for submission of comments.
  - iii. When any person, hereinafter referred to as the "requestor," submits a request to the DEQ for public disclosure of records or information, the DEQ shall disclose the records or information to the requestor unless the information has been determined to be confidential by the Director, or is subject to a claim of confidentiality that is being considered for determination by the Director.
    - (1) If a confidentiality claim is under consideration by the Director, the requestor shall be notified that the information requested is under a confidentiality claim consideration and therefore is unavailable for public disclosure pending the Director's determination pursuant to subsection (D)(2)(e)(ii)(2).
    - (2) When a request for disclosure is made, the claimant shall be notified, within seven working days by certified mail with return receipt requested, that the information under a claim of confidentiality has been requested and is subject to the Director's determination pursuant to subsection (D)(2)(e)(ii)(2).

- (3) If the Director disagrees with the confidentiality claim, the claimant shall have 20 working days to submit written comments either agreeing or disagreeing with the Director's evaluation.
  - (4) If a confidentiality claim is denied by the Director, the Director may request the attorney general to seek a court order authorizing disclosure pursuant to A.R.S. § 49-928.
- f. Records or information determined by the Director to be legitimate confidential trade secrets or other confidential information shall not be disclosed by the DEQ at administrative proceedings pursuant to A.R.S. §§ 49-923(A) unless the following procedure is observed:
- i. The DEQ shall notify both the claimant and the hearing officer of its intention to disclose the information at least 30 days prior to the hearing date. The DEQ shall send with the notice a copy of the confidential information that the DEQ intends to disclose;
  - ii. The claimant and the DEQ shall be allowed 10 days to present to the hearing officer comments concerning the disclosure of such information;
  - iii. The hearing officer shall determine whether the confidential information is relevant to the subject of the administrative proceeding and shall allow disclosure upon finding that the information is relevant to the subject of the administrative proceeding;
  - iv. The hearing officer may set conditions for disclosure of confidential and relevant information or the making of protective arrangements and commitments as warranted; and
  - v. The hearing officer shall give the claimant at least five days' notice before allowing disclosure of the information in the course of the administrative proceeding.
- E. § 260.10, titled "Definitions," is amended by adding all definitions from § 270.2 (~~as incorporated by R18-8-260 and R18-8-270~~) to this Section, including the following changes, applicable throughout this Article unless specified otherwise:
1. ["Acute Hazardous Waste" means waste found to be fatal to humans in low doses or, in the absence of data on human toxicity, that has been shown in studies to have an oral lethal dose (LD) 50 toxicity (rat) of less than 50 milligrams per kilogram, an inhalation lethal concentration (LC) 50 toxicity (rat) of less than 2 milligrams per liter, or a dermal LD 50 toxicity (rabbit) of less than 200 milligrams per kilogram or that is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible, illness.] and therefore are either listed in § 261.31 with the assigned hazard code of (H) or are listed in § 261.33(e).]
  2. ["Application" means the standard United States Environmental Protection Agency forms for applying for a permit, including any additions, revisions or modifications to the forms. Application also includes the information required pursuant to §§ 270.14 through 270.29 (~~as incorporated by R18-8-270~~, regarding the contents of a Part B HWM facility permit application).]
  3. [~~"Biennial report" means "annual report."~~]
  - 4.3. ["Chapter" means "Article" except in § 264.52(b), see R18-8-264, and § 265.52(b), see R18-8-265.]

- 5.4. “Closure” means [, for facilities with effective hazardous waste permits, the act of securing a HWM facility pursuant to the requirements of R18-8-264. For facilities subject to interim status requirements, “closure” means the act of securing a HWM facility pursuant to the requirements of R18-8-265.]
- 6.5. [“Concentration” means the amount of a substance in weight contained in a unit volume or weight.]
- 7.6. [“Department” or “the DEQ” means the Arizona Department of Environmental Quality.]
- 8.7. “Department of Transportation” or “DOT” means the U.S. Department of Transportation.
- 9.8. [“Director” or “state Director” means the Director of the Department of Environmental Quality or an authorized representative, except in §§ ~~262.50 through 262.57~~, 262.80 through 262.84, 268.5 through 268.6, 268.42(b), and 268.44 which are non-delegable to the state of Arizona.]
- 10.9. [“Draft permit” means a document prepared under § 124.6 (~~as incorporated by R18-8-271(E)~~) indicating the Director’s tentative decision to issue, deny, modify, revoke, reissue, or terminate a permit. A denial of a request for modification, revocation, reissuance or termination, as discussed in § 124.5 (~~as incorporated by R18-8-271(D)~~), is not a draft permit.]
- 11.10. [“Emergency permit” means a permit that is issued in accordance with § 270.61 (~~as incorporated by R18-8-270~~).]
- 12.11. [“EPA,” “Environmental Protection Agency,” “United States Environmental Protection Agency,” “U.S. EPA,” “EPA HQ,” “EPA Regions,” and “Agency” mean the DEQ with the following exceptions:
- a. Any references to EPA identification numbers;
  - b. Any references to EPA hazardous waste numbers;
  - c. Any reference to EPA test methods or documents;
  - d. Any reference to EPA forms;
  - e. Any reference to EPA publications;
  - f. Any reference to EPA manuals;
  - g. Any reference to EPA guidance;
  - h. Any reference to EPA Acknowledgment of Consent;
  - i. References in §§ ~~260.2(b) (as incorporated by R18-8-260(D)(2))~~ 260.2(d); 260.4(a)(4); 260.10 (definitions of “Administrator,” “EPA region,” “Federal agency,” “Person,” and “Regional Administrator” (~~as incorporated by R18-8-260(E)~~); 260, Appendix I (~~as incorporated by R18-8-260(C)~~); 260.11(a) (~~as incorporated by R18-8-260(C)~~); 261, Appendix IX (~~as incorporated by R18-8-261(A)~~); 261.39(a)(5) (~~as incorporated by R18-8-261(A)~~); 261.41; 262.21 (~~as incorporated by R18-8-262(A)~~); 262.24(a)(3); 262.25; 262.32(b) (~~as incorporated by R18-8-262(A)~~); 262.50 through 262.57 (~~as incorporated by R18-8-262(A)~~);

- 262.60(e) and (e) (as incorporated by R18-8-262(A));  
 262.80 through 262.89 (as incorporated by R18-8-262(A)); Part 262, subpart H  
 262, Appendix (as incorporated by R18-8-262(A));  
 263.10(a) Note (as incorporated by R18-8-263(A));  
 264.12(a)(2), 264.71(a)(3), 264.71(d), 265.12(a)(2), 265.71(a)(3), 265.71(d);  
 268.1(e)(3) (as incorporated by R18-8-268);  
 268.5, 268.6, 268.42(b), and 268.44, which are nondelegable to the state of Arizona (as  
 incorporated by R18-8-268);  
 270.1(a)(1) (as incorporated by R18-8-270);  
 270.1(b) (as incorporated by R18-8-270(B));  
 270.2 (definitions of “Administrator,” “Approved program or Approved state,”  
 “Director,” “Environmental Protection Agency,” “EPA,” “Final authorization,”  
 “Permit,” “Person,” “Regional Administrator,” and “State/EPA agreement”) (as  
 incorporated by R18-8-270(A));  
 270.3 (as incorporated by R18-8-270(A));  
 270.5 (as incorporated by R18-8-270(A));  
 270.10(e)(1) through (2) (as incorporated by R18-8-270(A) and R18-8-270(D));  
 270.11(a)(3) (as incorporated by R18-8-270(A));  
 270.32(a) and (c) (as incorporated by R18-8-270(M) and R18-8-270(O));  
 270.51 (as incorporated by R18-8-270(Q));  
 270.72(a)(5) and (b)(5) (as incorporated by R18-8-270(A));  
273.32(a)(3);  
 124.1(f) (as incorporated by R18-8-271(B));  
 124.5(d) (as incorporated by R18-8-271(D));  
 124.6(e) (as incorporated by R18-8-271(E));  
 124.10(c)(1)(ii) (as incorporated by R18-8-271(I)); and  
 124.13 (as incorporated by R18-8-271(L)).]
- ~~13-12.~~ [“Federal Register” means a daily or weekly major local newspaper of general  
 circulation, within the area affected by the facility or activity, except in §§ 260.11(b) (as  
 incorporated by R18-8-260) and 270.10(e)(2) (as incorporated by R18-8-270 (D)).]
- ~~14-13.~~ [“HWMA” or “State HWMA” means the State Hazardous Waste Management Act,  
 A.R.S. § 49-921 et seq., as amended.]
- ~~15-14.~~ [“Hazardous Waste Management facility” or “HWM facility” means any facility or  
 activity, including land or appurtenances thereto, that is subject to regulation under this  
 Article.]
- ~~16-15.~~ [“Key employee” means any person employed by an applicant or permittee in a  
 supervisory capacity or empowered to make discretionary decisions with respect to the solid  
 waste or hazardous waste operations of the applicant or permittee. Key employee does not  
 include an employee exclusively engaged in the physical or mechanical collection,  
 transportation, treatment, storage, or disposal of solid or hazardous waste.]
- ~~17-16.~~ [“National” means “state” in §§ 264.1(a) and 265.1(a) (as incorporated by R18-8-264  
 and R18-8-265).]
- ~~18-17.~~ [“Off-site” means any site that is not on-site.]
- ~~19-18.~~ [“Permit” means an authorization, license, or equivalent control document issued by the  
 DEQ to implement the requirements of this Article. Permit includes “permit-by-rule” in §

270.60 (~~as incorporated by R18-8-270~~) and “emergency permit” in § 270.61 (~~as incorporated by R18-8-270~~), and it does not include interim status as in § 270.70 (~~as incorporated by R18-8-270~~) or any permit which has not yet been the subject of final action, such as a “draft permit” or a “proposed permit.”]

~~20-19.~~ [“Permit-by-rule” means a provision of this Article stating that a facility or activity is considered to have a HWM facility permit if it meets the requirements of the provision.]

~~21-20.~~ [“Physical construction” means excavation, movement of earth, erection of forms or structures, or similar activity to prepare a HWM facility to accept hazardous waste.]

~~22-21.~~ [“RCRA,” “Resource Conservation and Recovery Act,” “Subtitle C of RCRA,” “RCRA Subtitle C,” or “Subtitle C” when referring either to an operating permit or to the federal hazardous waste program as a whole, mean the “State Hazardous Waste Management Act, A.R.S. § 49-921 et seq., as amended” with the following exceptions:

a. Any reference to a specific provision of “RCRA,” “Resource Conservation and Recovery Act,” “Subtitle C of RCRA,” “RCRA Subtitle C,” or “Subtitle C”;

b. References in §§ 260.10 (definition of “Act or RCRA”) (~~as incorporated by R18-8-260(E)~~); 260, Appendix I, (~~as incorporated by R18-8-260(C)~~); 261, Appendix IX, (~~as incorporated by R18-8-261(A)~~); 262, Appendix, (~~as incorporated by R18-8-262(A)~~); Part 262, subpart H, 270.1(a)(2) (~~as incorporated by R18-8-270(A)~~); 270.2, definition of “RCRA,” (~~as incorporated by R18-8-270(A)~~); and 270.51, “EPA-issued RCRA permit,” (~~as incorporated by R18-8-270(P)~~).]

~~23-22.~~ [Following any references to a specific provision of “RCRA,” “Resource Conservation and Recovery Act,” or “Subtitle C,” the phrase “or any comparable provisions of the state Hazardous Waste Management Act, A.R.S. § 49-921 et seq., as amended” shall be deemed to be added except in §§ 270.72(a)(5) and (b)(5) (~~as incorporated by R18-8-270(A)~~).]

~~24-23.~~ [“RCRA § 3005(a) and (e)” means “A.R.S. § 49-922.”]

~~25-24.~~ [“RCRA § 3007” means “A.R.S. § 49-922.”]

~~25.~~ [“RCRA § 3008” means “A.R.S. §§ 49-921 through 49-926”]

~~26.~~ [“RCRA § 3010” means “A.R.S. § 49-922.”]

~~26-27.~~ [“Recyclable Materials” mean hazardous wastes that are recycled.]

~~27-28.~~ [“Region” or “Region IX” means “state” or “state of Arizona.”]

~~28-29.~~ [“Schedule of compliance” means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements, such as actions, operations, or milestone events, leading to compliance with the HWMA and this Article.]

~~29-30.~~ [“Site” means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.]

~~30-31.~~ [“State,” “authorized state,” “approved state,” or “approved program” means the state of Arizona with the following exceptions:

References at §§ 260.10, definitions of “person,” “state,” and “United States,” (~~as incorporated by R18-8-260(E)~~); 262 (~~as incorporated by R18-8-262(A)~~);

264.143(e)(1) (~~as incorporated by R18-8-264(A)~~);

264.145(e)(1) (~~as incorporated by R18-8-264(A)~~);

264.147(a)(1)(ii) (~~as incorporated by R18-8-264(A)~~);

264.147(b)(1)(ii) (~~as incorporated by R18-8-264(A)~~);

264.147(g)(2) (~~as incorporated by R18-8-264(A)~~);

264.147(i)(4) (~~as incorporated by R18-8-264(A)~~);

265.143(d)(1) (as incorporated by R18-8-265(A));  
265.145(d)(1) (as incorporated by R18-8-265(A));  
265.147(a)(1)(ii) (as incorporated by R18-8-265(A));  
265.147(g)(2) (as incorporated by R18-8-265(A));  
265.147(i)(4) (as incorporated by R18-8-265(A)); and  
270.2, definitions of “Approved program or Approved state,” “Director,” “Final authorization,” “Person,” and “state” (as incorporated by R18-8-270(A)).]

~~31.32.~~ [“The effective date of these regulations” means the following dates: “May 19, 1981,” in §§ 265.112(a) and (d), 265.118(a) and (d), 265.142(a) and 265.144(a) (as incorporated by R18-8-265); “November 19, 1981,” in §§ 265.112(d) and 265.118(d) (as incorporated by R18-8-265); and “January 26, 1983,” in § 270.1(e) (as incorporated by R18-8-270).]

~~32.33.~~ [“TSD facility” means a “Hazardous Waste Management facility” or “HWM facility.”]

F. § 260.10, titled “Definitions,” as amended by subsection (E) also is amended as follows, with all definitions in § 260.10 (as incorporated by R18-8-260), applicable throughout this Article unless specified otherwise.

1. “Act” or [“the Act” means the state Hazardous Waste Management Act or HWMA, except in R18-8-261(B) and R18-8-262(B).]
2. “Administrator,” “Regional Administrator,” “state Director,” or “Assistant Administrator for Solid Waste and Emergency Response” mean the [Director or the Director’s authorized representative, except in §§:

260.10, in the definitions of “Administrator,” “AES filing compliance date”, “Electronic import-export reporting compliance date”, “Regional Administrator,” and “hazardous waste constituent” (as incorporated by R18-8-260(E));

260.20

260.41;

261.41 (as incorporated by R18-8-261);

261, Appendix IX (as incorporated by R18-8-261(A));

262.11(c);

262.41;

262.42;

262.43;

~~262, Subpart E~~

262, Subpart H;

~~262, Appendix (as incorporated by R18-8-262);~~

264.12(a) (as incorporated by R18-8-264(A));

264.71;

265.12(a) (as incorporated by R18-8-265(A));

265.71;

268.2(j);

268.5, 268.6, 268.42(b), and 268.44, which are nondelegable to the state of Arizona (as incorporated by R18-8-268);

270.2, in the definitions of “Administrator”, “Director”, “Major facility”, “Regional Administrator”, and “State/EPA agreement” (as incorporated by R18-8-270(A));

270.3 (as incorporated by R18-8-270(A));

270.5 (as incorporated by R18-8-270(A));

- 270.10(e)(1), (2), and (4) (as incorporated by R18-8-270(A) and R18-8-270(D));  
 270.10(f) and (g) (as incorporated by R18-8-270(A) and R18-8-270(E));  
 270.11(a)(3) (as incorporated by R18-8-270(A));  
 270.14(b)(20) (as incorporated by R18-8-270(A));  
 270.32(b)(2) (as incorporated by R18-8-270(N));  
 270.51 (as incorporated by R18-8-270(A));  
 124.5(d) (as incorporated by R18-8-271(D));  
 124.6(e) (as incorporated by R18-8-271(E));  
 124.10(b) (as incorporated by R18-8-271(F)).
3. “Facility” [or “activity” means:
    - a. Any HWM facility or other facility or activity, including] all contiguous land, structures, appurtenances, and improvements on the land [which are] used for treating, storing, or disposing of hazardous waste, [that is subject to regulation under the HWMA program]. A facility may consist of several treatment, storage, or disposal operational units ([that is], one or more landfills, surface impoundments, or combinations of them).
    - b. For the purposes of implementing corrective action under 40 CFR 264.101 (as incorporated by R18-8-264), all contiguous property under the control of the owner or operator seeking a permit under Subtitle C of RCRA. This definition also applies to facilities implementing corrective action under RCRA Section 3008(h).
    - c. Notwithstanding paragraph (b) of this definition, a remediation waste management site is not a facility that is subject to 40 CFR 264.101(as incorporated by R18-8-264), but is subject to corrective action requirements if the site is located within such a facility.
  4. “Final closure” means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under parts 264 and 265 of this chapter are no longer conducted at the facility unless subject to the provisions in [§§ 262.15 and 262.17.]
  4. ~~“Member of the Performance Track Program” or “Performance Track member facility” means a facility or generator that is a current member of the Arizona Environmental Performance Track Program (as described at <http://www.azdeq.gov/function/programs/azept>). Facility members must demonstrate a good record of compliance, past success in achieving environmental goals, and commit to future specific quantified environmental goals, environmental management systems, local community outreach, and annual reporting of measurable results.]~~
  5. “New HWM facility” or “new facility” means a HWM facility which began operation, or for which construction commenced, [after November 19, 1980].
  6. “Person” means an individual, trust, firm, joint stock company, federal agency, corporation, including a government corporation, [or a limited liability corporation], partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body, [state agency, or an agent or employee of a state agency].
  7. “United States” or “U.S.” means [Arizona except for the following:
    - a. The definitions of “CRT exporter” and “recognized trader” in § 260.10.
    - b. § 261.4(d)(4) and (e)(4).
    - a.c. § 261.39(a)(5) (as incorporated by R18-8-261).

~~b.d.~~ References in §§ 262.50, 262.51, 262.53(a), 262.54(e), 262.54(g)(2), 262.54(i), 262.55(a), 262.55(e), 262.56(a)(4), 262.60(a), 262.60(b)(2) and 262.60(d) (as incorporated by R18-8-262). Part 262, subpart H.

~~e.e.~~ All references in Part 263 (as incorporated by R18-8-263), except §§ 263.10(a) and 263.22(c).

~~d.f.~~ § 266.80.]

**G.** § 260.20(a), titled “General” pertaining to rulemaking petitions, is replaced by the following:

Where the Administrator of EPA has granted a rulemaking petition pursuant to 40 CFR 260.20(a), 260.21, or 260.22, the Director may accept the Administrator’s determination and amend the Arizona rules accordingly, if the Director determines the action to be consistent with the policies and purposes of the HWMA.

**H.** § 260.20(e) and (e) are amended by replacing “*Federal Register*” with “*Arizona Administrative Register*.”

**I.H.** No change

**J.I.** § 260.30, titled “~~Variances~~ Non-waste determinations and variances from classification as a solid waste,” is replaced by the following: Any person wishing to submit a variance petition shall submit the petition, under this subsection, to the EPA. Where the administrator of EPA has granted a variance from classification as a solid waste under 40 CFR 260.30, 260.31, and 260.33, the director shall accept the determination, if the director determines the action is consistent with the policies and purposes of the HWMA.

**K.J.** No change

**L.K.** 40 CFR 260.41, titled “Procedures for case-by-case regulation of hazardous waste recycling activities,” is amended by deleting the following from the end of the ~~sixth, seventh and eighth sentences of~~ paragraph (a):

“~~Or~~ or unless review by the Administrator is requested. The order may be appealed to the ~~administrator~~ Administrator by any person who participated in the public hearing. The Administrator may choose to grant or to deny the appeal.”

**M.L.** As required by A.R.S. § 49-929, generators and transporters of hazardous waste shall register annually with DEQ and submit the appropriate registration fee, prescribed below, with their registration. After the effective date of this rule, all registrations shall be done through DEQ’s myDEQ portal. For registration, go to <http://www.azdeq.gov/mydeq>.

1. A hazardous waste transporter that picks up or delivers hazardous waste in Arizona shall pay \$200 by March 1 of the year following the date of the pick-up or delivery;
2. A large-quantity generator that generated 1,000 kilograms or more of hazardous waste in any month of the previous calendar year shall pay \$300; or
3. A small-quantity generator that generated 100 kilograms or more but less than 1,000 kilograms of hazardous waste in any month of the previous year shall pay \$100.

**N.M.** A person shall pay hazardous waste generation and disposal fees as required under A.R.S. § 49-931. The DEQ shall send an invoice to large-quantity generators quarterly and small-quantity generators, including very small quantity generators who become a small quantity generator due to an episodic event, annually. The person shall pay an invoice within 30 days of the postmark on the invoice. The following hazardous waste fees shall apply:

1. A person who generates hazardous waste that is shipped offsite shall pay \$67.50 per ton but not more than \$200,000 per generator site per year of hazardous waste generated;

2. An owner or operator of a facility that disposes of hazardous waste shall pay \$270 per ton but not more than \$5,000,000 per disposal site per year of hazardous waste disposed; and
3. A person who generates hazardous waste that is retained onsite for disposal or that is shipped offsite for disposal to a facility that is owned and operated by that generator shall pay \$27 per ton but not more than \$160,000 per generator site per year of hazardous waste disposed.

**R18-8-261. Identification and Listing of Hazardous Waste**

A. All of 40 CFR 261 and accompanying appendices, revised as of ~~January 31, 2014~~ July 1, 2018 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ with the exception of the following:

1. The revisions for standardized permits as published at 70 FR 53419; and
2. The revisions to the solid waste definition as published at 73 FR 64668, 80 FR 1694, and 83 FR 24664; ~~3. The revisions for the gasification rule as published at 73 FR 57; 4. 40 CFR 261.4(a)(16) and 261.38.~~ Copies of 40 CFR 261 are available at [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html) <https://www.eCFR.gov>. Copies of the Federal Register (FR) are available at <https://www.federalregister.gov/>.

B. In the above-adopted federal regulations “Section 1004(5) of RCRA” or “Section 1004(5) of the Act” means A.R.S. § 49-921(5).

C. § 261.4, titled “Exclusions,” paragraph (b)(6)(i), is amended as follows:

- (i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in ~~Subpart~~ subpart D ~~{(as incorporated by R18-8-261)}~~ due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if [documentation is provided to the Director] by a waste generator or by waste generators that:
  - (A) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and
  - (B) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and
  - (C) The waste is typically and frequently managed in non-oxidizing environments.

D. § 261.4, titled “Exclusions,” paragraph (e)(1) is amended as follows:

- (1) Except as provided in paragraphs (e)(2) and (4) of this section, persons who generate or collect samples for the purpose of conducting treatability studies as defined in 40 CFR 260.10, are not subject to any requirement of 40 CFR parts 261 through 263 or to the notification requirements of Section 3010 of RCRA, nor are such samples included in the quantity determinations of [40 CFR 262.13 and 262.16(b)] when:
  - (i) The sample is being collected and prepared for transportation by the generator or sample collector; or
  - (ii) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or
  - (iii) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

- ~~D.E.~~ § 261.4, titled “Exclusions,” is amended by deleting the phrase “in the Region where the sample is collected” in paragraph (e)(3)iii.
- E. § 261.5, titled “Special requirements for hazardous waste generated by conditionally exempt small quantity generators,” paragraph (b) is amended as follows:
- (b) ~~Except for those wastes identified in paragraphs (e), (f), (g), and (j) of [§ 261.5 (as incorporated by R18-8-261)], a conditionally exempt small quantity generator’s hazardous wastes are not subject to regulation under [R18-8-262 through R18-8-266, R18-8-268, R18-8-270, and R18-8-271 of this Article], and the notification requirements of Section 3010 of RCRA, provided the generator complies with the requirements of paragraphs (f), (g), and (j) of [§ 261.5 (as incorporated by R18-8-261)]. [However, the Director may require reports of any conditionally exempt small quantity generator or group of conditionally exempt small quantity generators regarding the treatment, storage, transportation, disposal, or management of hazardous waste if the hazardous waste of such generator or generators poses a substantial present or potential hazard to human health or the environment, when it is improperly treated, stored, transported, disposed, or otherwise managed.]~~
- F. § 261.5, titled “Special requirements for hazardous waste generated by conditionally exempt small quantity generators,” paragraph (f)(3) is amended as follows:
- (3) ~~A conditionally exempt small quantity generator may either treat or dispose of [the] acute hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the U.S., is:~~
- (i) ~~Permitted under part 270 of this chapter [(as incorporated by R18-8-270)];~~
- (ii) ~~In interim status under parts 270 and 265 of this chapter [(as incorporated by R18-8-270 and R18-8-265)];~~
- (iii) ~~Authorized to manage hazardous waste by a state with a hazardous waste management program approved under part 271 of this chapter;~~
- (iv) ~~Permitted, licensed, or registered by a state to manage municipal [or industrial solid waste and approved by the owner or operator of the solid waste facility to accept acute hazardous waste from conditionally exempt small quantity generators that have not been excluded from disposing of their waste at such a facility under applicable provisions of the Solid Waste Management Act, A.R.S. §§ 49-701 through 49-791 and] is subject to Part 258 of this chapter;~~
- (v) ~~Permitted, licensed, or registered by a state to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in §§ 257.5 through 257.30 of this chapter; or~~
- (vi) ~~A facility which:~~
- (A) ~~Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or~~
- (B) ~~Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or~~
- (vii) ~~For universal waste managed under part 273 of this chapter [(as incorporated by R18-8-273)], a universal waste handler or destination facility subject to the requirements of part 273 of this chapter.~~
- G. § 261.5, titled “Special requirements for hazardous waste generated by conditionally exempt small quantity generators,” paragraph (g) is amended as follows:

- (g) ~~In order for hazardous waste [ , other than acute hazardous waste,] generated by a conditionally exempt small quantity generator in quantities of 100 kilograms or less of hazardous waste during a calendar month to be excluded from full regulation under this [subsection], the generator [shall] comply with the following requirements:~~
- (1) ~~§ 262.11 of this chapter [(as incorporated by R18-8-262)];~~
  - (2) ~~The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If [such generator] accumulates at any time 1,000 kilograms or greater of [its] hazardous wastes, all of those accumulated [hazardous] wastes are subject to regulation under the special provisions of part 262 applicable to generators of greater than 100 kg and less than 1000 kg of hazardous waste in a calendar month as well as the requirements of parts 263 through 266, 268, 270 and 271 of this chapter [as incorporated by R18-8-262, R18-8-263 through R18-8-266, R18-8-268, R18-8-270, and R18-8-271]] and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34(d) [(as incorporated by R18-8-262)] for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes equal or exceed 1,000 kilograms;~~
  - (3) ~~A conditionally exempt small quantity generator may either treat or dispose of [its] hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the U.S., is:~~
    - (i) ~~Permitted under part 270 of this chapter [(as incorporated by R18-8-270)];~~
    - (ii) ~~In interim status under parts 270 and 265 of this chapter [(as incorporated by R18-8-270 and R18-8-265)];~~
    - (iii) ~~Authorized to manage hazardous waste by a State with a hazardous waste management program approved under part 271 of this chapter;~~
    - (iv) ~~Permitted, licensed, or registered by a State to manage municipal [or industrial solid waste and approved by the owner or operator of the solid waste facility to accept hazardous waste from conditionally exempt small quantity generators who have not been excluded from disposing of their waste at such a facility pursuant to applicable provisions of the Solid Waste Management Act, A.R.S. §§ 49-701 through 49-791 and] is subject to Part 258 of this chapter;~~
    - (v) ~~Permitted, licensed, or registered by a State to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in §§ 257.5 through 257.30 of this chapter; or~~
    - (vi) ~~A facility which:~~
      - (A) ~~Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or~~
      - (B) ~~Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or~~
    - (vii) ~~For universal waste managed under part 273 of this chapter [(as incorporated by R18-8-273)], a universal waste handler or destination facility subject to the requirements of part 273 of this chapter.~~

**H.** ~~§ 261.5, titled “Special requirements for hazardous waste generated by conditionally exempt small quantity generators,” paragraph (j) is amended as follows:~~

- (j) ~~If a conditionally exempt small quantity generator’s wastes are mixed with used oil, the mixture is subject to 40 CFR 279 [(as incorporated by A.R.S. § 49-802 into Arizona law)].~~

~~Any material produced from such a mixture by processing, blending, or other treatment is also so regulated.~~

**I.F.** § 261.6, titled “Requirements for recyclable materials,” paragraphs (a)(1) through (a)(3) are amended as follows:

- (a)(1) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of paragraphs (b) and (c) of this section, except for the materials listed in paragraphs (a)(2) and (a)(3) of this section. Hazardous wastes that are recycled [shall] be known as “recyclable materials.”
- (2) The following recyclable materials are not subject to the requirements of this section but are regulated under [40 CFR 266, subparts C through N ~~(as incorporated by R18-8-266)~~] and all applicable provisions in parts 268, 270 and 124 of this chapter ~~[(as incorporated by R18-8-268, R18-8-270 and R18-8-271)]~~:
  - (i) Recyclable materials used in a manner constituting disposal (40 CFR part 266, subpart C);
  - (ii) Hazardous wastes burned (as defined in section 266.100(a)) in boilers and industrial furnaces that are not regulated under [40 CFR 264 or 265, subpart O ~~(as incorporated by R18-8-264 and R18-8-265)~~] (40 CFR part 266, subpart H);
  - (iii) Recyclable materials from which precious metals are reclaimed (40 CFR part 266, subpart F);
  - (iv) Spent lead acid batteries that are being reclaimed (40 CFR part 266, subpart G).
- (3) The following recyclable materials are not subject to regulation under [40 CFR 262 through 266, 268, 270, or 124 ~~(as incorporated by R18-8-262 through R18-8-266, R18-8-268, R18-8-270, and R18-8-271)~~] and are not subject to the notification requirements of section 3010 of RCRA:
  - (i) Industrial ethyl alcohol that is reclaimed except that, ~~unless provided otherwise in an international agreement as specified in § 262.58:~~ exports and imports of such recyclable materials [shall] comply with the requirements of 40 CFR part 262, subpart H.
    - (A) A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, [shall] comply with the requirements applicable to a primary exporter in §§ ~~262.53, 262.56(a)(1)-(4), (6), and (b), and 262.57~~ [§ 262.83(b), (g) and (i),] export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in ~~subpart E~~ [subpart H] of part 262, and provide a copy of the EPA Acknowledgment of Consent to the shipment to the transporter transporting the shipment for export;
    - (B) Transporters transporting a shipment for export may not accept a shipment if [the transporter] knows the shipment does not conform to the EPA Acknowledgment of Consent, [shall] ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment and [shall] ensure that [the EPA Acknowledgment of Consent] is delivered to the [subsequent transporter or] facility designated by the person initiating the shipment.
  - (ii) Scrap metal that is not excluded under § 261.4(a)(13);
  - (iii) Fuels produced from the refining of oil-bearing hazardous waste along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not

apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under § 261.4(a)(12) ~~(as incorporated by R18-8-261)~~;

- (iv)(A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under [A.R.S. § 49-801] and so long as no other hazardous wastes are used to produce the hazardous waste fuel;
- (B) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining[,] production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under [A.R.S. § 49-801]; and
- (C) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under [A.R.S. § 49-801].

**J.** § 261.6, titled “Requirements for recyclable materials,” paragraph (c) is amended by adding the following:

~~{(3) Each facility that recycles hazardous waste received from off-site and that is not otherwise required to submit an annual report under R18-8-262 through R18-8-265 shall submit Form IC, “Identification and Certification,” of the Facility Annual Hazardous Waste Report to the Director by March 1 for the preceding calendar year. The annual report shall be mailed to: ADEQ, Hazardous Waste Facilities Assistance Unit, 1110 W. Washington St., Phoenix, AZ 85007. The annual report shall be submitted on a form provided by the DEQ according to the instructions for the form.}~~

**K.G.** § 261.11, titled “Criteria for listing hazardous waste,” paragraph (a) is amended as follows:

- (a) The [Director] shall list a solid waste as a hazardous waste only upon determining that the solid waste meets one of the following criteria:
  - (1) It exhibits any of the characteristics of hazardous waste identified in subpart C ~~{(as incorporated by R18-8-261)}~~.
  - (2) It has been found to be fatal to humans in low doses or, in the absence of data on human toxicity, it has been shown in studies to have an oral LD 50 toxicity (rat) of less than 50 milligrams per kilogram, an inhalation LC 50 toxicity (rat) of less than 2 milligrams per liter, or a dermal LD 50 toxicity (rabbit) of less than 200 milligrams per kilogram or is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible, illness. (Waste listed in accordance with these criteria shall be designated Acute Hazardous Waste.)
  - (3) It contains any of the toxic constituents listed in Appendix VIII ~~{(as incorporated by R18-8-261)}~~ and, after considering the following factors, the [Director] concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed:
    - (i) The nature of the toxicity presented by the constituent.
    - (ii) The concentration of the constituent in the waste.

- (iii) The potential of the constituent or any toxic degradation product of the constituent to migrate from the waste into the environment under the types of improper management considered in (a)(3)(vii) of this [subsection].
- (iv) The persistence of the constituent or any toxic degradation product of the constituent.
- (v) The potential for the constituent or any toxic degradation product of the constituent to degrade into nonharmful constituents and the rate of degradation.
- (vi) The degree to which the constituent or any degradation product of the constituent bioaccumulates in ecosystems.
- (vii) The plausible types of improper management to which the waste could be subjected.
- (viii) The quantities of the waste generated at individual generation sites or on a regional or national basis.
- (ix) The nature and severity of the human health and environmental damage that has occurred as a result of the improper management of wastes containing the constituent.
- (x) Action taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste or waste constituent.
- (xi) Such other factors as may be appropriate.

**H. § 261.11, titled “Criteria for listing hazardous waste,” paragraph (c) is amended as follows:**

(c) The Administrator will use the criteria for listing specified in this section to establish the exclusion limits referred to in [§ 262.13(c).]

**I. § 261.30, titled “General”, paragraph (d) is amended as follows:**

(d) The following hazardous wastes listed in § 261.31 are subject to the exclusion limits for acutely hazardous wastes established in [§ 261.13:] EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026 and F027.

**R18-8-262. Standards Applicable to Generators of Hazardous Waste**

**A.** All of 40 CFR 262 ~~and the accompanying appendix~~, revised as of July 1, 2013 2018, (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 262 are available at [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html) <https://www.eCFR.gov>.

**B.** In 40 CFR 262 ~~(as incorporated by R18-8-262(A))~~:

1. [“Section 3008 of ~~the Act~~ RCRA” means both section 3008 of RCRA and A.R.S. §§ 49-923, 49-924 and 49-925.]
2. [“Section 2002(a) of the Act” means A.R.S. § 49-922.]
3. [“Section 3002(6) of the Act” means A.R.S. § 49-922.]

**C.** No change

**D.** § 262.11, titled “Hazardous waste determination and recordkeeping,” ~~paragraph (c)(1) is paragraphs (d)(1) and (d)(2) are amended by deleting the following:~~

~~(H) “, or according to an equivalent test method approved by the Administrator under 40 CFR 260.21.”~~

**E.** § 262.13, titled “Generator category determinations”, paragraph (f)(1)(iii) is amended as follows:

(iii) If a very small quantity generator's wastes are mixed with used oil, the mixture is subject to 40 CFR 279 [(as incorporated by A.R.S. § 49-802)]. Any material produced from such a mixture by processing, blending, or other treatment is also [so regulated].

**F.** § 262.16, titled "Conditions for exemption for a small quantity generator that accumulates hazardous waste", paragraph (b)(9)(iv)(C) is amended as follows:

(C) In the event of a fire, explosion, or other release that could threaten human health outside the facility or when the small quantity generator has knowledge that a spill has reached surface water [or when a spill has discharged into a storm sewer or dry well, or such an event has resulted in any other discharge that may reach groundwater], the small quantity generator immediately [shall] notify the National Response Center (using their 24-hour toll-free number 800/424-8802) [and the DEQ (using their 24-hour number (602) 771-2330 or 800/234-5677)]. The report [shall contain] the following information:

- (1) The name, address, and [the EPA Identification Number] of the generator;
- (2) Date, time, [location,] and type of incident (for example, spill or fire);
- (3) Quantity and type of hazardous waste involved in the incident;
- (4) Extent of injuries, if any; and
- (5) Estimated quantity and disposition of recovered materials, if any.

**G.** Any generator who must comply with 40 CFR 262.16 shall keep a written log of the inspections of container, tank, drip pad, and containment building areas and for the containers, tanks, and other equipment located in these storage areas in accordance with 40 CFR 265.174, 265.195, 265.444, and 265.1101(c)(4). The inspection log shall be kept by the generator for three years from the date of the inspection. The generator shall ensure that the inspection log is filled in after each inspection and includes the following information: inspection date, inspector's name and signature, and remarks or corrections.

**H.** § 262.17, titled "Conditions for exemption for a large quantity generator that accumulates hazardous waste", paragraph (f)(1) is amended as follows:

(1) The large quantity generator notifies [DEQ] at least thirty (30) days prior to receiving the first shipment from a very small quantity generator(s) using EPA Form 8700-12; and

**E.I.** § ~~262.12~~ 262.18, titled "EPA identification numbers and re-notification for small quantity generators and large quantity generators," paragraphs (a), (b) and ~~(b)(d)~~ are amended as follows:

(a) A generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the [DEQ].

(b) A generator who has not received an EPA identification number may obtain one by applying to the [DEQ] using EPA form 8700-12. [The completed form shall be ~~mailed or delivered to: ADEQ, Hazardous Waste Facilities Assistance Unit, 1110 W. Washington St., Phoenix, AZ 85007~~ submitted to DEQ through the myDEQ online portal.] Upon receiving the request, the [DEQ] will assign an EPA identification number to the generator.

(d) Re-notification. (1) A small quantity generator must re-notify [DEQ] starting in 2021 and every four years thereafter using EPA Form 8700-12. This re-notification must be submitted through the myDEQ online portal by September 1 of each year in which re-notifications are required.

(2) A large quantity generator must re-notify [DEQ] by March 1 of each even numbered year thereafter using EPA Form 8700-12. A large quantity generator may submit this re-notification as part of its ~~Biennial~~ Report required under § 262.41.

**J.** § 262.20, titled "General requirements", paragraph (a)(2) is amended as follows:

(2) The revised manifest form and procedures in 40 CFR 260.10, 261.7, [262.16, 262.17, 262.20, 262.21, 262.27, 262.32, 262.83(c) through (e), 262.84.] shall not apply until September 5, 2006. The manifest form and procedures in 40 CFR 260.10, 261.7, [262.16, 262.17, 262.20, 262.21, 262.32, 262.83(c) through (e), 262.84.] contained in the 40 CFR, parts 260 to 265, edition revised as of July 1, 2004, shall be applicable until September 5, 2006.

F. § 262.23, titled "Use of the manifest," paragraph (a) is amended by adding the following:

~~{(4) Submit one (1) copy of each manifest to the DEQ in accordance with R18-8-262(I).}~~

G. § 262.34, titled "Accumulation time," paragraph (d)(5)(iv)(C) is amended as follows:

~~(C) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water [or when a spill has discharged into a storm sewer or dry well, or such an event has resulted in any other discharge that may reach groundwater], the small quantity generator immediately [shall] notify the National Response Center (using their 24-hour toll-free number 800/424-8802) [and the DEQ (using their 24-hour number (602) 771-2330 or 800/234-5677)]. The report [shall contain] the following information:~~

- ~~(1) The name, address, and [the EPA Identification Number] of the generator;~~
- ~~(2) Date, time, [location,] and type of incident (for example, spill or fire);~~
- ~~(3) Quantity and type of hazardous waste involved in the incident;~~
- ~~(4) Extent of injuries, if any; and~~
- ~~(5) Estimated quantity and disposition of recovered materials, if any.~~

H. § 262.41, titled "Biennial report, is amended as follows:

~~(a) A generator [shall] prepare and submit a single copy of [an annual] report to the [Director] by March 1 [for the preceding calendar] year. The [annual] report [shall] be submitted on [a form provided by the DEQ according to the instructions for the form, shall describe] generator activities during the previous [calendar] year, and shall include the following information:~~

- ~~(1) The EPA identification number, name, [location,] and [mailing] address of the generator.~~
- ~~(2) The calendar year covered by the report.~~
- ~~(3) The EPA identification number, name, and [mailing] address for each off-site [TSD] facility to which waste was shipped during the [reporting] year [, including the name and address of all applicable foreign facilities for exported shipments.]~~
- ~~(4) The name, [mailing address], and the EPA identification number of each transporter used [by the generator] during the reporting year.~~
- ~~(5) A [waste] description, EPA hazardous waste number (from 40 CFR 261, subpart C or D) [(as incorporated by R18-8-261), U.S. Department of Transportation] hazard class, [concentration, physical state,] and quantity of each hazardous waste [:
  - ~~i. Generated];~~
  - ~~ii. Shipped off-site. This information must be listed by EPA identification number of each off-site facility to which waste was shipped; and~~
  - ~~iii. Accumulated at the end of the year].~~~~
- ~~(6) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.~~

- (7) ~~A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984.~~
- (8) ~~The certification signed by the generator or [the generator's] authorized representative [; and the date the report was prepared].~~
- (9) ~~[A waste description, EPA hazardous waste number, concentration, physical state, quantity, and handling method of each hazardous waste handled on-site in elementary neutralization or wastewater treatment units.]~~
- (10) ~~[Name and telephone number of facility contact responsible for information contained in the report.]~~
- (b) ~~Any generator who treats, stores, or disposes of hazardous waste on-site, [and is subject to the HWM facility requirements of R18-8-264, R18-8-265, or R18-8-270,] shall submit [an annual] report covering those wastes in accordance with the provisions of 40 CFR 264.75 [(as incorporated by R18-8-264(I)), and § 265.75 [(as incorporated by R18-8-265(I)).]~~
- I. ~~Manifests required in 40 CFR 262, subpart B, titled "The Manifest" (as incorporated by R18-8-262) shall be submitted to the DEQ in the following manner:~~
  - 1. ~~A generator initiating a shipment of hazardous waste required to be manifested shall submit to the DEQ, no later than 45 days following the end of the month of shipment, one copy of each manifest with the signature of that generator and transporter, and the signature of the owner or operator of the designated facility, for any shipment of hazardous waste transported or delivered within that month. If a conforming manifest is not available, the generator shall submit an Exception Report in compliance with § 262.42 (as incorporated by R18-8-262).~~
  - 2. ~~A generator shall designate on the manifest in item 13 "Waste Codes," the EPA hazardous waste number or numbers for each hazardous waste listed on the manifest.~~
  - 3. ~~A member of the Performance Track Program, as defined in R18-8-260(F), that initiates a shipment of hazardous waste required to be manifested shall submit the manifest to DEQ as specified in subsections (1) and (2), except a manifest may be submitted to DEQ within 45 days following the end of the calendar quarter of shipment rather than within 45 days following the end of the month of shipment.~~
- J. ~~§ 262.42, titled "Exception reporting," is amended by replacing "The Exception Report must include:" in paragraph (a)(2) with the following: "The Exception Report shall be submitted to DEQ within 45 days following the end of the month of shipment of the waste and shall include:"~~
- K. ~~§ 262.42, titled "Exception reporting," paragraph (b) is amended by adding the following sentence to the end of the paragraph: "This submission to DEQ shall be made within 60 days following the end of the month of shipment of the waste."~~
- L. ~~A generator who accumulates ignitable, reactive, or incompatible waste shall comply with 40 CFR 265.17(a) (as incorporated by R18-8-265(A)).~~
- M. ~~Any generator who must comply with 40 CFR 262.34(a)(1) (as incorporated by R18-8-262) shall keep a written log of the inspections of container, tank, drip pad, and containment building areas and for the containers, tanks, and other equipment located in these storage areas in accordance with 40 CFR 265.174, 265.195, 265.444, and 265.1101(e)(4) (as incorporated by R18-8-265). The inspection log shall be kept by the generator for three years from the date of the inspection. The generator shall ensure that the inspection log is filled in after each inspection~~

and includes the following information: inspection date, inspector's name and signature, and remarks or corrections.

**K.** § 262.212, titled "Making the hazardous waste determination at an on-site interim status or permitted treatment, storage or disposal facility", paragraph (e)(3) is amended as follows:

(3) Count the hazardous waste toward the eligible academic entity's generator status, pursuant to [§ 262.13(c) and (d)] in the calendar month that the hazardous waste determination was made, and

**L.** § 262.265, titled "Emergency procedures", paragraph (d)(2) is amended as follows:

(2) The emergency coordinator [shall] immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll free number 800/424-8802) [and the DEQ (using their 24-hour number (602) 771-2330 or 800/234-5677)]. The report [shall contain the following information:]

(i) The name, address, and [the EPA Identification Number] of the generator;

(ii) Date, time, [location,] and type of incident (for example, spill or fire);

(iii) Quantity and type of hazardous waste involved in the incident;

(iv) Extent of injuries, if any; and

(v) Estimated quantity and disposition of recovered materials, if any.]

**M.** A generator who accumulates ignitable, reactive, or incompatible waste shall comply with 40 CFR 265.17.

### **R18-8-263. Standards Applicable to Transporters of Hazardous Waste**

**A.** All of 40 CFR 263, revised as of July 1, ~~2013~~ 2018, (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 263 are available at [www.gpoaccess.gov/efr/index.html](http://www.gpoaccess.gov/efr/index.html) <https://www.eCFR.gov>.

**B.** § 263.11, titled "EPA identification numbers," is amended by the following:

(a) A transporter must not transport hazardous wastes without having received an EPA identification number from the [DEQ].

(b) A transporter who has not received an EPA identification number may obtain one by applying to the [DEQ] using EPA form 8700-12. [The completed form shall be ~~mailed or delivered to: DEQ, Waste Programs Division, GIS and IT Unit, 1110 W. Washington St., Phoenix, AZ 85007~~ submitted to DEQ through the myDEQ online portal.] Upon receiving the request, the [DEQ] will assign an EPA identification number to the transporter.

**C.** § 263.20, titled "The manifest system," is amended by adding the following:

~~[A transporter of hazardous waste, with the exception of hazardous waste shipments that originate outside of Arizona, must submit one copy of each manifest to the DEQ, in accordance with R18-8-263(D).]~~

**D.** Manifests required in 40 CFR 263, subpart B, titled "Compliance With the Manifest System and Recordkeeping," (as incorporated by R18-8-263) shall be submitted to the DEQ in the following manner:

~~[A transporter of hazardous waste, unless such hazardous waste shipment originated outside of the state of Arizona, shall submit to the DEQ, no later than 30 days following the end of the month of shipment, copy of each manifest, including the signature of that transporter, for any shipment of hazardous waste transported or delivered within that month.]~~

**E.C.** § 263.30, titled "Immediate action," paragraph (c)(2) is amended by the following:

- (2) Report in writing as required by 49 CFR 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, DC 20590 [and send a copy to the DEQ, Hazardous Waste Inspections and Compliance Unit, 1110 W. Washington St., Phoenix, AZ 85007.]

**R18-8-264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities**

- A.** All of 40 CFR 264 and accompanying appendices, revised as of July 1, ~~2013~~ 2018, (and no future editions), with the exception of §§ 264.1(d) and (f), 264.149, 264.150, and 264.301(l), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 264 are available at ~~www.gpoaccess.gov/cfr/index.html~~ <https://www.eCFR.gov>.
- B.** § 264.1, titled “Purpose, scope and applicability,” paragraph (g)(1) is amended as follows:
- (1) The owner or operator of a facility [with operational approval from the Director] to manage [public, private,] municipal or industrial solid waste [pursuant to ~~R18-8-512~~ R18-13-312, A.R.S. §§ 49-104 and 49-762], if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under [R18-8-264] pursuant to § ~~261.5~~ 262.14 [(as incorporated by ~~R18-8-261~~)];
- C.** No change
- D.** § 264.11, titled “Identification number,” is replaced by the following:
1. A facility owner or operator shall not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the DEQ.
  2. A facility owner or operator who has not received an EPA identification number may obtain one by applying to the DEQ using EPA form 8700-12. The completed form shall be ~~mailed or delivered to: ADEQ, Hazardous Waste Facilities Assistance Unit, 1110 W. Washington St., Phoenix, AZ 85007~~ submitted to DEQ through the myDEQ online portal. Upon receiving the request, the DEQ will assign an EPA identification number to the facility owner or operator.
- E.** § 264.15 titled “General inspection requirements,” paragraph (b)(5)(i) is amended by replacing “National Environmental Performance Track Program” with “Performance Track Program.”
- ~~**F.**~~ No change
- ~~**G.**~~ No change
- H.** § 264.71, titled “Use of manifest system,” paragraph (a)(2)(iv) is amended as follows:  
~~Within 30 days of delivery, send a copy of the manifest to the generator [and submit one copy of each manifest to DEQ, according to R18-8-264(J);] and~~
- I.** § 264.75, titled “Biennial report,” is amended as follows:  
The owner or operator [of a facility that treated, stored, or disposed of hazardous waste shall] prepare and submit a single copy of [an annual report to the Director] by March 1 [for the preceding calendar] year. The [annual] report must be submitted on [a form provided by DEQ according to the instructions for the form.] The report [shall describe treatment, disposal, or storage] activities during the previous calendar year and [shall] include [the following information]:
- (a) Name, [mailing] address, [location] and the EPA identification number of the facility;
  - (b) The calendar year covered by the report;

- (e) ~~[For facilities receiving waste from off-site,] the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; and, for imported shipments, the report must give the name and address of the foreign generator;~~
- (d) ~~A [waste] description, [EPA hazardous waste number, concentration, physical state], and quantity of each hazardous waste the facility received during the year. For [waste received from off-site], this information must be listed by the EPA identification number of each generator;~~
- (e) ~~The method of treatment, storage, or disposal for each hazardous waste;~~
- (f) ~~Reserved;~~
- (g) ~~The most recent closure cost estimate under § 264.142, [(as incorporated by R18-8-264)], and for disposal facilities, the most recent post-closure cost estimate under § 264.144, [(as incorporated by R18-8-264)];~~
- (h) ~~For generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.~~
- (i) ~~For generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984.~~
- (j) ~~The certification signed by the owner or operator of the facility, or authorized representative, [and the date the report was prepared];~~
- (k) ~~[Name and telephone number of facility contact responsible for information contained in the report; and]~~
- (l) ~~[If the TSD facility is also a generator, the complete generator annual report as required by § 262.41 (as incorporated by R18-8-262).]~~

**J.** ~~Manifests required in 40 CFR 264, Subpart E, titled “Manifest System, Recordkeeping, and Reporting,” (as incorporated by R18-8-264) shall be submitted to the DEQ in the following manner:~~

- ~~1. The TSD facility receiving off-site shipments of hazardous wastes required to be manifested shall submit to the DEQ, no later than 30 days following the end of the month of shipment, one copy of each manifest with the signature, in accordance with § 264.71(a)(1) (as incorporated by R18-8-264), of the owner or operator of the facility, or agent, for any shipment of hazardous waste received within that month.~~
- ~~2. If a facility receiving hazardous waste from off-site is also a generator, the owner or operator shall also submit generator manifests as required by R18-8-262(i).]~~

**K.G.** § 264.93, titled “Hazardous constituents,” paragraph (c) is amended as follows:

- (c) ~~In making any determination under [§ 264.93(b) (as incorporated by R18-8-264)] about the use of ground water in the area around the facility, the [Director shall] consider any identification of underground sources of drinking water and exempted aquifers made under [40 CFR] § 144.7, [and any identification of uses of ground water made pursuant to 18 A.A.C. 9 or 11].~~

**L.H.** § 264.94, titled “Concentration limits,” paragraph (c) is amended as follows:

- (c) ~~In making any determination under [§ 264.94(b) (as incorporated by R18-8-264)] about the use of ground water in the area around the facility, the [Director shall] consider any~~

identification of underground sources of drinking water and exempted aquifers made under [40 CFR] 144.7, [and any identification of uses of ground water made pursuant to 18 A.A.C. 9 or 11].

**M.I.** No change

**N.J.** No change

**O.K.** No change

**P.L.** § 264.301, titled “Design and operating requirements,” is amended by adding the following: [The DEQ may require that hazardous waste disposed in a landfill operation; be treated prior to landfilling to reduce the water content, water solubility, and toxicity of the waste. The decision by the DEQ shall be based upon the following criteria:

1. Whether the action is necessary to protect public health;
2. Whether the action is necessary to protect the groundwater, particularly where the groundwater is a source, or potential source, of a drinking water supply;
3. The type of hazardous waste involved and whether the waste may be made less hazardous through treatment;
4. The degree of water content, water solubility, and toxicity of the waste;
5. The existence or likelihood of other wastes in the landfill and the compatibility or incompatibility of the wastes with the wastes being considered for treatment;
6. Consistency with other laws, rules and regulations, but not necessarily limited to laws, rules, and regulations relating to landfills and solid wastes.]

**M.** § 264.1030, titled “Applicability”, paragraph (b)(3) is amended as follows:

- (3) A unit that is exempt from permitting under the provisions of [40 CFR 262.17(a)] (i.e., a “90-day” tank or container) and is not a recycling unit under the provisions of 40 CFR 261.6.

**N.** § 264.1050, titled “Applicability”, paragraph (b)(2) is amended as follows:

- (2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of [40 CFR 262.17(a)] (i.e., a hazardous waste recycling unit that is not a “90-day” tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of 40 CFR part 270, or

### **R18-8-265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities**

**A.** All of 40 CFR 265 and accompanying appendices, revised as of July 1, ~~2013~~ 2018, (and no future editions), with the exception of §§ 265.1(c)(2), 265.1(c)(4), 265.149, 265.150, and 265.430, is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 265 are available at ~~www.gpoaccess.gov/cfr/index.html~~ <https://www.eCFR.gov>.

**B.** § 265.1, titled “Purpose, scope, and applicability,” paragraph (c)(5) is amended as follows:

- (5) The owner or operator of a facility [with operational approval from the Director] to manage [public, private,] municipal or industrial solid waste [pursuant to ~~R18-8-512~~ R18-13-312, A.R.S. §§ 49-104 and 49-762], if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under [R18-8-265, pursuant to § 261.5 (~~as incorporated by R18-8-261~~)];

**C.** No change

- D.** § 265.11, titled “Identification number,” is replaced by the following:
1. A facility owner or operator shall not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the DEQ.
  2. A facility owner or operator who has not received an EPA identification number may obtain one by applying to the DEQ using EPA form 8700-12. The completed form shall be ~~mailed or delivered to: ADEQ, Hazardous Waste Facilities Assistance Unit, 1110 W. Washington St., Phoenix, AZ 85007~~ submitted to DEQ through the myDEQ online portal. Upon receiving the request, the DEQ shall assign an EPA identification number to the facility owner or operator.]
- ~~E.~~ § 265.15 titled “General inspection requirements,” paragraph (b)(5)(i) is amended by replacing “National Environmental Performance Track Program” with “Performance Track Program.”
- ~~F.~~E. No change
- ~~G.~~F. No change
- H.** § 265.71, titled “Use of manifest system,” paragraph (a)(2)(iv) is amended as follows:  
~~Within 30 days of delivery, send a copy of the manifest to the generator [and submit one copy of each manifest to DEQ, according to R18-8-265(J);] and~~
- G.** § 265.71, titled “Use of the manifest system”, is amended in the Comment following paragraph (c) as follows:  
Comment: The provisions of [§§ 262.15, 262.16 and 262.17] are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of [§§ 262.15, 262.16 and 262.17] only apply to owners or operators who are shipping hazardous waste which they generated at that facility.
- I.** § 265.75, titled “Biennial report,” is amended as follows:  
~~The owner or operator [of a facility that treated, stored, or disposed of hazardous waste] shall prepare and submit a copy of [an annual] report to the [Director] by March 1 [for the preceding calendar] year. The [annual] report must be submitted on [a form provided by DEQ according to the instructions for the form]. The report [shall describe] facility activities during the previous calendar year and must include the following information:~~
- ~~(a) Name, [mailing] address, [location], and EPA identification number of the facility;~~
  - ~~(b) The calendar year covered by the report;~~
  - ~~(c) For [facilities receiving waste from off-site], the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; [and] for imported shipments, the report must give the name and address of the foreign generator;~~
  - ~~(d) A [waste] description, [EPA hazardous waste number, concentration, physical state], and quantity of each hazardous waste the facility received [according to the quantity treated, stored or disposed] during the year. For [waste received from off-site], this information must be listed by EPA identification number of each generator;~~
  - ~~(e) The method of treatment, storage, or disposal for each hazardous waste;~~
  - ~~(f) Monitoring data under § 265.94(a)(2)(ii) and (iii), and (b)(2) [(as incorporated by R18-8-265)], where required;~~
  - ~~(g) The most recent closure cost estimate under § 265.142 [(as incorporated by R18-8-265)]; and, for disposal facilities, the most recent post-closure cost estimate under § 265.144 [(as incorporated by R18-8-265)];~~

- (h) ~~For generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;~~
- (i) ~~For generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984;~~
- (j) ~~The certification signed by the owner or operator of the facility, or authorized representative, [and the date the report was prepared; and~~
- (k) ~~Name and telephone number of facility contact responsible for information contained in the report.]~~

~~**J.** Manifests required in 40 CFR 265, subpart E, titled “Manifest System, Recordkeeping, and Reporting,” (as incorporated by R18-8-265) shall be submitted to the DEQ in the following manner:~~

~~The TSD facility receiving off-site shipments of hazardous wastes required to be manifested shall submit to the DEQ, no later than 30 days following the end of the month of shipment, a copy of each manifest with the signature, in accordance with § 265.71(a)(1) (as incorporated by R18-8-265), of the owner or operator of the facility, or agent, for any shipment of hazardous waste received within that month.~~

~~**K.G.** § 265.90, titled “Applicability,” paragraphs (a) and (d)(1), and § 265.93, titled “Preparation, evaluation, and response,” paragraph (a) (as incorporated by R18-8-265), are amended by deleting the following phrase: “within one year”; and § 265.90, titled “Applicability,” paragraph (d)(2) (as incorporated by R18-8-265), is amended by deleting the following phrase: “Not later than one year.”~~

~~**L.H.** No change~~

~~**M.I.** No change~~

~~**N.J.** § 265.193, titled “Containment and detection of releases” (as incorporated by R18-8-265), is amended by adding the following:~~

~~[For existing underground tanks and associated piping systems not yet retrofitted in accordance with § 265.193, the owner or operator shall ensure that:~~

- ~~1. A level is measured daily;~~
- ~~2. A material balance is calculated and recorded daily; and~~
- ~~3. A yearly test for leaks in the tank and piping system, using a method approved by the DEQ is performed.]~~

**R18-8-266. Standards for the Management of Specific Hazardous Wastes and Specific Hazardous Waste Management Facilities**

**A.** All of 40 CFR 266 and accompanying appendices, revised as of July 1, ~~2013~~ 2018 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 266 are available at ~~www.epaaccess.gov/cfr/index.html~~ https://www.eCFR.gov.

**B.** § 266.100, titled “Applicability” paragraph (c) is amended as follows:

- (c) The following hazardous wastes and facilities are not subject to regulation under this subpart:

- (1) Used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in subpart C of part 261 ~~{(as incorporated by R18-8-261)}~~ of this chapter. Such used oil is subject to regulation under [A.R.S. §§ 49-801 through 49-818] rather than this subpart;
- (2) Gas recovered from hazardous or solid waste landfills when such gas is burned for energy recovery;
- (3) Hazardous wastes that are exempt from regulation under §§ 261.4 and 261.6(a)(3)(iii) and (iv) ~~{(as incorporated by R18-8-261)}~~ of this chapter, and hazardous wastes that are subject to the special requirements for ~~conditionally exempt~~ [very] small quantity generators under § ~~261.5~~ ~~{(as incorporated by R18-8-261)}~~ [§§ 262.13 and 262.14] of this chapter; and
- (4) Coke ovens, if the only hazardous waste burned is EPA Hazardous Waste No. K087, decanter tank tar sludge from coking operations.

**C. § 266.108, titled “Small quantity on-site burner exemption” is amended in the Note following paragraph (c) as follows:**

Note: Hazardous wastes that are subject to the special requirements for small quantity generators under [§§ 262.13 and 262.14] of this chapter may be burned in an off-site device under the exemption provided by § 266.108, but must be included in the quantity determination for the exemption.

**R18-8-268. Land Disposal Restrictions**

All of 40 CFR 268 and accompanying appendices, revised as of July 1, ~~2013~~ 2018 (and no future editions), with the exception of Part 268, Subpart B, is incorporated by reference and on file with the DEQ. Copies of 40 CFR 268 are available at ~~www.gpoaccess.gov/cfr/index.html~~ <https://www.eCFR.gov>.

**R18-8-270. Hazardous Waste Permit Program**

**A.** All of 40 CFR 270 and the accompanying appendices, revised as of July 1, ~~2013~~ 2018 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ with the exception of the following:

1. §§ 270.1(a), 270.1(c)(1)(i), 270.3, 270.10(g)(1)(i), 270.60(a) and (b), and 270.64;
2. The revisions for standardized permits as published at 70 FR 53419;
3. The revisions to the solid waste definition as published at 73 FR 64668, 80 FR 1694, and 83 FR 24664. Copies of 40 CFR 270 are available at ~~www.gpoaccess.gov/cfr/index.html~~ <https://www.eCFR.gov>. Copies of the Federal Register are available at <https://www.federalregister.gov>.

**B.** § 270.1, titled “Purpose and scope of these regulations,” paragraph (b) is replaced by the following:

1. [After the effective date of these regulations the treatment, storage, or disposal of any hazardous waste is prohibited except as follows:
  - a. As allowed under § 270.1(c)(2) and (3) ~~(as incorporated by R18-8-270)~~;
  - b. Under the conditions of a permit issued pursuant to these regulations; or
  - c. At an existing facility accorded interim status under the provisions of § 270.70 ~~(as incorporated by R18-8-270)~~.

2. The direct disposal or discharge of hazardous waste into or onto any of the following is prohibited:
  - a. Waters of the state as defined in A.R.S. § 49-201, excluding surface impoundments as defined in § 260.10 ~~(as incorporated by R18-8-260)~~; and
  - b. Injection well, ditch, alleyway, storm drain, leachfield, or roadway.]
- C. No change
- D. No change
- E. No change
- F. § 270.10(g), titled “Updating permit applications,” subparagraph (1)(iii), is amended as follows:
  - (iii) As necessary to comply with provisions of § 270.72 ~~[(as incorporated by R18-8-270)]~~ for changes during interim [status]. Revised Part A applications necessary to comply with the provisions of § 270.72 ~~[(as incorporated by R18-8-270)]~~ shall be filed with the [Director.]
- G. No change
  1. No change
  2. No change
    - a. No change
    - b. No change
    - c. No change
  3. No change
  4. The fee for a land treatment demonstration permit issued under § 270.63 ~~(as incorporated by R18-8-270)~~ for hazardous waste applies toward the \$20,000 permit fee for a Part B land treatment permit when the owner or operator seeks to treat or dispose of hazardous waste in land treatment units based on the successful treatment demonstration ~~(as incorporated by R18-8-270)~~.
  5. No change
    - a. No change
    - b. No change
      - i. No change
      - ii. No change
      - iii. No change
    - c. No change
    - d. No change
  6. No change
    - a. No change
    - b. 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
      - ix. No change
    - c. No change

~~7. Any person who receives a final bill from the DEQ for the processing and issuance or denial of a permit or permit modification under this Article may request an informal review of all billing items and may pay the bill under protest. If the bill is paid under protest, the DEQ shall issue the permit or permit modification if it would be otherwise issuable after normal payment. Such a request shall specify each area of dispute, and it shall be made in writing, within 30 days of the date of receipt of the final bill, to the division director of the DEQ for the Waste Programs Division. The final bill shall be sent by certified mail, return receipt requested. The informal review shall take place within 30 days of the DEQ's receipt of the request unless agreed otherwise by the DEQ and the applicant. The division director of the DEQ shall review whether or not the amounts of time billed are correct and reasonable for the tasks involved. Disposition of the informal review shall be mailed to the requester within 10 working days after the informal review.~~

7. A person may seek review of a bill by filing a written request for reconsideration with the Director.

a. The request shall specify, in detail, why the bill is in dispute and shall include any supporting documentation.

b. The written request for reconsideration shall be delivered to the Director in person, by mail, or by facsimile on or before the payment due date or within 35 days of the invoice date, whichever is later.

8. ~~The division director's decision after the informal review shall become final within 30 days after receipt of the decision, unless the applicant requests in writing a hearing pursuant to R18-1-202. The Director shall make a final decision on the request for reconsideration of the bill and mail a final written decision to the person within 20 working days after the date the Director receives the written request.~~

9. No change

H. No change

I. No change

J. § 270.14, titled "Contents of Part B: General requirements," paragraph (b) is amended by adding the following:

[(23) Any additional information required by the DEQ to evaluate compliance with facility standards and informational requirements of R18-8-264, ~~R18-8-269~~ and R18-8-270.

(24)(i) A signed statement, submitted on a form supplied by the DEQ that demonstrates:

(A) An individual owner or operator has sufficient reliability, expertise, integrity and competence to operate a HWM facility, and has not been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the permit application; or

(B) In the case of a corporation or business entity, no officer, director, partner, key employee, other person, or business entity who holds 10% or more of the equity or debt liability has been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the permit application.

ii. Failure to comply with subsection (i), the requirements of A.R.S. § 49-922(C)(1), and the requirements of § 270.43 (~~as incorporated by R18-8-270~~) and §§ 124.3(d) and 124.5(a) (~~as incorporated by R18-8-271~~), may cause the Director to refuse to issue a permit to a TSD facility pursuant to A.R.S. § 49-922(C) as amended, including requirements in § 270.43 (~~as incorporated by R18-8-270~~) and §§ 124.3(d) and 124.5(a) (~~as incorporated by R18-8-271~~).]

- K.** § 270.30, titled “Conditions applicable to all permits” paragraph (l)(10) is amended as follows:
- (10) Other noncompliance. The permittee shall report all instances of noncompliance not reported under [§ 270.30(l)(4),(5), and (6) ~~(as incorporated by R18-8-270)~~] at the same time monitoring [(including annual)] reports are submitted. The reports shall contain the information listed in [§ 270.30(l)(6) ~~(as incorporated by R18-8-270)~~].
- L.** § 270.30, titled “Conditions applicable to all permits” paragraph ~~(L)~~ (l) is amended by adding the following:
- [All reports listed above ~~(as incorporated by R18-8-270)~~ shall be submitted to the Director in such a manner that the reports are received within the time periods required under this Article.]
- M.** No change
- N.** No change
- O.** No change
- P.** No change
- Q.** No change
- R.** No change
- S.** § 270.65, titled “Research, development, and demonstration permits,” is amended as follows:
- (a) The [Director] may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under part 264 or 266. ~~[(as incorporated by R18-8-264 and R18-8-266).]~~ [A research, development, and demonstration] permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits:
- (1) Shall provide for the construction of such facilities as necessary, and for operation of the facility for not longer than one year unless renewed as provided in paragraph (d) of this section, and
  - (2) Shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the [Director] deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment, and
  - (3) Shall include such requirements as the [Director] deems necessary to protect human health and the environment [, including requirements regarding monitoring, operation, financial responsibility, closure, and remedial action, and such requirements as the Director] deems necessary regarding testing and providing of information [relevant] to the [Director] with respect to the operation of the facility.
- (b) For the purpose of expediting review and issuance of permits under this section, the [Director] may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements [, or add conditions to the permit in accordance with the permitting procedures set forth in R18-8-270 and R18-8-271,] except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures regarding public participation.
- (c) The [Director] may order an immediate termination of all operations at the facility at any time [the Director] determines that termination is necessary to protect human health and the environment.

- (d) Any permit issued under this section may be renewed not more than three times. Each such renewal shall be for a period of not more than one year.
- T. § 270.110, titled “What must I include in my application for a RAP?,” is amended by adding paragraphs (j) and (k) as follows:
- [(j) A signed statement, submitted on a form supplied by DEQ that demonstrates:
- (1) An individual owner or operator has sufficient reliability, expertise, integrity and competence to operate a HWM facility, and has not been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the RAP application.
  - (2) In the case of a corporation or business entity, no officer, director, partner, key employee, other person or business entity who holds 10% or more of the equity or debt liability has been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the RAP application.
- (k) Failure to comply with subsection (j), the requirements of A.R.S. § 49-922(C)(1), and the requirements of § 270.43 (~~as incorporated by R18-8-270~~) and §§ 124.3(d) and 124.5(a) (~~as incorporated by R18-8-271~~), may cause the Director to refuse to issue a permit to a TSD facility pursuant to A.R.S. § 49-922(C) as amended, including requirements in § 270.43 (~~as incorporated by R18-8-270~~) and §§ 124.3(d) and 124.5(a) (~~as incorporated by R18-8-271~~).]
- U. § 270.155 titled “May the decision to approve or deny my RAP application be administratively appealed?,” paragraph (a), is amended as follows:
- (a) Any commenter on the draft RAP or notice of intent to deny, or any participant in any public hearing(s) on the draft RAP, may appeal the Director’s decision to approve or deny your RAP application [under Title 41, Chapter 6, Article 10, Arizona Revised Statutes.] Any person who did not file comments, or did not participate in any public hearing(s) on the draft RAP, may petition for administrative review only to the extent of the changes from the draft to the final RAP decision. Appeals of RAPs may be made to the same extent as for final permit decisions under § 124.15 of this chapter [~~as incorporated by R18-8-271~~] (or a decision under § 270.29 [~~as incorporated by R18-8-270~~]) to deny a permit for the active life of a RCRA hazardous waste management facility or unit.)

**R18-8-271. Procedures for Permit Administration**

- A. All of 40 CFR 124, revised as of July 1, 2013 ~~2018~~, (and no future editions), with the exception of §§ 124.1 (b) through (e), 124.2, 124.4, 124.16, 124.20, 124.21, and subparts C, D, and G, and with the exception of the revisions for standardized permits as published at 70 FR 53419, is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 124 are available at [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html) <https://www.eCFR.gov>. Copies of the Federal Register are available at <https://www.federalregister.gov>.
- B. § 124.1, titled “Purpose and scope,” paragraph (a) is replaced by the following:
- [This Section contains the DEQ procedures for issuing, modifying, revoking and reissuing, or terminating all hazardous waste management facility permits. This Section describes the procedures the DEQ shall follow in reviewing permit applications, preparing draft permits, issuing public notice, inviting public comment, and holding public hearings on draft permits. This Section also includes procedures for assembling an administrative record, responding to comments, issuing a final permit decision, and allowing for administrative appeal of the

final permit decision. The procedures of this Section also apply to denial of a permit for the active life of a RCRA HWM facility or unit under § 270.29 ~~(as incorporated by R18-8-270(A)).~~]

C. § 124.3, titled “Application for a permit,” is replaced by the following:

[(a)(1) Any person who requires a permit under this Article shall complete, sign, and submit to the Director an application for each permit required under § 270.1 ~~(as incorporated by R18-8-270)~~. Applications are not required for RCRA permits-by-rule in § 270.60 ~~(as incorporated by R18-8-270)~~.

(2) The Director shall not begin processing a permit until the applicant has fully complied with the application requirements for that permit. (Refer to §§ 270.10 and 270.13 ~~as incorporated by R18-8-270~~).

(3) An applicant for a permit shall comply with the signature and certification requirements of § 270.11 ~~as incorporated by R18-8-270~~.

(b) Reserved.

(c) The Director shall review for completeness every application for a permit. Each application submitted by a new HWM facility shall be reviewed for completeness by the Director in the order of priority on the basis of hazardous waste capacity established in a list by the Director. The Director shall make the list available upon request. Upon completing the review, the Director shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Director shall list the information necessary to make the application complete. When the application is for an existing HWM facility, the Director shall specify in the notice of deficiency a date for submitting the necessary information. The Director shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Director may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material. Requests for additional information do not render an application incomplete.

(d) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and the Director may take appropriate enforcement actions against an existing HWM facility pursuant to A.R.S. §§ 49-923, 49-924 and 49-925.

(e) If the Director decides that a site visit is necessary for any reason in conjunction with the processing of an application, the Director shall notify the applicant and schedule a date for a site visit.

(f) The effective date of an application is the date on which the Director notifies the applicant that the application is complete as provided in paragraph (c) of this subsection.

(g) For each application from a new HWM facility, the Director shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule shall specify target dates by which the Director intends to do the following:

(1) Prepare a draft permit or Notice of Intent to Deny;

(2) Give public notice;

(3) Complete the public comment period, including any public hearing;

(4) Make a decision to issue or deny a final permit; and

(5) Issue a final decision.

D. § 124.5, titled “Modification, revocation and reissuance, or termination of permits,” is replaced by the following:

- [(a) Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Director's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in §§ 270.41 or 270.43 (~~as incorporated by R18-8-270~~). All requests shall be in writing and shall contain facts or reasons supporting the request.
  - (b) If the Director decides the request is not justified, the Director shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings.
  - (c) Modification, revocation or reissuance of permits procedures.
    - (1) If the Director tentatively decides to modify or revoke and reissue a permit under §§ 270.41 or 270.42(c) (~~as incorporated by R18-8-270~~), the Director shall prepare a draft permit under § 124.6 (~~as incorporated by R18-8-271(E)~~), incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Director shall require the submission of a new application.
    - (2) In a permit modification under this [subsection], only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. The permit modification shall have the same expiration date as the unmodified permit. When a permit is revoked and reissued under this subsection, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.
    - (3) "Classes 1 and 2 modifications" as defined in § 270.42 (~~as incorporated by R18-8-270~~) are not subject to the requirements of this subsection.
  - (d) If the Director tentatively decides to terminate a permit under § 270.43 (~~as incorporated by R18-8-270~~), the Director shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under § 124.6 (~~as incorporated by R18-8-271(E)~~). In the case of permits that are processed or issued jointly by both the DEQ and the EPA, a notice of intent to terminate shall not be issued if the Regional Administrator and the permittee agree to termination in the course of transferring permit responsibilities from the EPA to the state.
  - (e) The Director shall base all draft permits, including notices of intent to terminate, prepared under this subsection on the administrative record as defined in § 124.9 (~~as incorporated by R18-8-271(H)~~).]
- E. § 124.6, titled "Draft permits," is replaced by the following:
- (a) Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application.
  - (b) If the Director tentatively decides to deny the permit application, the Director shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under (e) of this subsection.
  - (c) Reserved.

- (d) If the Director decides to prepare a draft permit, the Director shall prepare a draft permit that contains the following information:
  - (1) All conditions under §§ 270.30 and 270.32 ~~(as incorporated by R18-8-270)~~, unless not required under 40 CFR 264 and 265 ~~(as incorporated by R18-8-264 and R18-8-265)~~;
  - (2) All compliance schedules under § 270.33 ~~(as incorporated by R18-8-270)~~;
  - (3) All monitoring requirements under § 270.31 ~~(as incorporated by R18-8-270)~~; and
  - (4) Standards for treatment, storage, and/or disposal and other permit conditions under § 270.30 ~~(as incorporated by R18-8-270)~~.
- (e) All draft permits prepared by the DEQ under this subsection shall be accompanied by a statement of basis (§ 124.7, ~~as incorporated by R18-8-271(F)~~) or fact sheet (§ 124.8, ~~as incorporated by R18-8-271(G)~~), and shall be based on the administrative record (§ 124.9, ~~as incorporated by R18-8-271(H)~~), publicly noticed (§ 124.10, ~~as incorporated by R18-8-271(I)~~) and made available for public comment (§ 124.11, ~~as incorporated by R18-8-271(J)~~). The Director shall give notice of opportunity for a public hearing (§ 124.12, ~~as incorporated by R18-8-271(K)~~), issue a final decision (§ 124.15, ~~as incorporated by R18-8-271(N)~~) and respond to comments (§ 124.17, ~~as incorporated by R18-8-271(O)~~).

F. § 124.7, titled “Statement of basis,” is replaced by the following:

The DEQ shall prepare a statement of basis for every draft permit for which a fact sheet under § 124.8, ~~(as incorporated by R18-8-271(G))~~, is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

G. § 124.8, titled “Fact sheet,” is replaced by the following:

- (a) The DEQ shall prepare a fact sheet for every draft permit for a new HWM facility, and for every draft permit that the Director finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person.
- (b) The fact sheet shall include, when applicable:
  - (1) A brief description of the type of facility or activity that is the subject of the draft permit;
  - (2) The type and quantity of wastes, that are proposed to be or are being treated, stored, or disposed;
  - (3) Reserved.
  - (4) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by § 124.9, ~~(as incorporated by R18-8-271(H))~~;
  - (5) Reasons why any requested variances or alternatives to required standards do or do not appear justified;
  - (6) A description of the procedures for reaching a final decision on the draft permit including:
    - (i) The beginning and ending dates of the comment period under §§ 124.10 ~~(as incorporated by R18-8-271(I))~~ and the address where comments will be received;
    - (ii) Procedures for requesting a hearing and the nature of that hearing; and
    - (iii) Any other procedures by which the public may participate in the final decision; and

- (7) Name and telephone number of a person to contact for additional information.
- (8) Reserved.

**H.** § 124.9 titled “Administrative record for draft permits” is replaced by the following:

- (a) The provisions of a draft permit prepared under § 124.6 (~~as incorporated by R18-8-271(E)~~) shall be based on the administrative record defined in this subsection.
- (b) For preparing a draft permit under § 124.6 (~~as incorporated by R18-8-271(E)~~), the record consists of:
  - (1) The application, if required, and any supporting data furnished by the applicant, subject to paragraph (e) of this subsection;
  - (2) The draft permit or notice of intent to deny the application or to terminate the permit;
  - (3) The statement of basis under §§ 124.7 (~~as incorporated by R18-8-271(F)~~) or fact sheet under § 124.8 (~~as incorporated by R18-8-271(G)~~);
  - (4) All documents cited in the statement of basis or fact sheet; and
  - (5) Other documents contained in the supporting file for the draft permit.
  - (6) Reserved.
- (c) Material readily available at the DEQ or published material that is generally available, and that is included in the administrative record under paragraphs (b) and (c) of this subsection, need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the fact sheet.
- (d) This subsection applies to all draft permits when public notice was given after the effective date of these rules.
- (e) All items deemed confidential pursuant to A.R.S. § 49-928 shall be maintained separately and not disclosed to the public.

**I.** § 124.10, titled “Public notice of permit actions and public comment period,” is replaced by the following:

- (a) Scope.
  - (1) The Director shall give public notice that the following actions have occurred:
    - (i) A permit application has been tentatively denied under § 124.6(b) (~~as incorporated by R18-8-271(E)~~);
    - (ii) A draft permit has been prepared under § 124.6(d) (~~as incorporated by R18-8-271(E)~~); and
    - (iii) A hearing has been scheduled under § 124.12 (~~as incorporated by R18-8-271(K)~~).
  - (2) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under § 124.5(b) (~~as incorporated by R18-8-271(D)~~). Written notice of that denial shall be given to the requester and to the permittee.
  - (3) Public notices may describe more than one permit or permit actions.
- (b) Timing.
  - (1) Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under paragraph (a) of this subsection shall allow at least 45 days for public comment.
  - (2) Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

- (c) Methods. Public notice of activities described in paragraph (a)(1) of this subsection shall be given by the following methods:
- (1) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this subparagraph may waive his or her rights to receive notice for any classes and categories of permits):
    - (i) An applicant;
    - (ii) Any other agency which the Director knows has issued or is required to issue a HWM facility permit or any other federal environmental permit for the same facility or activity;
    - (iii) Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected states (Indian Tribes). For purposes of this paragraph, and in the context of the Underground Injection Control Program only, the term State includes Indian Tribes treated as States;
    - (iv) Reserved.
    - (v) Reserved.
    - (vi) Reserved.
    - (vii) Reserved.
    - (viii) ~~For Class I injection well UIC permits only, state and local oil and gas regulatory agencies and state agencies regulating mineral exploration and recovery;~~ Reserved.
    - (ix) Persons on a mailing list developed by:
      - (A) Including those who request in writing to be on the list;
      - (B) Soliciting persons for “area lists” from participants in past permit proceedings in that area; and
      - (C) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state-funded newsletters, environmental bulletins, or state law journals. (The Director may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Director may delete from the list the name of any person who fails to respond to the request.); and
    - (x) (A) To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and
      - (B) To each state agency having any authority under state law with respect to the construction or operation of the facility;
  - (2) By newspaper publication and radio announcement broadcast, as follows:
    - (i) Reserved.
    - (ii) For all permits, publication of a notice in a daily or weekly major local newspaper of general circulation within the area affected by the facility or activity, at least once, and in accordance with the provisions of paragraph (b) of this subsection; and
    - (iii) For all permits, a radio announcement broadcast over two local radio stations serving the affected area at least once during the period two weeks prior to the public hearing. The announcement shall contain:
      - (A) A brief description of the nature and purpose of the hearing;
      - (B) The information described in items (i), (ii), (iii), (iv), and (vii) of subparagraph (d)(1) of this subsection;

- (C) The date, time, and place of the hearing; and
  - (D) Any additional information considered necessary or proper; or
- (3) Reserved.
- (4) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.
- (d) (1) Each public notice issued under this Article shall contain the following minimum information:
- (i) Name and address of the office processing the permit action for which notice is being given;
  - (ii) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by such permit;
  - (iii) A brief description of the business conducted at the facility or activity described in the permit application;
  - (iv) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the statement of basis or fact sheet;
  - (v) A brief description of the comment procedures required by §§ 124.11 ~~(as incorporated by R18-8-271(J))~~ and 124.12 ~~(as incorporated by R18-8-271(K))~~ and the time and place of any hearing that shall be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;
  - (vi) The location of the administrative record required by § 124.9 ~~(as incorporated by R18-8-271(H))~~, the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant (except for confidential information pursuant to A.R.S. § 49-928) is available as part of the administrative record;
  - (vii) The locations where a copy of the application and the draft permit may be inspected and the times at which these documents are available for public review; and
  - (viii) Reserved.
  - (ix) Any additional information considered necessary or proper.
- (2) Public notices for hearings. In addition to the general public notice described in paragraph (d)(1) of this subsection, the public notice of a hearing under § 124.12 ~~(as incorporated by R18-8-271(K))~~ shall contain the following information:
- (i) Reference to the date of previous public notices relating to the permit;
  - (ii) Date, time, and place of the hearing; and
  - (iii) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.
  - (iv) Reserved.
- (e) In addition to the general public notice described in paragraph (d)(1) of this subsection, all persons identified in paragraphs (c)(1)(i), (ii), and (iii) of this subsection shall be mailed a copy of the fact sheet or statement of basis, the permit application (if any), and the draft permit (if any).

**J.** § 124.11, titled “Public comments and requests for public hearings,” is replaced by the following:

During the public comment period provided under § 124.10 (~~as incorporated by R18-8-271(I)~~), any person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in § 124.17 (~~as incorporated by R18-8-271(O)~~).

**K.** § 124.12, titled “Public hearings,” is replaced by the following:

[(a)(1) The Director shall hold a public hearing whenever the Director finds, on the basis of requests, a significant degree of public interest in a draft permit.

(2) The Director may also hold a public hearing at the Director’s discretion whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

(3) The Director shall hold a public hearing whenever written notice of opposition to a draft permit and a request for a hearing has been received within 45 days of public notice under § 124.10(b)(1) (~~as incorporated by R18-8-271(I)~~). Whenever possible the Director shall schedule a hearing under this subsection at a location convenient to the nearest population center to the proposed facility.

(4) Public notice of the hearing shall be given as specified in § 124.10 (~~as incorporated by R18-8-271(I)~~).

(b) Reserved.

(c) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under § 124.10 (~~as incorporated by R18-8-271(I)~~) shall automatically be extended to the close of any public hearing under this subsection. The hearing officer may also extend the comment period by so stating at the hearing.

(d) A tape recording or written transcript of the hearing shall be made available to the public.

(e) Reserved.]

**L.** § 124.13, titled “Obligation to raise issues and provide information during the public comment period,” is replaced by the following:

[All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director’s tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public hearing) under § 124.10, (~~as incorporated by R18-8-271(I)~~). Any supporting materials that a commenter submits shall be included in full and shall not be incorporated by reference, unless they are already part of the administrative record in the same proceeding or consist of state or federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials. Commenters shall make supporting material not already included in the administrative record available to the DEQ as directed by the Director.]

**M.** § 124.14, titled “Reopening of the public comment period,” is replaced by the following:

(a) (1) The Director may order the public comment period reopened if the procedures of this paragraph could expedite the decision-making process. When the public comment period is reopened under this paragraph, all persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director’s tentative decision to deny an

application, terminate a permit, or prepare a draft permit is inappropriate, must submit all reasonably available factual grounds supporting their position, including all supporting material, by a date, not less than 60 days after public notice under paragraph (a)(2) of this subsection, set by the Director. Thereafter, any person may file a written response to the material filed by any other person, by a date, not less than 20 days after the date set for filing of the material, set by the Director.

- (2) Public notice of any comment period under this paragraph shall identify the issues to which the requirements of § 124.14(a) ~~(as incorporated by R18-8-271(M))~~ apply.
  - (3) On the Director's own motion or on the request of any person, the Director may direct that the requirements of paragraph (a)(1) of this subsection shall apply during the initial comment period where it reasonably appears that issuance of the permit will be contested and that applying the requirements of paragraph (a)(1) of this subsection will substantially expedite the decision-making process. The notice of the draft permit shall state whenever this has been done.
  - (4) A comment period of longer than 60 days will often be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this subsection. Commenters may request longer comment periods and they shall be granted under § 124.10 ~~(as incorporated by R18-8-271(I))~~ to the extent they appear necessary.
- (b) If any data, information, or arguments submitted during the public comment period, including information or arguments required under § 124.13 ~~(as incorporated by R18-8-271(L))~~, appear to raise substantial new questions concerning a permit, the Director may take one or more of the following actions:
- (1) Prepare a new draft permit, appropriately modified, under §§ 124.6 ~~(as incorporated by R18-8-271(E))~~;
  - (2) Prepare a revised statement of basis under § 124.7 ~~(as incorporated by R18-8-271(F))~~, a fact sheet or revised fact sheet under this § 124.8 ~~(as incorporated by R18-8-271(G))~~, and reopen the comment period under this subsection; or,
  - (3) Reopen or extend the comment period under § 124.10 ~~(as incorporated by R18-8-271(I))~~ to give interested persons an opportunity to comment on the information or arguments submitted.
- (c) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under § 124.10 ~~(as incorporated by R18-8-271(I))~~ shall define the scope of the reopening.
- (d) Reserved.
- (e) Public notice of any of the above actions shall be issued under §§ 124.10 ~~(as incorporated by R18-8-271(I))~~.
- N. § 124.15, titled "Issuance and effective date of permit," is replaced by the following:
- (a) After the close of the public comment period under § 124.10 ~~(as incorporated by R18-8-271(I))~~ on a draft permit, the Director shall issue a final permit decision or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29 ~~(as incorporated by R18-8-270(A))~~. The Director shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a permit or a decision to terminate a permit. For purposes of this subsection, a final permit

decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

- (b) A final permit decision or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29 (~~as incorporated by R18-8-270(A)~~) becomes effective on the date specified by the Director in the final permit notice.
  - (1) Reserved.
  - (2) Reserved.
  - (3) Reserved.

O. § 124.17, titled “Response to comments,” is replaced by the following:

- (a) At the time that any final decision to issue a permit is made under § 124.15 (~~as incorporated by R18-8-271(N)~~), the Director shall issue a response to comments. This response shall:
  - (1) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
  - (2) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.
- (b) Any documents cited in the response to comments shall be included in the administrative record for the final permit decision as defined in § 124.18 (~~as incorporated by R18-8-271(P)~~). If new points are raised or new material supplied during the public comment period, the DEQ may document its response to those matters by adding new materials to the administrative record.
- (c) The response to comments shall be available to the public.

P. § 124.18, titled “Administrative record for final permit” is replaced by the following:

- (a) The Director shall base final permit decisions under § 124.15 (~~as incorporated by R18-8-271(N)~~) on the administrative record defined in this subsection.
- (b) The administrative record for any final permit shall consist of the administrative record for the draft permit, and:
  - (1) All comments received during the public comment period provided under § 124.10 (~~as incorporated by R18-8-271(I)~~), including any extension or reopening under § 124.14, (~~as incorporated by R18-8-271(M)~~);
  - (2) The tape or transcript of any hearing(s) held under § 124.12 (~~as incorporated by R18-8-271(K)~~);
  - (3) Any written materials submitted at such a hearing;
  - (4) The response to comments required by § 124.17 (~~as incorporated by R18-8-271(O)~~) and any new material placed in the record under that subsection;
  - (5) Reserved.
  - (6) Other documents contained in the supporting file for the permit; and
  - (7) The final permit.
- (c) The additional documents required under (b) of this subsection shall be added to the record as soon as possible after their receipt or publication by the DEQ. The record shall be complete on the date the final permit is issued.
- (d) This subsection applies to all final permits when the draft permit was subject to the administrative record requirement of § 124.9 (~~as incorporated by R18-8-271(H)~~).
- (e) Material readily available at the DEQ, or published materials which are generally available and which are included in the administrative record under the standards of this subsection or

of § 124.17 (~~as incorporated by R18-8-271(O)~~), (“Response to comments”), need not be physically included in the same file as the rest of the record as long as the materials and their location are specifically identified in the statement of basis or fact sheet or in the response to comments.

- Q.** § 124.19, titled “Appeal of RCRA, UIC, and PSD permits,” is replaced by the following:  
A final permit decision (or a decision under § 270.29 (~~as incorporated by R18-8-270(A)~~) to deny a permit for the active life of a RCRA hazardous waste management facility or unit issued under § 124.15 (~~as incorporated by R18-8-271(N)~~) is an appealable agency action as defined in A.R.S. § 41-1092 and is subject to appeal under A.R.S. Title 41, Ch. 6, Art. 10.
- R.** No change  
**S.** No change  
**T.** No change

### **R18-8-273. Standards for Universal Waste Management**

- A.** All of 40 CFR 273, revised as of July 1, ~~2013~~ 2018 (and no future editions), is incorporated by reference and on file with the DEQ. Copies of 40 CFR 273 are available at ~~www.gpoaccess.gov/cfr/index.html~~ <https://www.eCFR.gov>.
- B.** § 273.13, titled “Waste management”, paragraphs (c)(2)(iii) and (c)(2)(iv) are amended as follows:  
(iii)Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules from that containment device to a container that meets the requirements of [40 CFR 262.15 and 40 CFR 262.16;]  
(iv)Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of [40 CFR 262.15 and 40 CFR 262.16;]
- C.** § 273.33, titled “Waste management”, paragraphs (c)(2)(iii) and (c)(2)(iv) are amended as follows:  
(iii)Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks [from] broken ampules from that containment device to a container that meets the requirements of [40 CFR 262.15 and 40 CFR 262.16;]  
(iv)Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of [40 CFR 262.15 and 40 CFR 262.16;]

### **R18-8-280. Compliance**

- A.** No change  
1. No change  
2. No change  
3. No change  
4. No change  
5. No change
- B.** No change  
**C.** No change

**D. No change**

1. No change

a. No change

b. No change

c. Visual observation of unauthorized disposal or discharges which cannot be verified pursuant to § 262.11 (~~as incorporated by R18-8-262~~), § 264.13 (~~as incorporated by R18-8-264~~), or § 265.13 (~~as incorporated by R18-8-265~~) as not containing a hazardous waste or hazardous waste constituents.

d. No change

2. No change

3. No change

4. No change

5. No change

**ECONOMIC IMPACT STATEMENT  
TITLE 18. ENVIRONMENTAL QUALITY  
CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY  
HAZARDOUS WASTE MANAGEMENT**

Identification of the rulemaking: 18 A.A.C. 8, Articles 1 and 2. This rulemaking impacts persons mainly in the areas of hazardous waste manifests and hazardous waste generator requirements. The impacts are primarily the result of 3 EPA regulations and one ADEQ deregulatory change. For further information, see Part 6 of the preamble.

Under A.R.S. § 49-922 and federal law, Arizona's Hazardous Waste Program is responsible for ensuring that all regulated hazardous waste in Arizona is stored, transported, and disposed of safely and properly. It is largely a preventative program to keep hazardous waste from entering the environment. The program maintains an inventory of hazardous waste generators, transporters and treatment, storage, and disposal (TSD) facilities in Arizona. Permits are issued, managed, and maintained for TSD facilities. This activity includes permit modifications, renewals, closure plans, and financial assurance reviews. Generators, transporters and TSD facilities are inspected periodically. Hazardous waste complaints are investigated. Compliance and hazardous waste generator data is collected and stored and hazardous waste is tracked from generation to disposal. Compliance assistance is provided, enforcement actions are pursued against significant violators, and oversight is provided for the remediation of contaminated sites.

ADEQ's Hazardous Waste Program regulates a universe of over 2700 active facilities, including metal platers, chemical manufacturers, laboratories, explosive and munition manufacturers, pesticide manufacturers, hazardous waste TSD facilities, and military installations. There are currently 13 permitted TSD facilities, 338 large quantity generators, 644 small quantity generators, 1372 very small quantity generators, and 314 transporters in Arizona. An unknown fraction of these are small businesses. ADEQ records show that over 40,000 tons of hazardous waste were generated in Arizona in 2017. Until June 30, 2018, ADEQ received and processed over 35,000 manifests tracking this waste annually. Under EPA's new e-Manifest system, which ADEQ has incorporated in this rulemaking, these manifests are no

longer sent to ADEQ, and ADEQ is not processing them. ADEQ now has access to these manifests through the e-Manifest system.

Impact of EPA regulations incorporated by reference. Overall, this final rule incorporated by reference eight separate federal regulations, spanning five years through July 1, 2018. ADEQ believes that three of the eight EPA rules will have the most economic impact in Arizona because they affect virtually the entire community of hazardous waste handlers: generators, transporters, and TSD facilities. These three rules are the Generator Improvements rule and the two e-Manifest rules. These rules impact the more than 2700 Arizona hazardous waste handlers. Although the potential impact is considerable due to the number of affected entities, ADEQ believes that the actual economic impact of these federal rules will be a mixture of minor positive and negative impacts, with a relatively low net impact.

With EPA's new e-Manifest rules, the most noticeable new impact is the new EPA fee for filing each manifest, whether using the e-Manifest or a paper manifest. Prior to June 30, 2018, when the EPA fees became effective nationwide, there was no manifest fee payable to either EPA or ADEQ for manifests filed. The new EPA fees are initially \$15 for a paper manifest and \$5 for an electronic manifest (the fees are for year 1, the fees can be adjusted later). For simplicity and other reasons, EPA determined that these fees would be paid by the hazardous waste "receiving facilities", otherwise known as TSD facilities. EPA assumed that these facilities could and would pass these fees through to their generator customers.

EPA's e-Manifest rules did not change who had to manifest hazardous waste shipments. The rules merely authorized the use of electronic manifests as equivalent to paper manifests and added the fees for each type of manifest a facility may choose to use. Generators of hazardous waste may either participate in the electronic manifest system through the involvement of the transporters or facilities that service their wastes, or, they will continue to use paper manifests. Likewise, transporters and TSD facilities may elect to continue to use paper manifests, although there could be competitive pressure on those small transporters or facilities that continue to supply paper manifests to their customers.

Through June 30, 2018, ADEQ received paper manifests at the rate of approximately 35,000 per year. Based on the most recent information, the Department believes that the majority of manifest filers are now using e-Manifest. If all 35,000 paper manifests were replaced by e-Manifests, there would be a hypothetical new cost distributed to Arizona 2700 hazardous waste handlers of \$175,000, or an average of about \$65 per entity per year. It is not clear that all entities were able to make the switch to the less costly e-Manifest on June 30<sup>th</sup>, but the cost differential provides some incentive for all but the smallest filers to do so reasonably soon. In addition, e-Manifests also save filers money because the e-Manifests can normally be processed more cheaply and efficiently, with no paper related costs such as purchase of the forms, filing and storage, and mailing to ADEQ. The fee revenue is paid to EPA to compensate for the costs of developing, operating and maintaining the e-Manifest system. An additional substantial positive impact of the e-Manifest system will be savings for ADEQ. ADEQ's tracking of hazardous waste activity previously included entering complete manifests into ADEQ's database, ARID (Arizona RCRA Information Database). ADEQ estimates that approximately 1750 hours per year of manifest processing labor has been eliminated by the e-Manifest system. ADEQ will still be able to track hazardous waste activity by accessing manifests through the EPA database.

EPA's Generator Improvements rule also affects Arizona's 2700+ hazardous waste handlers. The impacts of incorporating this rule are based on the content of the EPA regulation itself and a significant deregulatory change in reporting requirements that ADEQ has made in response. EPA prepared an economic impact statement assessing impacts of this rule nationally. ADEQ believes that the impacts in Arizona will be similar but proportionally smaller. EPA estimated the national costs to industry to comply with the more stringent provisions of the new rule at between \$5.9 and \$13.3 million. EPA also calculated the cost savings or benefits for facilities opting to take advantage of two voluntary programs created under the new rule as slightly higher than the costs (e.g., consolidation of very small quantity generator waste by large quantity generators under the same ownership, and generators who would not be required to change generator status as a result of an episodic event). ADEQ believes that in

Arizona the average per facility costs of the EPA regulation will be initially more than the average per facility cost savings, since the more stringent changes outnumber the less stringent changes, and since the more stringent changes had to be complied with on the effective date of the rule. Nevertheless, ADEQ believes that the net average per facility impact of the EPA regulation will be minimal.

In conjunction with the incorporation of EPA's Generator Improvements rule, ADEQ has eliminated the annual reporting requirement that has existed in Arizona rules since the beginning of the program in the 1980's. Only EPA's biennial reporting requirement remains. ADEQ believes that the improved recordkeeping and reporting infrastructure created by the Generator Improvements rule in combination with the e-Manifests rule will allow this relaxation in ADEQ rules without compromising program authorization. ADEQ notes that its three decades of experience in the hazardous waste area and the current full staffing of hazardous waste inspectors is also helpful in allowing this change. Generators and TSD facilities will experience significant savings through not having to create and process these reports to ADEQ. There will be moderate savings for ADEQ through not having to upload these reports to EPA's database.

In the proposed rule, ADEQ requested information from generators and TSD facilities regarding the savings they could expect through the switch from annual to biennial reports. ADEQ's preliminary estimate of the impact used a report preparation cost of \$1000. No information was received on the cost of these reports. Using this amount as an example, if the extra reports are eliminated for 200 facilities, reports would only have to be filed with EPA every other year. The estimated annual savings would be \$200,000 every other year, or an average of \$500 per facility per year.

Looking at the rest of the eight EPA rules incorporated by reference, ADEQ believes the following three EPA rules will have minimal direct impact in Arizona:

Imports and Exports of Hazardous Waste. This EPA rule harmonized EPA's export and import provisions with Organization for Economic Cooperation and Development (OECD) procedures, and enabled electronic submittals and electronic validation of consent for these

hazardous waste shipments. States are required to adopt these rules for consistency but have no role in implementing them. EPA estimated quantifiable national industry costs for this rule at less than \$2 million per year, but also listed certain benefits that could not be quantified, such as “increased efficiency and convenience of electronic submission, enhanced tracking of hazardous waste transportation recognized trader activities, increased regulatory efficiency, consistency with trade requirements for OECD countries, reduction of risks associated with the treatment and disposal of hazardous wastes, and improved ability to acquire information regarding exports and imports of hazardous waste.”

Disposal of Coal Combustion Residuals (CCR) from Electric Utilities: The 2015 EPA rule removed this waste from regulation as a hazardous waste in Part 261 and created new CCR solid waste regulations in Part 257. Incorporation of the hazardous waste rule portion of the rule in Part 261 by ADEQ was a necessary step in reducing potential hazardous waste costs by millions of dollars for affected facilities. The economic impacts of any ADEQ rulemaking related to the Part 257 regulations will be evaluated in a future ADEQ rulemaking in another Chapter of Title 18.

Revisions to the Export Provisions of the Cathode Ray Tube (CRT) Rule. ADEQ is not aware of any CRT exporters in Arizona. EPA estimated annual costs to CRT exporters and EPA for the reporting and recordkeeping requirements to be from \$9,777 to \$17,362 per year. Additionally, CRT exporters were estimated to incur a one-time cost of \$42,904 in the first year following promulgation of the rule to familiarize themselves with the new CRT rule requirements.

The following 2 rules are predicted to have little or no direct impact on Arizona businesses: CO<sub>2</sub> Geologic Sequestration. ADEQ is not aware of activities planned in Arizona in this area. Confidentiality Determinations for Hazardous Waste Export and Import Documents. ADEQ believes the economic impact of not allowing confidential business information claims for documents related to the export, import and transportation of hazardous waste and export of excluded CRTs is somewhat subjective, and case-specific. EPA observed that it has only

received 4 requests for these nationally, the earliest one going back to 1994, and noted that “there are no costs associated with this action”.

#### Impact of ADEQ Initiated Procedural changes

- In R18-8-260(M), ADEQ clarified that the small quantity generator fee provided for in A.R.S. § 49-931 will apply to those very small quantity generators (VSQGs) who become small quantity generators by reason of EPA’s new episodic event procedures. Arizona has an estimated 1372 VSQGs. For purposes of impact analysis, ADEQ estimates that 5% of these will have episodic events, and that in one half of these cases the VSQG will fail to meet conditions that would prevent it from being classified for the year as a SQG. Approximately 34 VSQGs would become SQGs and be subject to the rule’s language clarifying that they will be subject to the small quantity generator fee of \$67.50 per ton of hazardous waste generated. At an estimated average of 2 tons generated annually for each of the 34 generators, the extra impact will average \$135 per generator for a total of \$4590.
- At several other locations, ADEQ is requiring that certain submissions and registrations will be required to be submitted through ADEQ’s online portal, myDEQ. These changes are at R18-8-260(M), R18-8-262(G), R18-8-263(B), R18-8-264(D), and R18-8-265(D). This requirement is designed to save processing time for ADEQ personnel, but it is unknown whether there will be any economic impact for regulated entities. ADEQ requested hazardous waste handlers to review their procedures and submit any additional anticipated costs to ADEQ. No information was received on this issue.

Reduction of Impact on Small Businesses. A.R.S. § 41-1035 requires state agencies to reduce the impact of a rulemaking on small businesses, if legal and feasible in meeting the statutory objectives of the rule. As discussed previously, ADEQ rules have to be as stringent as EPA’s to be authorized to implement the hazardous waste program in Arizona. In addition, other than the elimination of the annual report to ADEQ that is already carried out by this rulemaking, ADEQ is not aware of any manifest or generator procedural requirements where

ADEQ is more stringent than EPA that could be relaxed for small businesses. Those more stringent procedural requirements have been eliminated in this rulemaking and the changes are beneficial for large and small businesses alike. For similar reasons, the Department has determined there are no less intrusive or less costly methods of achieving the purposes of the rule.

This rulemaking will have no effect on state revenues. No existing fees are increased or reduced and no new fees are established.

#### Cost/benefit analysis

In A.R.S. § 49-922(A), the legislature has given ADEQ twin directives regarding Arizona hazardous waste rules: 1) maintain program authorization by being consistent with and equivalent to the federal rules, including when changes to federal rules make them more stringent than the previous federal rules, and 2) Arizona hazardous waste rules should not conflict with or be more stringent than EPA in nonprocedural areas.

These directives express the general ongoing assumption of the legislature that the impacts of incorporating required federal rules will be less than the impact of not incorporating them and having EPA implement the hazardous waste program in Arizona. In the proposed rule, ADEQ provided a preliminary summary of the impacts on ADEQ and businesses of incorporating certain federal rules and making other changes as an aid to regulated entities and others in understanding the proposed rule revisions. ADEQ requested input on the accuracy of that summary. Information provided to ADEQ by regulated entities can help ADEQ make adjustments to the incorporated federal rules if such adjustments remain equivalent to and consistent with the federal program. No information or data was received and no adjustments were possible for this rulemaking.

The table below summarizes the impacts. Based on the table and the facts described in this rulemaking, ADEQ has concluded that the benefits of this rule are greater than the costs.

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/Increased Revenue
<b>A. State and Local Government Agencies</b>			
ADEQ	Direct effect of incorporating EPA rules: continued implementation of the state HW program by ADEQ. -----	--- Moderate ----	Significant
	Direct effect: not processing and uploading annual reports -----	-----	Moderate
	Indirect effect: EPA rules eliminate manifest processing -----	-----	Substantial
	Staff learning time for new requirements of Generator Improvements and e-Manifest rules -----	--- Moderate	
County agencies acting as regulatory authorities and other government agencies (Pima County)	None	NA	NA
<b>B. Privately Owned Businesses</b>			
Hazardous waste generators, such as metal platers, chemical manufacturers, laboratories, explosive and munition manufacturers, pesticide manufacturers, hazardous waste TSD facilities, and military installations	Direct effects: both more stringent and less stringent requirements due to Generator Improvements rule	Minimal per site	Minimal per site
	Direct: ADEQ elimination of annual reports -----	-----	Moderate per site
	Indirect: EPA imposed fees on e-Manifests-----	Minimal per site	
	Increased efficiency in preparing and filing manifests -----	-----	Minimal per site
<b>C. Consumers</b>			
No direct effects	None	NA	NA
Minimal	Moderate	Substantial	Significant
\$1,000 or less	\$1,000 to \$10,000	\$10,001 or more	Cost/Burden cannot be calculated, but the Department

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

**TITLE 18. Environmental Quality**

**Chapter 08. Department of Environmental Quality - Hazardous Waste Management**

Sections, Parts, Exhibits, Tables or Appendices modified  
R18-8-269

REMOVE Supp. 16-3  
Pages: 1 - 30

REPLACE with Supp. 17-4  
Pages: 1 - 30

*The Council can answer questions about EXPIRED rules in this Chapter:*

Name: Governor's Regulatory Review Council  
Address: 100 N 15th Ave #305  
Phoenix, AZ 85007  
Phone: (602) 542-2058

*Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.*

**PUBLISHER**  
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## 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  
December 31, 2017

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### **RULES**

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

### **THE ADMINISTRATIVE CODE**

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

### **ADMINISTRATIVE CODE SUPPLEMENTS**

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

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

For example, the first supplement for the first quarter of 2017 is cited as Supp. 17-1.

### **HOW TO USE THE CODE**

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

### **ARTICLES AND SECTIONS**

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

### **HISTORICAL NOTES AND EFFECTIVE DATES**

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

### **ARIZONA REVISED STATUTE REFERENCES**

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

### **SESSION LAW REFERENCES**

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### **EXEMPTIONS FROM THE APA**

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

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

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

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

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

### **EXEMPTIONS AND PAPER COLOR**

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

### **PERSONAL USE/COMMERCIAL USE**

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

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

Editor's Note: Article 1 was exempt from the regular rulemaking process (Laws 1995, Ch. 232 § 5). However the Department was required to provide a notice of hearing and public hearing before adoption of this rule. The emergency rules were approved by the Attorney General. (Supp. 96-1). Editor's Note added to clarify exemptions of emergency adoption (Supp. 97-1). The Article was adopted permanently effective December 4, 1997 (Supp. 97-4).

ARTICLE 1. REMEDIAL ACTION REQUIREMENTS

Article 1, consisting of R18-8-101, adopted permanently through the regular rulemaking process, effective December 4, 1997 (Supp. 97-4).

Article 1, consisting of R18-8-101, adopted by emergency action effective March 22, 1996, pursuant to A.R.S. § 41-1026; in effect until permanent rules are adopted pursuant to Laws 1995, Chapter 232 § 5 (Supp. 96-1).

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ARTICLE 2. HAZARDOUS WASTES

Article 2 consisting of Section R18-8-273 adopted effective June 13, 1996 (Supp. 96-2).

Article 2 consisting of Sections R9-8-1860 through R9-8-1866, R9-8-1869 through R9-8-1871, and R9-8-1880 amended and renumbered as Article 2, Sections R18-8-260 through R18-8-266, R18-8-269 through R18-8-271, and R18-8-280 (Supp. 87-2).

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ARTICLE 3. RECODIFIED

Title 18, Chapter 8, Article 3, consisting of Sections R18-8-301 through R18-8-305, R18-8-307, Table A, Exhibit 1, and Appendices A and B, recodified to Title 18, Chapter 13, Article 13, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Article 3, consisting of Sections R18-8-301 through R18-8-305, adopted effective August 16, 1993 (Supp. 93-3).

Article 3, consisting of Section R18-8-306, adopted again by emergency action effective May 26, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-2).

Article 3, consisting of Section R18-8-306, adopted by emergency action effective February 22, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency expired.

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Title 18, Chapter 8, Article 4, consisting of Section R18-8-402, recodified to Title 18, Chapter 13, Article 9, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Article 17 consisting of Sections R9-8-1711 and R9-8-1717 renumbered as Article 4, Sections R18-8-401 and R18-8-402 (Supp. 87-3).

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ARTICLE 5. RECODIFIED

Title 18, Chapter 8, Article 5, consisting of Sections R18-8-502 through R18-8-512, recodified to Title 18, Chapter 13, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Article 4 consisting of Sections R9-8-411 through R9-8-416, R9-8-421, R9-8-426 through R9-8-428, and R9-8-431 through R9-8-433 renumbered as Article 5, Sections R18-8-501 through R18-8-513 (Supp. 87-3).

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**ARTICLE 6. RECODIFIED**

Existing Sections in Article 6 recodified to 18 A.A.C. 13, Article 11 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

Article 12 consisting of Sections R9-8-1211 through R9-8-1216, R9-8-1221 through R9-8-1225, R9-8-1231 through R9-8-1236, and R9-8-1241 through R9-8-1244 renumbered as Article 6, Sections R18-8-601 through R18-8-621 (Supp. 87-3).

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**ARTICLE 7. RECODIFIED**

18 A.A.C. 8, Article 7, consisting of Sections R18-8-701 through R18-8-710, recodified to Title 18, Chapter 13, Article 12, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Article 7, consisting of Sections R18-8-701 through R18-8-708, adopted permanently with changes effective July 6, 1993 (Supp. 93-3).

Article 7, consisting of Sections R18-8-709 and R18-8-710, adopted again by emergency action effective May 6, 1993, pursuant

to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-2). Emergency expired.

Article 7, consisting of Sections R18-8-709 and R18-8-710, adopted by emergency action effective February 5, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1).

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**ARTICLE 16. RECODIFIED**

Article 16, consisting of Sections R18-8-1601 through R18-8-1614, recodified to 18 A.A.C. 13, Article 16 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

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 R18-8-1608. Recodified .....30  
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 R18-8-1610. Recodified .....30  
 R18-8-1611. Recodified .....30  
 R18-8-1612. Recodified .....30  
 R18-8-1613. Recodified .....30  
 R18-8-1614. Recodified .....30

**ARTICLE 1. REMEDIAL ACTION REQUIREMENTS****R18-8-101. Remedial Action Requirements; Level and Extent of Cleanup**

- A. This Article is applicable to Chapter 8 of this Title.
- B. In any instance where soil remediation is done under this Chapter, it shall be conducted in accordance with A.A.C. R18-7-201 through R18-7-209.

**Historical Note**

Emergency rule adopted effective March 22, 1996, pursuant to A.R.S. §§ 49-152 and 41-1026; in effect until permanent rules are adopted (Supp. 96-1). Historical note revised to clarify exemptions of emergency adoption (Supp. 97-1 & Supp. 97-3). Adopted permanently through the regular rulemaking process, effective December 4, 1997 (Supp. 97-4).

**ARTICLE 2. HAZARDOUS WASTES****R18-8-201. Expired****Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 846, effective July 1, 2010 (Supp. 10-2). Section expired pursuant to A.R.S. § 41-1056(J), at 22 A.A.R. 2983, effective September 15, 2016 (Supp. 16-2).

**R18-8-202. Reserved**

through

**R18-8-259. Reserved****R18-8-260. Hazardous Waste Management System: General**

- A. Federal regulations cited in this Article are those revised as of July 1, 2013 (and no future editions), unless otherwise noted. 40 CFR 124, 260 through 266, 268, 270 and 273 or portions of these regulations, are incorporated by reference, as noted in the text. Federal statutes and regulations that are cited within 40 CFR 124, 260 through 270, and 273 that are not incorporated by reference may be used as guidance in interpreting federal regulatory language. d as guidance in interpreting federal regulatory language.
- B. Any reference or citation to 40 CFR 124, 260 through 266, 268, 270, and 273, or portions of these regulations, appearing in the body of this Article and regulations incorporated by reference, includes any modification to the CFR section made by this Article. When federal regulatory language that has been incorporated by reference has been amended, brackets [ ] enclose the new language. The subsection labeling in this Article may or may not conform to the Secretary of State's formatting requirements, because the formatting reflects the structure of the incorporated federal regulations.
- C. All of 40 CFR 260 and the accompanying appendix, revised as of January 31, 2014 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the Department of Environmental Quality (DEQ) with the exception of the following:
1. 40 CFR 260.1(b)(4) through (6), 260.20(a), 260.21, 260.22, 260.30, 260.31, 260.32, and 260.33;
  2. The revisions for standardized permits as published at 70 FR 53419;
  3. The revisions to the solid waste definition as published at 73 FR 64668;
  4. The revisions for the gasification rule as published at 73 FR 57. Copies of 40 CFR 260 are available at [www.gpo-access.gov/cfr/index.html](http://www.gpo-access.gov/cfr/index.html).
- D. § 260.2, titled "Availability of information; confidentiality of information" is amended by the following:
1. § 260.2(a). Any information provided to [the DEQ] under [R18-8-260 et seq. shall] be made available to the public to the extent and in the manner authorized by the [Hazardous Waste Management Act (HWMA), A.R.S. § 49-921 et seq.; the Open Meeting Law, A.R.S. § 38-431 et seq.; the Public Records Statute, A.R.S. § 39-121 et seq.; the Administrative Procedure Act, A.R.S. § 41-1001 et seq.; and rules promulgated pursuant to the above-referenced statutes], as applicable.
  2. § 260.2(b) is replaced with the following:
    - a. The DEQ shall make a record or other information, such as a document, a writing, a photograph, a drawing, sound or a magnetic recording, furnished to or obtained by the DEQ pursuant to the HWMA and regulations promulgated thereunder, available to the public to the extent authorized by the Public Records Statute, A.R.S. §§ 39-121 et seq.; the Administrative Procedure Act, A.R.S. §§ 41-1001 et seq.; and the HWMA, A.R.S. §§ 49-921 et seq. Specifically, the DEQ shall disclose the records or other information to the public unless:
      - i. A statutory exemption authorizes the withholding of the information; or
      - ii. The record or other information contains a trade secret concerning processes, operations, style of work, or apparatus of a person, or other information that the Director determines is likely to cause substantial harm to the person's competitive position.
    - b. Notwithstanding subsection (a):
      - i. The DEQ shall make records and other information available to the EPA upon request without restriction;
      - ii. As required by the HWMA and regulations promulgated thereunder the DEQ shall disclose the name and address of a person who applies for, or receives, a HWM facility permit;
      - iii. The DEQ and any other appropriate governmental agency may publish quantitative and qualitative statistics pertaining to the generation, transportation, treatment, storage, or disposal of hazardous waste; and
      - iv. An owner or operator may expressly agree to the publication or to the public availability of records or other information.
    - c. A person submitting records or other information to the DEQ may claim that the information contains a confidential trade secret or other information likely to cause substantial harm to the person's competitive position. In the absence of such claim, the DEQ shall make the information available to the public on request without further notice. A person making a claim of confidentiality shall assert the claim:
      - i. At the time the information is submitted to, or otherwise obtained by, the DEQ;
      - ii. By either stamping or clearly marking the words "confidential trade secret" or "confidential information" on each page of the material containing the information. The person may assert the claim only for those portions or pages that actually contain a confidential trade secret or confidential information; and
      - iii. During the course of a DEQ inspection, or other observation, pursuant to the administration of the HWMA Program, by clearly indicating to the inspector which specific processes,

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- operations, styles of work, or apparatus constitute a trade secret. The inspector shall record the claim on the inspection report and the claimant shall sign the report.
- d. The Director shall provide the claimant with an opportunity to submit written comments to demonstrate that the information constitutes a legitimate confidential trade secret or confidential information. The comments shall be limited to confidential use by the DEQ pursuant to A.R.S. § 49-928. Pertinent factors to be considered by the Director for making a determination of confidentiality, and that the claimant may address in the claimant's written comments, include the following:
    - i. Whether the information is proprietary;
    - ii. Whether the information has been disclosed to persons other than the employees, agents, or other representatives of the owner; and
    - iii. Whether public disclosure would harm the competitive position of the claimant.
  - e. The Director shall make a determination of each confidentiality claim using the following procedures:
    - i. When a claim of confidentiality is asserted for information submitted as part of a HWM facility permit application:
      - (1) The claimant shall submit written comments demonstrating the legitimacy of the claim of confidentiality; and
      - (2) The Director shall evaluate the confidentiality claim and notify the claimant of the result of that determination as part of the completeness review pursuant to § 124.3(c) (as incorporated by R18-8-271(C)).
    - ii. When a claim of confidentiality is asserted for information submitted or obtained during an inspection, or for any other information submitted to or obtained by the DEQ pursuant to this Article, but not as part of a HWM facility permit application:
      - (1) The claimant may submit written comments demonstrating the legitimacy of the claim of a confidential trade secret or other confidential information within 10 working days of asserting the confidentiality claim; and
      - (2) If a request for disclosure is made, the Director shall evaluate the confidentiality claim and notify the claimant of the result of that determination. In all other instances, the Director may, on the Director's own initiative, evaluate the confidentiality claim and notify the claimant of the result of that determination within 20 working days after the time for submission of comments.
    - iii. When any person, hereinafter referred to as the "requestor," submits a request to the DEQ for public disclosure of records or information, the DEQ shall disclose the records or information to the requestor unless the information has been determined to be confidential by the Director, or is subject to a claim of confidentiality that is being considered for determination by the Director.
      - (1) If a confidentiality claim is under consideration by the Director, the requestor shall be notified that the information requested is under a confidentiality claim consideration and therefore is unavailable for public disclosure pending the Director's determination pursuant to subsection (D)(2)(e)(ii)(2).
      - (2) When a request for disclosure is made, the claimant shall be notified, within seven working days by certified mail with return receipt requested, that the information under a claim of confidentiality has been requested and is subject to the Director's determination pursuant to subsection (D)(2)(e)(ii)(2).
      - (3) If the Director disagrees with the confidentiality claim, the claimant shall have 20 working days to submit written comments either agreeing or disagreeing with the Director's evaluation.
      - (4) If a confidentiality claim is denied by the Director, the Director may request the attorney general to seek a court order authorizing disclosure pursuant to A.R.S. § 49-928.
  - f. Records or information determined by the Director to be legitimate confidential trade secrets or other confidential information shall not be disclosed by the DEQ at administrative proceedings pursuant to A.R.S. §§ 49-923(A) unless the following procedure is observed:
    - i. The DEQ shall notify both the claimant and the hearing officer of its intention to disclose the information at least 30 days prior to the hearing date. The DEQ shall send with the notice a copy of the confidential information that the DEQ intends to disclose;
    - ii. The claimant and the DEQ shall be allowed 10 days to present to the hearing officer comments concerning the disclosure of such information;
    - iii. The hearing officer shall determine whether the confidential information is relevant to the subject of the administrative proceeding and shall allow disclosure upon finding that the information is relevant to the subject of the administrative proceeding;
    - iv. The hearing officer may set conditions for disclosure of confidential and relevant information or the making of protective arrangements and commitments as warranted; and
    - v. The hearing officer shall give the claimant at least five days' notice before allowing disclosure of the information in the course of the administrative proceeding.
- E. § 260.10, titled "Definitions," is amended by adding all definitions from § 270.2 (as incorporated by R18-8-260 and R18-8-270) to this Section, including the following changes, applicable throughout this Article unless specified otherwise:
1. ["Acute Hazardous Waste" means waste found to be fatal to humans in low doses or, in the absence of data on human toxicity, that has been shown in studies to have an oral lethal dose (LD) 50 toxicity (rat) of less than 50 milligrams per kilogram, an inhalation lethal concentration (LC) 50 toxicity (rat) of less than 2 milligrams per liter, or a dermal LD 50 toxicity (rabbit) of less than 200 milli-

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- grams per kilogram or that is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible, illness.]
2. ["Application" means the standard United States Environmental Protection Agency forms for applying for a permit, including any additions, revisions or modifications to the forms. Application also includes the information required pursuant to §§ 270.14 through 270.29 (as incorporated by R18-8-270, regarding the contents of a Part B HWM facility permit application).]
  3. ["Biennial report" means "annual report."]
  4. ["Chapter" means "Article" except in § 264.52(b), see R18-8-264, and § 265.52(b), see R18-8-265.]
  5. "Closure" means [, for facilities with effective hazardous waste permits, the act of securing a HWM facility pursuant to the requirements of R18-8-264. For facilities subject to interim status requirements, "closure" means the act of securing a HWM facility pursuant to the requirements of R18-8-265.]
  6. ["Concentration" means the amount of a substance in weight contained in a unit volume or weight.]
  7. ["Department" or "the DEQ" means the Department of Environmental Quality.]
  8. "Department of Transportation" or "DOT" means the U.S. Department of Transportation.
  9. ["Director" or "state Director" means the Director of the Department of Environmental Quality or an authorized representative, except in §§ 262.50 through 262.57, 268.5 through 268.6, 268.42(b), and 268.44 which are non-delegable to the state of Arizona.]
  10. ["Draft permit" means a document prepared under § 124.6 (as incorporated by R18-8-271(E)) indicating the Director's tentative decision to issue, deny, modify, revoke, reissue, or terminate a permit. A denial of a request for modification, revocation, reissuance or termination, as discussed in § 124.5 (as incorporated by R18-8-271(D)), is not a draft permit.]
  11. ["Emergency permit" means a permit that is issued in accordance with § 270.61 (as incorporated by R18-8-270).]
  12. ["EPA," "Environmental Protection Agency," "United States Environmental Protection Agency," "U.S. EPA," "EPA HQ," "EPA Regions," and "Agency" mean the DEQ with the following exceptions:
    - a. Any references to EPA identification numbers;
    - b. Any references to EPA hazardous waste numbers;
    - c. Any reference to EPA test methods or documents;
    - d. Any reference to EPA forms;
    - e. Any reference to EPA publications;
    - f. Any reference to EPA manuals;
    - g. Any reference to EPA guidance;
    - h. Any reference to EPA Acknowledgment of Consent;
    - i. References in §§ 260.2(b) (as incorporated by R18-8-260(D)(2)); 260.10 (definitions of "Administrator," "EPA region," "Federal agency," "Person," and "Regional Administrator" (as incorporated by R18-8-260(E)); 260, Appendix I (as incorporated by R18-8-260(C)); 260.11(a) (as incorporated by R18-8-260(C)); 261, Appendix IX (as incorporated by R18-8-261(A)); 261.39(a)(5) (as incorporated by R18-8-261(A)); 262.21 (as incorporated by R18-8-262(A)); 262.32(b) (as incorporated by R18-8-262(A)); 262.50 through 262.57 (as incorporated by R18-8-262(A)); 262.60(c) and (e) (as incorporated by R18-8-262(A)); 262.80 through 262.89 (as incorporated by R18-8-262(A)); 262, Appendix (as incorporated by R18-8-262(A)); 263.10(a) Note (as incorporated by R18-8-263(A)); 264.12(a)(2), 264.71(a)(3), 264.71(d), 265.12(a)(2), 265.71(a)(3), 265.71(d); 268.1(c)(3) (as incorporated by R18-8-268); 268.5, 268.6, 268.42(b), and 268.44, which are non-delegable to the state of Arizona (as incorporated by R18-8-268); 270.1(a)(1) (as incorporated by R18-8-270); 270.1(b) (as incorporated by R18-8-270(B)); 270.2 (definitions of "Administrator," "Approved program or Approved state," "Director," "Environmental Protection Agency," "EPA," "Final authorization," "Permit," "Person," "Regional Administrator," and "State/EPA agreement") (as incorporated by R18-8-270(A)); 270.3 (as incorporated by R18-8-270(A)); 270.5 (as incorporated by R18-8-270(A)); 270.10(e)(1) through (2) (as incorporated by R18-8-270(A) and R18-8-270(D)); 270.11(a)(3) (as incorporated by R18-8-270(A)); 270.32(a) and (c) (as incorporated by R18-8-270(M) and R18-8-270(O)); 270.51 (as incorporated by R18-8-270(Q)); 270.72(a)(5) and (b)(5) (as incorporated by R18-8-270(A)); 124.1(f) (as incorporated by R18-8-271(B)); 124.5(d) (as incorporated by R18-8-271(D)); 124.6(e) (as incorporated by R18-8-271(E)); 124.10(c)(1)(ii) (as incorporated by R18-8-271(I)); and 124.13 (as incorporated by R18-8-271(L)).]
  13. ["Federal Register" means a daily or weekly major local newspaper of general circulation, within the area affected by the facility or activity, except in §§ 260.11(b) (as incorporated by R18-8-260) and 270.10(e)(2) (as incorporated by R18-8-270 (D)).]
  14. ["HWMA" or "State HWMA" means the State Hazardous Waste Management Act, A.R.S. § 49-921 et seq., as amended.]
  15. ["Hazardous Waste Management facility" or "HWM facility" means any facility or activity, including land or appurtenances thereto, that is subject to regulation under this Article.]
  16. ["Key employee" means any person employed by an applicant or permittee in a supervisory capacity or empowered to make discretionary decisions with respect to the solid waste or hazardous waste operations of the applicant or permittee. Key employee does not include an employee exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste.]
  17. ["National" means "state" in §§ 264.1(a) and 265.1(a) (as incorporated by R18-8-264 and R18-8-265).]
  18. ["Off-site" means any site that is not on-site.]
  19. ["Permit" means an authorization, license, or equivalent control document issued by the DEQ to implement the requirements of this Article. Permit includes "permit-by-rule" in § 270.60 (as incorporated by R18-8-270) and "emergency permit" in § 270.61 (as incorporated by R18-8-270), and it does not include interim status as in § 270.70 (as incorporated by R18-8-270) or any permit

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- which has not yet been the subject of final action, such as a “draft permit” or a “proposed permit.”]
20. [“Permit-by-rule” means a provision of this Article stating that a facility or activity is considered to have a HWM facility permit if it meets the requirements of the provision.]
  21. [“Physical construction” means excavation, movement of earth, erection of forms or structures, or similar activity to prepare a HWM facility to accept hazardous waste.]
  22. [“RCRA,” “Resource Conservation and Recovery Act,” “Subtitle C of RCRA,” “RCRA Subtitle C,” or “Subtitle C” when referring either to an operating permit or to the federal hazardous waste program as a whole, mean the “State Hazardous Waste Management Act, A.R.S. § 49-921 et seq., as amended” with the following exceptions:
    - a. Any reference to a specific provision of “RCRA,” “Resource Conservation and Recovery Act,” “Subtitle C of RCRA,” “RCRA Subtitle C,” or “Subtitle C”;
    - b. References in §§ 260.10 (definition of “Act or RCRA”) (as incorporated by R18-8-260(E)); 260, Appendix I, (as incorporated by R18-8-260(C)); 261, Appendix IX, (as incorporated by R18-8-261(A)); 262, Appendix, (as incorporated by R18-8-262(A)); 270.1(a)(2) (as incorporated by R18-8-270(A)); 270.2, definition of “RCRA,” (as incorporated by R18-8-270(A)); and 270.51, “EPA-issued RCRA permit,” (as incorporated by R18-8-270(P)).]
  23. [Following any references to a specific provision of “RCRA,” “Resource Conservation and Recovery Act,” or “Subtitle C,” the phrase “or any comparable provisions of the state Hazardous Waste Management Act, A.R.S. § 49-921 et seq., as amended” shall be deemed to be added except in §§ 270.72(a)(5) and (b)(5) (as incorporated by R18-8-270(A)).]
  24. [“RCRA § 3005(a) and (e)” means “A.R.S. § 49-922.”]
  25. [“RCRA § 3007” means “A.R.S. § 49-922.”]
  26. [“Recyclable Materials” mean hazardous wastes that are recycled.]
  27. [“Region” or “Region IX” means “state” or “state of Arizona.”]
  28. [“Schedule of compliance” means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements, such as actions, operations, or milestone events, leading to compliance with the HWMA and this Article.]
  29. [“Site” means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.]
  30. [“State,” “authorized state,” “approved state,” or “approved program” means the state of Arizona with the following exceptions:
 

References at §§ 260.10, definitions of “person,” “state,” and “United States,” (as incorporated by R18-8-260(E)); 262 (as incorporated by R18-8-262(A)); 264.143(e)(1) (as incorporated by R18-8-264(A)); 264.145(e)(1) (as incorporated by R18-8-264(A)); 264.147(a)(1)(ii) (as incorporated by R18-8-264(A)); 264.147(b)(1)(ii) (as incorporated by R18-8-264(A)); 264.147(g)(2) (as incorporated by R18-8-264(A)); 264.147(i)(4) (as incorporated by R18-8-264(A)); 265.143(d)(1) (as incorporated by R18-8-265(A)); 265.145(d)(1) (as incorporated by R18-8-265(A)); 265.147(a)(1)(ii) (as incorporated by R18-8-265(A)); 265.147(g)(2) (as incorporated by R18-8-265(A)); 265.147(i)(4) (as incorporated by R18-8-265(A)); and 270.2, definitions of “Approved program or Approved state,” “Director,” “Final authorization,” “Person,” and “state” (as incorporated by R18-8-270(A)).]
  31. [“The effective date of these regulations” means the following dates: “May 19, 1981,” in §§ 265.112(a) and (d), 265.118(a) and (d), 265.142(a) and 265.144(a) (as incorporated by R18-8-265); “November 19, 1981,” in §§ 265.112(d) and 265.118(d) (as incorporated by R18-8-265); and “January 26, 1983,” in § 270.1(c) (as incorporated by R18-8-270).]
  32. [“TSD facility” means a “Hazardous Waste Management facility” or “HWM facility.”]
- F.** § 260.10, titled “Definitions,” as amended by subsection (E) also is amended as follows, with all definitions in § 260.10 (as incorporated by R18-8-260), applicable throughout this Article unless specified otherwise.
1. “Act” or [“the Act” means the state Hazardous Waste Management Act or HWMA, except in R18-8-261(B) and R18-8-262(B).]
  2. “Administrator,” “Regional Administrator,” “state Director,” or “Assistant Administrator for Solid Waste and Emergency Response” mean the [Director or the Director’s authorized representative, except in §§:
 

260.10, in the definitions of “Administrator,” “Regional Administrator,” and “hazardous waste constituent” (as incorporated by R18-8-260(E)); 261.41 (as incorporated by R18-8-261); 261, Appendix IX (as incorporated by R18-8-261(A)); 262, Subpart E; 262, Subpart H; 262, Appendix (as incorporated by R18-8-262); 264.12(a) (as incorporated by R18-8-264(A)); 265.12(a) (as incorporated by R18-8-265(A)); 268.5, 268.6, 268.42(b), and 268.44, which are non-delegable to the state of Arizona (as incorporated by R18-8-268); 270.2, in the definitions of “Administrator,” “Director,” “Major facility,” “Regional Administrator,” and “State/EPA agreement” (as incorporated by R18-8-270(A)); 270.3 (as incorporated by R18-8-270(A)); 270.5 (as incorporated by R18-8-270(A)); 270.10(e)(1), (2), and (4) (as incorporated by R18-8-270(A) and R18-8-270(D)); 270.10(f) and (g) (as incorporated by R18-8-270(A) and R18-8-270(E)); 270.11(a)(3) (as incorporated by R18-8-270(A)); 270.14(b)(20) (as incorporated by R18-8-270(A)); 270.32(b)(2) (as incorporated by R18-8-270(N)); 270.51 (as incorporated by R18-8-270(A)); 124.5(d) (as incorporated by R18-8-271(D)); 124.6(e) (as incorporated by R18-8-271 (E)); 124.10(b) (as incorporated by R18-8-271(I))].
  3. “Facility” [or “activity” means:
    - a. Any HWM facility or other facility or activity, including] all contiguous land, structures, appurtenances, and improvements on the land [which are] used for treating, storing, or disposing of hazardous

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waste, [that is subject to regulation under the HWMA program]. A facility may consist of several treatment, storage, or disposal operational units ([that is], one or more landfills, surface impoundments, or combinations of them).

- b. For the purposes of implementing corrective action under 40 CFR 264.101 (as incorporated by R18-8-264), all contiguous property under the control of the owner or operator seeking a permit under Subtitle C of RCRA. This definition also applies to facilities implementing corrective action under RCRA Section 3008(h).
- c. Notwithstanding paragraph (b) of this definition, a remediation waste management site is not a facility that is subject to 40 CFR 264.101(as incorporated by R18-8-264), but is subject to corrective action requirements if the site is located within such a facility.
4. ["Member of the Performance Track Program" or "Performance Track member facility" means a facility or generator that is a current member of the Arizona Environmental Performance Track Program (as described at <http://www.azdeq.gov/function/programs/azsept>). Facility members must demonstrate a good record of compliance, past success in achieving environmental goals, and commit to future specific quantified environmental goals, environmental management systems, local community outreach, and annual reporting of measurable results.]
5. "New HWM facility" or "new facility" means a HWM facility which began operation, or for which construction commenced, [after November 19, 1980].
6. "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, including a government corporation, [or a limited liability corporation], partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body, [state agency, or an agent or employee of a state agency].
7. "United States" means [Arizona except for the following:
- § 261.39(a)(5) (as incorporated by R18-8-261).
  - References in §§ 262.50, 262.51, 262.53(a), 262.54(c), 262.54(g)(2), 262.54(i), 262.55(a), 262.55(c), 262.56(a)(4), 262.60(a), 262.60(b)(2) and 262.60(d) (as incorporated by R18-8-262).
  - All references in Part 263 (as incorporated by R18-8-263), except §§ 263.10(a) and 263.22(c).
  - § 266.80]
- G. § 260.20(a), titled "General" pertaining to rulemaking petitions, is replaced by the following:
- Where the Administrator of EPA has granted a rulemaking petition pursuant to 40 CFR 260.20(a), 260.21, or 260.22, the Director may accept the Administrator's determination and amend the Arizona rules accordingly, if the Director determines the action to be consistent with the policies and purposes of the HWMA.
- H. § 260.20(c) and (e) are amended by replacing "*Federal Register*" with "*Arizona Administrative Register*."
- I. § 260.23, titled "Petitions to amend 40 CFR 273 to include additional hazardous wastes" pertaining to rulemaking petitions, is amended as follows: (a) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of part 273 of this chapter may petition for a regulatory amendment under this Section, 40 CFR 260.20(b) through (e), and Subpart G of 40 CFR 273.
- J. § 260.30, titled "Variances from classification as a solid waste," is replaced by the following: Any person wishing to submit a variance petition shall submit the petition, under this subsection, to the EPA. Where the administrator of EPA has granted a variance from classification as a solid waste under 40 CFR 260.30, 260.31, and 260.33, the director shall accept the determination, if the director determines the action is consistent with the policies and purposes of the HWMA.
- K. § 260.32, titled "Variances to be classified as a boiler," is replaced by the following:
- Any person wishing to submit a variance petition shall submit the petition, under this subsection, to the EPA. Where the administrator of EPA has granted a variance from classification as a boiler pursuant to 40 CFR 260.32 and 260.33, the director shall accept the determination, if the director determines the action is consistent with the policies and purposes of the HWMA.
- L. 40 CFR 260.41, titled "Procedures for case-by-case regulation of hazardous waste recycling activities," is amended by deleting the following from the end of the sixth, seventh and eighth sentences of paragraph (a):
- "Or unless review by the Administrator is requested. The order may be appealed to the administrator by any person who participated in the public hearing. The Administrator may choose to grant or to deny the appeal."
- M. As required by A.R.S. § 49-929, generators and transporters of hazardous waste shall register annually with DEQ and submit the appropriate registration fee, prescribed below, with their registration:
- A hazardous waste transporter that picks up or delivers hazardous waste in Arizona shall pay \$200 by March 1 of the year following the date of the pick-up or delivery;
  - A large-quantity generator that generated 1,000 kilograms or more of hazardous waste in any month of the previous calendar year shall pay \$300; or
  - A small-quantity generator that generated 100 kilograms or more but less than 1,000 kilograms of hazardous waste in any month of the previous year shall pay \$100.
- N. A person shall pay hazardous waste generation and disposal fees as required under A.R.S. § 49-931. The DEQ shall send an invoice to large-quantity generators quarterly and small-quantity generators annually. The person shall pay an invoice within 30 days of the postmark on the invoice. The following hazardous waste fees shall apply:
- A person who generates hazardous waste that is shipped offsite shall pay \$67.50 per ton but not more than \$200,000 per generator site per year of hazardous waste generated;
  - An owner or operator of a facility that disposes of hazardous waste shall pay \$270 per ton but not more than \$5,000,000 per disposal site per year of hazardous waste disposed; and
  - A person who generates hazardous waste that is retained onsite for disposal or that is shipped offsite for disposal to a facility that is owned and operated by that generator shall pay \$27 per ton but not more than \$160,000 per generator site per year of hazardous waste disposed.

**Historical Note**

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsections (A), (C), and (E) effective June 27, 1985 (Supp. 85-3). Amended subsections (A) and (C) effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1860 renumbered as Section R18-8-260, and subsections (A) and (C) amended effective May 29, 1987 (Supp. 87-2). Amended subsections (D) and (E) effective December 1, 1988 (Supp. 88-4). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4).

Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998; R18-8-260 corrected, text was inadvertently omitted (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Subsections in R18-8-260(F)(2) reinstated at request of the Department after a clerical error in 9 A.A.C. 816 omitted the subsections from the rule text, Office File No. M10-288, filed July 20, 2010 (Supp. 10-2). Amended by final rulemaking at 18 A.A.R. 1202, effective July 1, 2012 (Supp. 12-2). Amended by final rulemaking at 21 A.A.R. 1246, effective September 5, 2015 (Supp. 15-3).

**R18-8-261. Identification and Listing of Hazardous Waste**

- A. All of 40 CFR 261 and accompanying appendices, revised as of January 31, 2014 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ with the exception of the following:
1. The revisions for standardized permits as published at 70 FR 53419;
  2. The revisions to the solid waste definition as published at 73 FR 64668;
  3. The revisions for the gasification rule as published at 73 FR 57;
  4. 40 CFR 261.4(a)(16) and 261.38. Copies of 40 CFR 261 are available at [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html).
- B. In the above-adopted federal regulations “Section 1004(5) of RCRA” or “Section 1004(5) of the Act” means A.R.S. § 49-921(5).
- C. § 261.4, titled “Exclusions,” paragraph (b)(6)(i), is amended as follows:
- (i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in Subpart D [(as incorporated by R18-8-261)] due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if [documentation is provided to the Director] by a waste generator or by waste generators that:
    - (A) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and
    - (B) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and
    - (C) The waste is typically and frequently managed in non-oxidizing environments.
- D. § 261.4, titled “Exclusions,” is amended by deleting the phrase “in the Region where the sample is collected” in paragraph (e)(3).
- E. § 261.5, titled “Special requirements for hazardous waste generated by conditionally exempt small quantity generators,” paragraph (b) is amended as follows:
- (b) Except for those wastes identified in paragraphs (e), (f), (g), and (j) of [§ 261.5 (as incorporated by R18-8-261)], a conditionally exempt small quantity generator’s hazardous wastes are not subject to regulation under [R18-8-262 through R18-8-266, R18-8-268, R18-8-270, and R18-8-271 of this Article], and the notification requirements of Section 3010 of RCRA, provided the generator complies with the requirements of paragraphs (f), (g), and (j) of [§ 261.5 (as incorporated by R18-8-261)]. [However, the Director may require reports of any conditionally exempt small quantity generator or group of conditionally exempt small quantity generators regarding the treatment, storage, transportation, disposal, or management of hazardous waste if the hazardous waste of such generator or generators poses a substantial present or potential hazard to human health or the environment, when it is improperly treated, stored, transported, disposed, or otherwise managed.]
- F. § 261.5, titled “Special requirements for hazardous waste generated by conditionally exempt small quantity generators,” paragraph (f)(3) is amended as follows:
- (3) A conditionally exempt small quantity generator may either treat or dispose of [the] acute hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the U.S., is:
    - (i) Permitted under part 270 of this chapter [(as incorporated by R18-8-270)];
    - (ii) In interim status under parts 270 and 265 of this chapter [(as incorporated by R18-8-270 and R18-8-265)];
    - (iii) Authorized to manage hazardous waste by a state with a hazardous waste management program approved under part 271 of this chapter;
    - (iv) Permitted, licensed, or registered by a state to manage municipal [or industrial solid waste and approved by the owner or operator of the solid waste facility to accept acute hazardous waste from conditionally exempt small quantity generators that have not been excluded from disposing of their waste at such a facility under applicable provisions of the Solid Waste Management Act, A.R.S. §§ 49-701 through 49-791 and] is subject to Part 258 of this chapter;
    - (v) Permitted, licensed, or registered by a state to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in §§ 257.5 through 257.30 of this chapter; or
    - (vi) A facility which:
      - (A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or
      - (B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or
    - (vii) For universal waste managed under part 273 of this chapter [(as incorporated by R18-8-273)], a universal waste handler or destination facility subject to the requirements of part 273 of this chapter.
- G. § 261.5, titled “Special requirements for hazardous waste generated by conditionally exempt small quantity generators,” paragraph (g) is amended as follows:
- (g) In order for hazardous waste [, other than acute hazardous waste,] generated by a conditionally exempt small quantity generator in quantities of 100 kilograms or less of hazardous waste during a calendar month to be excluded from full regulation under this [subsection], the generator [shall] comply with the following requirements:

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- (1) § 262.11 of this chapter [(as incorporated by R18-8-262)];
- (2) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If [such generator] accumulates at any time 1,000 kilograms or greater of [its] hazardous wastes, all of those accumulated [hazardous] wastes are subject to regulation under the special provisions of part 262 applicable to generators of greater than 100 kg and less than 1000 kg of hazardous waste in a calendar month as well as the requirements of parts 263 through 266, 268, 270 and 124 of this chapter [as incorporated by R18-8-262, R18-8-263 through R18-8-266, R18-8-268, R18-8-270, and R18-8-271]) and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34(d) [(as incorporated by R18-8-262)] for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes equal or exceed 1,000 kilograms;
- (3) A conditionally exempt small quantity generator may either treat or dispose of [its] hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the U.S., is:
- (i) Permitted under part 270 of this chapter [(as incorporated by R18-8-270)];
  - (ii) In interim status under parts 270 and 265 of this chapter [(as incorporated by R18-8-270 and R18-8-265)];
  - (iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under part 271 of this chapter;
  - (iv) Permitted, licensed, or registered by a State to manage municipal [or industrial solid waste and approved by the owner or operator of the solid waste facility to accept hazardous waste from conditionally exempt small quantity generators who have not been excluded from disposing of their waste at such a facility pursuant to applicable provisions of the Solid Waste Management Act, A.R.S. §§ 49-701 through 49-791 and] is subject to Part 258 of this chapter;
  - (v) Permitted, licensed, or registered by a State to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in §§ 257.5 through 257.30 of this chapter; or
  - (vi) A facility which:
    - (A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or
    - (B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or
  - (vii) For universal waste managed under part 273 of this chapter [(as incorporated by R18-8-273)], a universal waste handler or destination facility subject to the requirements of part 273 of this chapter.
- H.** § 261.5, titled "Special requirements for hazardous waste generated by conditionally exempt small quantity generators," paragraph (j) is amended as follows:
- (j) If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to 40 CFR 279 [(as incorporated by A.R.S. § 49-802 into Arizona law)]. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated.
- I.** § 261.6, titled "Requirements for recyclable materials," paragraphs (a)(1) through (a)(3) are amended as follows:
- (a)(1) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of paragraphs (b) and (c) of this section, except for the materials listed in paragraphs (a)(2) and (a)(3) of this section. Hazardous wastes that are recycled [shall] be known as "recyclable materials."
  - (2) The following recyclable materials are not subject to the requirements of this section but are regulated under [40 CFR 266, subparts C through N (as incorporated by R18-8-266)] and all applicable provisions in parts 268, 270 and 124 of this chapter [(as incorporated by R18-8-268, R18-8-270 and R18-8-271)]:
    - (i) Recyclable materials used in a manner constituting disposal (40 CFR part 266, subpart C);
    - (ii) Hazardous wastes burned (as defined in section 266.100(a)) in boilers and industrial furnaces that are not regulated under [40 CFR 264 or 265, subpart O (as incorporated by R18-8-264 and R18-8-265)] (40 CFR part 266, subpart H);
    - (iii) Recyclable materials from which precious metals are reclaimed (40 CFR part 266, subpart F);
    - (iv) Spent lead acid batteries that are being reclaimed (40 CFR part 266, subpart G).
  - (3) The following recyclable materials are not subject to regulation under [40 CFR 262 through 266, 268, 270, or 124 (as incorporated by R18-8-262 through R18-8-266, R18-8-268, R18-8-270, and R18-8-271)] and are not subject to the notification requirements of section 3010 of RCRA:
    - (i) Industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in § 262.58:
      - (A) A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, [shall] comply with the requirements applicable to a primary exporter in §§ 262.53, 262.56(a)(1)-(4), (6), and (b), and 262.57, export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in subpart E of part 262, and provide a copy of the EPA Acknowledgment of Consent to the shipment to the transporter transporting the shipment for export;
      - (B) Transporters transporting a shipment for export may not accept a shipment if [the transporter] knows the shipment does not conform to the EPA Acknowledgment of Consent, [shall] ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment and [shall] ensure that [the EPA Acknowledgment of Consent] is delivered to the [subsequent transporter or] facility designated by the person initiating the shipment.
    - (ii) Scrap metal that is not excluded under § 261.4(a)(13);
    - (iii) Fuels produced from the refining of oil-bearing hazardous waste along with normal process streams at a petroleum refining facility if such wastes result from

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normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under § 261.4(a)(12) (as incorporated by R18-8-261);

- (iv)(A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under [A.R.S. § 49-801] and so long as no other hazardous wastes are used to produce the hazardous waste fuel;
- (B) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining[,] production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under [A.R.S. § 49-801]; and
- (C) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under [A.R.S. § 49-801].

J. § 261.6, titled "Requirements for recyclable materials," paragraph (c) is amended by adding the following:

- (3) Each facility that recycles hazardous waste received from off-site and that is not otherwise required to submit an annual report under R18-8-262 through R18-8-265 shall submit Form IC, "Identification and Certification," of the Facility Annual Hazardous Waste Report to the Director by March 1 for the preceding calendar year. The annual report shall be mailed to: ADEQ, Hazardous Waste Facilities Assistance Unit, 1110 W. Washington St., Phoenix, AZ 85007. The annual report shall be submitted on a form provided by the DEQ according to the instructions for the form.]

K. § 261.11, titled "Criteria for listing hazardous waste," paragraph (a) is amended as follows:

- (a) The [Director] shall list a solid waste as a hazardous waste only upon determining that the solid waste meets one of the following criteria:
  - (1) It exhibits any of the characteristics of hazardous waste identified in subpart C [(as incorporated by R18-8-261)].
  - (2) It has been found to be fatal to humans in low doses or, in the absence of data on human toxicity, it has been shown in studies to have an oral LD 50 toxicity (rat) of less than 50 milligrams per liter, or a dermal LD 50 toxicity (rabbit) of less than 200 milligrams per kilogram or is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible, illness. (Waste listed in accordance with these criteria shall be designated Acute Hazardous Waste.)
  - (3) It contains any of the toxic constituents listed in Appendix VIII [(as incorporated by R18-8-261)] and, after considering the following factors, the

[Director] concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed:

- (i) The nature of the toxicity presented by the constituent.
- (ii) The concentration of the constituent in the waste.
- (iii) The potential of the constituent or any toxic degradation product of the constituent to migrate from the waste into the environment under the types of improper management considered in (a)(3)(vii) of this [subsection].
- (iv) The persistence of the constituent or any toxic degradation product of the constituent.
- (v) The potential for the constituent or any toxic degradation product of the constituent to degrade into nonharmful constituents and the rate of degradation.
- (vi) The degree to which the constituent or any degradation product of the constituent bioaccumulates in ecosystems.
- (vii) The plausible types of improper management to which the waste could be subjected.
- (viii) The quantities of the waste generated at individual generation sites or on a regional or national basis.
- (ix) The nature and severity of the human health and environmental damage that has occurred as a result of the improper management of wastes containing the constituent.
- (x) Action taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste or waste constituent.
- (xi) Such other factors as may be appropriate.

#### Historical Note

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsection (A) effective June 27, 1985 (Supp. 85-3). Amended subsections (A) and (E) effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1861 renumbered as Section R18-8-261, and subsections (A), (D) and (F) amended effective May 29, 1987 (Supp. 87-2). Amended subsection (B) effective December 1, 1988 (Supp. 88-4). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1).

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Amended by final rulemaking at 21 A.A.R. 1246, effective September 5, 2015 (Supp. 15-3).

**R18-8-262. Standards Applicable to Generators of Hazardous Waste**

- A.** All of 40 CFR 262 and the accompanying appendix, revised as of July 1, 2013 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 262 are available at [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html).
- B.** In 40 CFR 262 (as incorporated by R18-8-262(A)):
1. [“Section 3008 of the Act” means A.R.S. §§ 49-923, 49-924 and 49-925.]
  2. [“Section 2002(a) of the Act” means A.R.S. § 49-922.]
  3. [“Section 3002(6) of the Act” means A.R.S. § 49-922.]
- C.** § 262.10, titled “Purpose, scope, and applicability,” paragraph (i) is amended as follows:
- (i) [For the limited time period required to control, mitigate, or eliminate the immediate threat,] persons responding to an explosives or munitions emergency in accordance with 40 CFR 264.1(g)(8)(i)(D) or (iv), or 265.1(c)(11)(i)(D) or (iv), and 270.1(c)(3)(i)(D) or (iii) are not required to comply with the standards of this part. [As soon as the immediate response activities are completed, all standards of this part apply. For purposes of this rule, DEQ does not consider emergency response personnel to be generators of residuals resulting from immediate responses, unless they are also the owner of the object of an emergency response. The owner of the object of an emergency response, the owner of the property on which the object of an emergency rests or where the emergency response initiates, or the requestor for an emergency response is responsible for addressing any residual contamination that results from an emergency response.]
- D.** § 262.11, titled “Hazardous waste determination,” paragraph (c)(1) is amended by deleting the following:
- (1) “, or according to an equivalent method approved by the Administrator under 40 CFR 260.21.”
- E.** § 262.12, titled “EPA identification numbers,” paragraphs (a) and (b) are amended as follows:
- (a) A generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the [DEQ].
  - (b) A generator who has not received an EPA identification number may obtain one by applying to the [DEQ] using EPA form 8700-12. [The completed form shall be mailed or delivered to: ADEQ, Hazardous Waste Facilities Assistance Unit, 1110 W. Washington St., Phoenix, AZ 85007.] Upon receiving the request, the [DEQ] will assign an EPA identification number to the generator.
- F.** § 262.23, titled “Use of the manifest,” paragraph (a) is amended by adding the following:
- (4) Submit one (1) copy of each manifest to the DEQ in accordance with R18-8-262(I).]
- G.** § 262.34, titled “Accumulation time,” paragraph (d)(5)(iv)(C) is amended as follows:
- (C) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water [or when a spill has discharged into a storm sewer or dry well, or such an event has resulted in any other discharge that may reach groundwater], the generator immediately [shall] notify the National Response Center (using their 24-hour toll-free number 800/424-8802) [and the DEQ (using their 24-hour number (602) 771-2330 or 800/234-5677)]. The report [shall contain] the following information:
    - (1) The name, address, and [the EPA Identification Number] of the generator;
    - (2) Date, time, [location,] and type of incident (for example, spill or fire);
    - (3) Quantity and type of hazardous waste involved in the incident;
    - (4) Extent of injuries, if any; and
    - (5) Estimated quantity and disposition of recovered materials, if any.
- H.** § 262.41, titled “Biennial report,” is amended as follows:
- (a) A generator [shall] prepare and submit a single copy of [an annual] report to the [Director] by March 1 [for the preceding calendar] year. The [annual] report [shall] be submitted on [a form provided by the DEQ according to the instructions for the form, shall describe] generator activities during the previous [calendar] year, and shall include the following information:
    - (1) The EPA identification number, name, [location,] and [mailing] address of the generator.
    - (2) The calendar year covered by the report.
    - (3) The EPA identification number, name, and [mailing] address for each off-site [TSD] facility to which waste was shipped during the [reporting] year [, including the name and address of all applicable foreign facilities for exported shipments.]
    - (4) The name, [mailing address], and the EPA identification number of each transporter used [by the generator] during the reporting year.
    - (5) A [waste] description, EPA hazardous waste number (from 40 CFR 261, subpart C or D) [(as incorporated by R18-8-261), U.S. Department of Transportation] hazard class, [concentration, physical state,] and quantity of each hazardous waste [ :
      - i. Generated];
      - ii. Shipped off-site. This information must be listed by EPA identification number of each off-site facility to which waste was shipped; and
      - iii. Accumulated at the end of the year].
    - (6) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.
    - (7) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984.
    - (8) The certification signed by the generator or [the generator’s] authorized representative [, and the date the report was prepared].
    - (9) [A waste description, EPA hazardous waste number, concentration, physical state, quantity, and handling method of each hazardous waste handled on-site in elementary neutralization or wastewater treatment units.]
    - (10) [Name and telephone number of facility contact responsible for information contained in the report.]
  - (b) Any generator who treats, stores, or disposes of hazardous waste on-site, [and is subject to the HWM facility requirements of R18-8-264, R18-8-265, or R18-8-270,] shall submit [an annual] report covering those wastes in accordance with the provisions of 40 CFR 264.75 [(as incorporated by R18-8-264(I)), and § 265.75 [(as incorporated by R18-8-265(I)).]
- I.** Manifests required in 40 CFR 262, subpart B, titled “The Manifest,” (as incorporated by R18-8-262) shall be submitted to the DEQ in the following manner:

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1. A generator initiating a shipment of hazardous waste required to be manifested shall submit to the DEQ, no later than 45 days following the end of the month of shipment, one copy of each manifest with the signature of that generator and transporter, and the signature of the owner or operator of the designated facility, for any shipment of hazardous waste transported or delivered within that month. If a conforming manifest is not available, the generator shall submit an Exception Report in compliance with § 262.42 (as incorporated by R18-8-262).
  2. A generator shall designate on the manifest in item 13 "Waste Codes," the EPA hazardous waste number or numbers for each hazardous waste listed on the manifest.
  3. A member of the Performance Track Program, as defined in R18-8-260(F), that initiates a shipment of hazardous waste required to be manifested shall submit the manifest to DEQ as specified in subsections (1) and (2), except a manifest may be submitted to DEQ within 45 days following the end of the calendar quarter of shipment rather than within 45 days following the end-of-the month of shipment.
- J.** § 262.42, titled "Exception reporting," is amended by replacing "The Exception Report must include:" in paragraph (a)(2) with the following: "The Exception Report shall be submitted to DEQ within 45 days following the end of the month of shipment of the waste and shall include:"
- K.** § 262.42, titled "Exception reporting," paragraph (b) is amended by adding the following sentence to the end of the paragraph: "This submission to DEQ shall be made within 60 days following the end of the month of shipment of the waste."
- L.** A generator who accumulates ignitable, reactive, or incompatible waste shall comply with 40 CFR 265.17(a) (as incorporated by R18-8-265(A)).
- M.** Any generator who must comply with 40 CFR 262.34(a)(1) (as incorporated by R18-8-262) shall keep a written log of the inspections of container, tank, drip pad, and containment building areas and for the containers, tanks, and other equipment located in these storage areas in accordance with 40 CFR 265.174, 265.195, 265.444, and 265.1101(c)(4) (as incorporated by R18-8-265). The inspection log shall be kept by the generator for three years from the date of the inspection. The generator shall ensure that the inspection log is filled in after each inspection and includes the following information: inspection date, inspector's name and signature, and remarks or corrections.
- Historical Note**
- Adopted effective July 24, 1984 (Supp. 84-4). Amended subsection (A) effective June 27, 1985 (Supp. 85-3). Amended subsections (A) and (D) effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1862 renumbered as R18-8-262, and amended effective May 29, 1987 (Supp. 87-2). Amended effective December 1, 1988 (Supp. 88-4). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 21 A.A.R. 1246, effective September 5, 2015 (Supp. 15-3).
- R18-8-263. Standards Applicable to Transporters of Hazardous Waste**
- A.** All of 40 CFR 263, revised as of July 1, 2013 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 263 are available at [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html).
- B.** § 263.11, titled "EPA identification numbers," is amended by the following:
- (a) A transporter must not transport hazardous wastes without having received an EPA identification number from the [DEQ].
  - (b) A transporter who has not received an EPA identification number may obtain one by applying to the [DEQ] using EPA form 8700-12. [The completed form shall be mailed or delivered to: DEQ, Waste Programs Division, GIS and IT Unit, 1110 W. Washington St., Phoenix, AZ 85007.] Upon receiving the request, the [DEQ] will assign an EPA identification number to the transporter.
- C.** § 263.20, titled "The manifest system," is amended by adding the following:
- [A transporter of hazardous waste, with the exception of hazardous waste shipments that originate outside of Arizona, must submit one copy of each manifest to the DEQ, in accordance with R18-8-263(D).]
- D.** Manifests required in 40 CFR 263, subpart B, titled "Compliance With the Manifest System and Recordkeeping," (as incorporated by R18-8-263) shall be submitted to the DEQ in the following manner:
- [A transporter of hazardous waste, unless such hazardous waste shipment originated outside of the state of Arizona, shall submit to the DEQ, no later than 30 days following the end of the month of shipment, copy of each manifest, including the signature of that transporter, for any shipment of hazardous waste transported or delivered within that month.]
- E.** § 263.30, titled "Immediate action," paragraph (c)(2) is amended by the following:
- (2) Report in writing as required by 49 CFR 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, DC 20590 [and send a copy to the DEQ, Hazardous Waste Inspections and Compliance Unit, 1110 W. Washington St., Phoenix, AZ 85007.]
- Historical Note**
- Adopted effective July 24, 1984 (Supp. 84-4). Amended subsection (A) effective June 27, 1985 (Supp. 85-3). Amended subsection (A) effective August 5, 1986 (Supp. 86-5). Former Section R9-8-1863 renumbered as R18-8-263, and subsection (A) amended effective May 29, 1987 (Supp. 87-2). Amended subsection (A) effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3).

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Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 21 A.A.R. 1246, effective September 5, 2015 (Supp. 15-3).

**R18-8-264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities**

- A.** All of 40 CFR 264 and accompanying appendices, revised as of July 1, 2013 (and no future editions), with the exception of §§ 264.1(d) and (f), 264.149, 264.150, and 264.301(l), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 264 are available at [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html).
- B.** § 264.1, titled "Purpose, scope and applicability," paragraph (g)(1) is amended as follows:
- (1) The owner or operator of a facility [with operational approval from the Director] to manage [public, private,] municipal or industrial solid waste [pursuant to R18-8-512, A.R.S. §§ 49-104 and 49-762], if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under [R18-8-264] pursuant to § 261.5 [(as incorporated by R18-8-261)];
- C.** § 264.1, titled "Purpose, scope, and applicability," paragraph (g)(8)(i)(D) is amended as follows:
- (D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40 CFR 260.10. [The DEQ Emergency Response Unit shall be notified as soon as possible, using the 24-hour number (602) 771-2330 or (800) 234-5677.]
- D.** § 264.11, titled "Identification number," is replaced by the following:
1. A facility owner or operator shall not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the DEQ.
2. A facility owner or operator who has not received an EPA identification number may obtain one by applying to the DEQ using EPA form 8700-12. The completed form shall be mailed or delivered to: ADEQ, Hazardous Waste Facilities Assistance Unit, 1110 W. Washington St., Phoenix, AZ 85007. Upon receiving the request, the DEQ will assign an EPA identification number to the facility owner or operator.
- E.** § 264.15 titled "General inspection requirements," paragraph (b)(5)(i) is amended by replacing "National Environmental Performance Track Program" with "Performance Track Program."
- F.** § 264.18, titled "Location standards," paragraph (c) is amended by deleting the following:
- (c) " , except for the Department of Energy Waste Isolation Pilot Project in New Mexico."
- G.** § 264.56, titled "Emergency procedures," paragraph (d)(2) is amended as follows:
- (2) [The emergency coordinator, or designee, shall] immediately notify [the DEQ at (602) 771-2330 or (800) 234-5677, extension 771-2330, and notify] either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll free number (800) 424-8802). The report [shall include the following]:

- (i) Name and telephone number of reporter;
- (ii) Name and address of facility;
- (iii) Time and type of incident (for example, release, fire);
- (iv) Name and quantity of material(s) involved, to the extent known;
- (v) The extent of injuries, if any; and
- (vi) The possible hazards to human health, or the environment, outside the facility.

- H.** § 264.71, titled "Use of manifest system," paragraph (a)(2)(iv) is amended as follows:

Within 30 days of delivery, send a copy of the manifest to the generator [and submit one copy of each manifest to DEQ, according to R18-8-264(J);] and

- I.** § 264.75, titled "Biennial report," is amended as follows:

The owner or operator [of a facility that treated, stored, or disposed of hazardous waste shall] prepare and submit a single copy of [an annual report to the Director] by March 1 [for the preceding calendar] year. The [annual] report must be submitted on [a form provided by DEQ according to the instructions for the form.] The report [shall describe treatment, disposal, or storage] activities during the previous calendar year and [shall] include [the following information]:

- (a) Name, [mailing] address, [location] and the EPA identification number of the facility;
- (b) The calendar year covered by the report;
- (c) [For facilities receiving waste from off-site,] the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; and, for imported shipments, the report must give the name and address of the foreign generator;
- (d) A [waste] description, [EPA hazardous waste number, concentration, physical state], and quantity of each hazardous waste the facility received during the year. For [waste received from off-site], this information must be listed by the EPA identification number of each generator;
- (e) The method of treatment, storage, or disposal for each hazardous waste;
- (f) Reserved;
- (g) The most recent closure cost estimate under § 264.142, [(as incorporated by R18-8-264)], and for disposal facilities, the most recent post-closure cost estimate under § 264.144, [(as incorporated by R18-8-264)];
- (h) For generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.
- (i) For generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984.
- (j) The certification signed by the owner or operator of the facility, or authorized representative, [and the date the report was prepared];
- (k) [Name and telephone number of facility contact responsible for information contained in the report; and]
- (l) [If the TSD facility is also a generator, the complete generator annual report as required by § 262.41 (as incorporated by R18-8-262).]

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- J.** Manifests required in 40 CFR 264, Subpart E, titled “Manifest System, Recordkeeping, and Reporting,” (as incorporated by R18-8-264) shall be submitted to the DEQ in the following manner:
1. The TSD facility receiving off-site shipments of hazardous wastes required to be manifested shall submit to the DEQ, no later than 30 days following the end of the month of shipment, one copy of each manifest with the signature, in accordance with § 264.71(a)(1) (as incorporated by R18-8-264), of the owner or operator of the facility, or agent, for any shipment of hazardous waste received within that month.
  2. If a facility receiving hazardous waste from off-site is also a generator, the owner or operator shall also submit generator manifests as required by R18-8-262(I).]
- K.** § 264.93, titled “Hazardous constituents,” paragraph (c) is amended as follows:
- (c) In making any determination under [§ 264.93(b) (as incorporated by R18-8-264)] about the use of ground water in the area around the facility, the [Director shall] consider any identification of underground sources of drinking water and exempted aquifers made under [40 CFR] § 144.7, [and any identification of uses of ground water made pursuant to 18 A.A.C. 9 or 11].
- L.** § 264.94, titled “Concentration limits,” paragraph (c) is amended as follows:
- (c) In making any determination under [§ 264.94(b) (as incorporated by R18-8-264)] about the use of ground water in the area around the facility, the [Director shall] consider any identification of underground sources of drinking water and exempted aquifers made under [40 CFR] 144.7, [and any identification of uses of ground water made pursuant to 18 A.A.C. 9 or 11].
- M.** § 264.143, titled “Financial assurance for closure,” paragraph (h), and 264.145, titled “Financial assurance for post-closure care,” paragraph (h), are amended by replacing the third sentence in each citation with the following: “Evidence of financial assurance must be submitted to and maintained with the Director for those facilities located in Arizona.”
- N.** § 264.147, titled “Liability requirements,” paragraphs (a)(1)(i) and (b)(1)(i) are amended by deleting the following from the fourth sentence in each citation: “, or Regional Administrators if the facilities are located in more than one Region.”
- O.** § 264.151, titled “Wording of the instruments,” is adopted except any reference to “{of/for} the Regions in which the facilities are located” is deleted and “an agency of the United States Government” is deleted from the second paragraph of the Trust Agreements.
- P.** § 264.301, titled “Design and operating requirements,” is amended by adding the following:
- [The DEQ may require that hazardous waste disposed in a landfill operation, be treated prior to landfilling to reduce the water content, water solubility, and toxicity of the waste. The decision by the DEQ shall be based upon the following criteria:
1. Whether the action is necessary to protect public health;
  2. Whether the action is necessary to protect the groundwater, particularly where the groundwater is a source, or potential source, of a drinking water supply;
  3. The type of hazardous waste involved and whether the waste may be made less hazardous through treatment;
  4. The degree of water content, water solubility, and toxicity of the waste;
  5. The existence or likelihood of other wastes in the landfill and the compatibility or incompatibility of the wastes with the wastes being considered for treatment;
  6. Consistency with other laws, rules and regulations, but not necessarily limited to laws, rules, and regulations relating to landfills and solid wastes.]
- Historical Note**
- Adopted effective July 24, 1984 (Supp. 84-4). Amended subsection (A) effective June 27, 1985 (Supp. 85-3). Amended subsection (A) effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1864 renumbered as Section R18-8-264, and subsection (A) amended effective May 29, 1987 (Supp. 87-2). Amended subsection (B) effective December 1, 1988 (Supp. 88-4). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 21 A.A.R. 1246, effective September 5, 2015 (Supp. 15-3).
- R18-8-265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities**
- A.** All of 40 CFR 265 and accompanying appendices, revised as of July 1, 2013 (and no future editions), with the exception of §§ 265.1(c)(2), 265.1(c)(4), 265.149, 265.150, and 265.430, is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 265 are available at [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html).
- B.** § 265.1, titled “Purpose, scope, and applicability,” paragraph (c)(5) is amended as follows:
- (5) The owner or operator of a facility [with operational approval from the Director] to manage [public, private,] municipal or industrial solid waste [pursuant to R18-8-512, A.R.S. §§ 49-104 and 49-762], if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under [R18-8-265, pursuant to § 261.5 (as incorporated by R18-8-261)];
- C.** § 265.1, titled “Purpose, scope, and applicability,” paragraph (c)(11)(i)(D) is amended as follows:
- (D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40 CFR 260.10. [The DEQ Emergency Response Unit shall be notified as soon as possible, using the 24-hour number (602) 771-2330 or (800) 234-5677]
- D.** § 265.11, titled “Identification number,” is replaced by the following:

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- [1. A facility owner or operator shall not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the DEQ.
2. A facility owner or operator who has not received an EPA identification number may obtain one by applying to the DEQ using EPA form 8700-12. The completed form shall be mailed or delivered to: ADEQ, Hazardous Waste Facilities Assistance Unit, 1110 W. Washington St., Phoenix, AZ 85007. Upon receiving the request, the DEQ shall assign an EPA identification number to the facility owner or operator.]
- E.** § 265.15 titled "General inspection requirements," paragraph (b)(5)(i) is amended by replacing "National Environmental Performance Track Program" with "Performance Track Program."
- F.** § 265.18, titled "Location standards," is amended by deleting the following:  
 " , except for the Department of Energy Waste Isolation Pilot Project in New Mexico."
- G.** § 265.56, titled "Emergency procedures," paragraph (d)(2) is amended as follows:  
 (2) [The emergency coordinator, or designee, immediately shall] notify [the DEQ at (602) 771-2330 or 800/234-5677, and notify] either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll-free number 800/424-8802). The report [shall include the following]:  
 (i) Name and telephone number of the reporter;  
 (ii) Name and address of the facility;  
 (iii) Time and type of incident (for example, release, fire);  
 (iv) Name and quantity of material(s) involved, to the extent known;  
 (v) The extent of injuries, if any; and  
 (vi) The possible hazards to human health, or the environment, outside the facility.
- H.** § 265.71, titled "Use of manifest system," paragraph (a)(2)(iv) is amended as follows:  
 Within 30 days of delivery, send a copy of the manifest to the generator [and submit one copy of each manifest to DEQ, according to R18-8-265(J);] and
- I.** § 265.75, titled "Biennial report," is amended as follows:  
 The owner or operator [of a facility that treated, stored, or disposed of hazardous waste] shall prepare and submit a copy of [an annual] report to the [Director] by March 1 [for the preceding calendar] year. The [annual] report must be submitted on [a form provided by DEQ according to the instructions for the form]. The report [shall describe] facility activities during the previous calendar year and must include the following information:  
 (a) Name, [mailing] address, [location], and EPA identification number of the facility;  
 (b) The calendar year covered by the report;  
 (c) For [facilities receiving waste from off-site], the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; [and] for imported shipments, the report must give the name and address of the foreign generator;  
 (d) A [waste] description, [EPA hazardous waste number, concentration, physical state], and quantity of each hazardous waste the facility received [according to the quantity treated, stored or disposed] during the year. For [waste received from off-site], this information must be listed by EPA identification number of each generator;
- (e) The method of treatment, storage, or disposal for each hazardous waste;
- (f) Monitoring data under § 265.94(a)(2)(ii) and (iii), and (b)(2) [(as incorporated by R18-8-265)], where required;
- (g) The most recent closure cost estimate under § 265.142 [(as incorporated by R18-8-265)], and, for disposal facilities, the most recent post-closure cost estimate under § 265.144 [(as incorporated by R18-8-265)];
- (h) For generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;
- (i) For generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984;
- (j) The certification signed by the owner or operator of the facility, or authorized representative, [and the date the report was prepared; and
- (k) Name and telephone number of facility contact responsible for information contained in the report.]
- J.** Manifests required in 40 CFR 265, subpart E, titled "Manifest System, Recordkeeping, and Reporting," (as incorporated by R18-8-265) shall be submitted to the DEQ in the following manner:  
 The TSD facility receiving off-site shipments of hazardous wastes required to be manifested shall submit to the DEQ, no later than 30 days following the end of the month of shipment, a copy of each manifest with the signature, in accordance with § 265.71(a)(1) (as incorporated by R18-8-265), of the owner or operator of the facility, or agent, for any shipment of hazardous waste received within that month.
- K.** § 265.90, titled "Applicability," paragraphs (a) and (d)(1), and § 265.93, titled "Preparation, evaluation, and response," paragraph (a) (as incorporated by R18-8-265), are amended by deleting the following phrase: "within one year"; and § 265.90, titled "Applicability," paragraph (d)(2) (as incorporated by R18-8-265), is amended by deleting the following phrase: "Not later than one year."
- L.** § 265.112(d), titled "Notification of partial closure and final closure," subparagraph (1) is amended as follows:  
 1. The owner or operator must submit the closure plan to the [Director] at least 180 days prior to the date on which [the owner or operator] expects to begin closure of the first surface impoundment, waste pile, land treatment, or landfill unit, [tank, container storage, or incinerator unit], or final closure if it involves such a unit, whichever [occurs earlier]. The owner or operator with approved closure plans shall notify the Director] in writing at least 60 days prior to the date on which [the owner or operator expects] to begin closure of a surface impoundment, waste pile, landfill, or land treatment unit, or final closure of a facility [if it involves such a unit. The owner or operator] with approved closure plans must notify the [Director] in writing at least 45 days prior to the date on which [the owner or operator expects] to begin final closure of a facility with only tanks, container storage, or incinerator units.
- M.** §§ 265.143, titled "Financial assurance for closure," paragraph (g), and 265.145, titled "Financial assurance for post-closure

care,” paragraph (g), are amended by replacing the third sentence in each citation with the following: “Evidence of financial assurance must be submitted to and maintained with the Director for those facilities located in Arizona.”

- N. § 265.193, titled “Containment and detection of releases” (as incorporated by R18-8-265), is amended by adding the following:

[For existing underground tanks and associated piping systems not yet retrofitted in accordance with § 265.193, the owner or operator shall ensure that:

1. A level is measured daily;
2. A material balance is calculated and recorded daily; and
3. A yearly test for leaks in the tank and piping system, using a method approved by the DEQ is performed.]

#### Historical Note

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsection (A) effective June 27, 1985 (Supp. 85-3). Amended subsection (A) effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1866 renumbered as Section R18-8-265, subsection (A) amended and a new subsection (I) added effective May 29, 1987 (Supp. 87-2). Amended subsection (B) effective December 1, 1988 (Supp. 88-4). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 21 A.A.R. 1246, effective September 5, 2015 (Supp. 15-3).

#### R18-8-266. Standards for the Management of Specific Hazardous Wastes and Specific Hazardous Waste Management Facilities

- A. All of 40 CFR 266 and accompanying appendices, revised as of July 1, 2013 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 266 are available at [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html).
- B. § 266.100, titled “Applicability” paragraph (c) is amended as follows:
- (c) The following hazardous wastes and facilities are not subject to regulation under this subpart:
- (1) Used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in subpart C of part 261 [(as incorporated by R18-8-261)] of this chapter. Such used oil is subject to regulation under [A.R.S. §§ 49-801 through 49-818] rather than this subpart;
  - (2) Gas recovered from hazardous or solid waste landfills when such gas is burned for energy recovery;

- (3) Hazardous wastes that are exempt from regulation under §§ 261.4 and 261.6(a)(3)(iii) and (iv) [(as incorporated by R18-8-261)] of this chapter, and hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under § 261.5 [(as incorporated by R18-8-261)] of this chapter; and
- (4) Coke ovens, if the only hazardous waste burned is EPA Hazardous Waste No. K087, decanter tank tar sludge from coking operations.

#### Historical Note

Adopted effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1866 renumbered as Section R18-8-266, and amended effective May 29, 1987 (Supp. 87-2). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 21 A.A.R. 1246, effective September 5, 2015 (Supp. 15-3).

#### R18-8-267. Reserved

#### R18-8-268. Land Disposal Restrictions

All of 40 CFR 268 and accompanying appendices, revised as of July 1, 2013 (and no future editions), with the exception of Part 268, Subpart B, is incorporated by reference and on file with the DEQ. Copies of 40 CFR 268 are available at [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html).

#### Historical Note

Adopted effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1).

#### R18-8-269. Expired

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**Historical Note**

Adopted effective July 24, 1984 (Supp. 84-4). Former Section R9-8-1869 renumbered without change as Section R18-8-269 (Supp. 87-2). Amended subsections (A) and (B) effective December 1, 1988 (Supp. 88-4). Amended effective December 2, 1994 (Supp. 94-4). Section expired pursuant to A.R.S. § 41-1056(J), at 23 A.A.R. 3428, effective October 10, 2017 (Supp. 17-4).

**R18-8-270. Hazardous Waste Permit Program**

- A. All of 40 CFR 270 and the accompanying appendices, revised as of July 1, 2013 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ with the exception of the following:
  - 1. §§ 270.1(a), 270.1(c)(1)(i), 270.3, 270.10(g)(1)(i), 270.60(a) and (b), and 270.64;
  - 2. The revisions for standardized permits as published at 70 FR 53419;
  - 3. The revisions to the solid waste definition as published at 73 FR 64668. Copies of 40 CFR 270 are available at [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html).
- B. § 270.1, titled "Purpose and scope of these regulations," paragraph (b) is replaced by the following:
  - 1. [After the effective date of these regulations the treatment, storage, or disposal of any hazardous waste is prohibited except as follows:
    - a. As allowed under § 270.1(c)(2) and (3) (as incorporated by R18-8-270);
    - b. Under the conditions of a permit issued pursuant to these regulations; or
    - c. At an existing facility accorded interim status under the provisions of § 270.70 (as incorporated by R18-8-270).
  - 2. The direct disposal or discharge of hazardous waste into or onto any of the following is prohibited:
    - a. Waters of the state as defined in A.R.S. § 49-201, excluding surface impoundments as defined in § 260.10 (as incorporated by R18-8-260); and
    - b. Injection well, ditch, alleyway, storm drain, leach-field, or roadway.]
- C. § 270.1, titled "Purpose and scope of these regulations," paragraph (c)(3)(i)(D) is amended as follows:
 

(D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40 CFR 260.10. [The DEQ Emergency Response Unit shall be notified as soon as possible, using the 24-hour number (602) 771-2330 or (800) 234-5677.]
- D. § 270.10, titled "General application requirements," paragraph (e)(2), is amended as follows:
  - (2) The [Director] may extend the date by which owners and operators of specified classes of existing [HWM facilities shall submit Part A of their permit application if the Administrator has published in the Federal Register that EPA is granting an extension under 40 CFR § 270.10(e)(2) for those classes of facilities.]
- E. § 270.10(g), titled "Updating permit applications," subparagraph (1)(ii) is amended as follows:
  - (ii) With the [Director] no later than the effective date of regulatory provisions listing or designating wastes as hazardous in [the] state if the facility is treating, storing, or disposing of any of those newly listed or designated wastes; or
- F. § 270.10(g), titled "Updating permit applications," subparagraph (1)(iii), is amended as follows:

- (iii) As necessary to comply with provisions of § 270.72 [(as incorporated by R18-8-270)] for changes during interim [status]. Revised Part A applications necessary to comply with the provisions of § 270.72 [(as incorporated by R18-8-270)] shall be filed with the [Director.]

- G. § 270.10, titled "General application requirements," is amended by adding the following:
  - 1. When submitting an application for any of the license types in the Table below, an applicant shall remit to the DEQ an application fee as shown in the Table.

**Table - Hazardous Waste Permitting Application and Maximum Fees For Various License Types**

License Type	Application Fee	Maximum Fee
Permit for: Container Storage/Container Treatment	\$20,000	\$250,000
Permit for: Tank Storage/Tank Treatment	\$20,000	\$300,000
Permit for: Surface Impoundment	\$20,000	\$400,000
Permit for: Incinerator/Boiler and Industrial Furnace (BIF)/Landfill/Miscellaneous Unit	\$20,000	\$500,000
Permit for: Waste Pile/Land Treatment/Drip Pad/Containment Building/Research, Development, and Demonstration	\$20,000	\$300,000
Corrective Action Permit/Remedial Action Plan (RAP) Approval	\$20,000	\$300,000
Post-Closure Permit	\$20,000	\$400,000
Closure of Container/Tank/Drip Pad/Containment Building	\$5,000/unit	\$100,000
Closure of Miscellaneous Unit/Incinerator/BIF/Surface Impoundment/Waste Pile/Land Treatment Unit/Landfill	\$5,000/unit	\$300,000
Class 1 Modification (requiring Director Approval)	\$1,000	\$50,000
Class 2 Modification	\$5,000	\$250,000
Class 3 Modification (for a permit with an Incinerator, BIF, Surface Impoundment, Waste Pile, Land Treatment Unit, or Landfill)	\$20,000	\$400,000
Class 3 Modification (for a permit without an Incinerator, BIF, Surface Impoundment, Waste Pile, Land Treatment Unit, or Landfill)	\$10,000	\$250,000

- 2. If the total cost of processing the application identified in the Table is less than the application fee listed in the Table, the DEQ shall refund the difference between the total cost and the amount listed in the Table to the applicant.
  - a. Permits and permit modifications other than post-closure permits and closure plans. If the total cost of processing the application is greater than the amount listed plus other amounts paid, the DEQ shall bill the applicant for the difference upon permit approval. The applicant shall pay the difference in full before the DEQ issues the permit.
  - b. Post-closure permits. If the total cost of processing the application is greater than the amount listed plus

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- other amounts paid, the DEQ shall bill the applicant for the difference upon permit issuance. The applicant shall pay the difference in full within 45 days of the date of the bill.
- c. Withdrawals. In the event of a valid withdrawal of the permit application by the applicant, if the total costs of processing the application are less than the amount paid, the DEQ shall refund the difference. If the total costs are greater than the amount paid, the DEQ shall bill the applicant for the difference, and the applicant shall pay the difference within 45 days of the date of the bill.
3. With an application for a closure plan for a facility, the applicant shall remit to the DEQ an application fee of \$5,000 for each hazardous waste management unit involved in the closure plan or \$20,000, whichever is less. If the total cost of processing the application, including review and approval of the closure report, is more than the application fee paid, the applicant shall be billed for the difference, and the difference shall be paid in full after the DEQ completes review and approval of the closure report and within 30 days of notification by the Director. If the reasonable cost is less than the fee paid by the applicant, the DEQ shall refund the difference within 30 days of the closure report review and approval. The maximum fee for a closure plan is shown in the Table.
  4. The fee for a land treatment demonstration permit issued under § 270.63 (as incorporated by R18-8-270) for hazardous waste applies toward the \$20,000 permit fee for a Part B land treatment permit when the owner or operator seeks to treat or dispose of hazardous waste in land treatment units based on the successful treatment demonstration (as incorporated by R18-8-270).
  5. The DEQ shall provide the applicant itemized bills at least semiannually for the expenses associated with evaluating the application and approving or denying the permit or permit modification. The following information shall be included in each bill:
    - a. The dates of the billing period;
    - b. After January 1, 2013, the date and number of review hours performed during the billing period itemized by employee name, position type and specifically describing:
      - i. Each review task performed,
      - ii. The facility and operational unit involved,
      - iii. The hourly rate;
    - c. A description and amount of review-related costs as described in subsection (G)(6)(b); and
    - d. The total fees paid to date, the total fees due for the billing period, the date when the fees are due, and the maximum fee for the project.
  6. Fees shall consist of processing charges and review-related costs as follows:
    - a. Processing charges. The DEQ shall calculate the processing charges using a rate of \$136 per hour, multiplied by the number of review hours used to evaluate and approve or deny the permit or permit modification.
    - b. Review-related costs means any of the following costs applicable to a specific application:
      - i. Per diem expenses,
      - ii. Transportation costs,
      - iii. Reproduction costs,
      - iv. Laboratory analysis charges performed during the review of the permit or permit modification,
      - v. Public notice advertising and mailing costs,
      - vi. Presiding officer expenses for public hearings on a permitting decision,
      - vii. Court reporter expenses for public hearings on a permitting decision,
      - viii. Facility rentals for public hearings on a permitting decision, and
      - ix. Other reasonable and necessary review-related expenses documented in writing by the DEQ and agreed to by the applicant.
  - c. Total itemized billings for an application shall not exceed the maximum amounts listed in the Table in this Section.
7. Any person who receives a final bill from the DEQ for the processing and issuance or denial of a permit or permit modification under this Article may request an informal review of all billing items and may pay the bill under protest. If the bill is paid under protest, the DEQ shall issue the permit or permit modification if it would be otherwise issuable after normal payment. Such a request shall specify each area of dispute, and it shall be made in writing, within 30 days of the date of receipt of the final bill, to the division director of the DEQ for the Waste Programs Division. The final bill shall be sent by certified mail, return receipt requested. The informal review shall take place within 30 days of the DEQ's receipt of the request unless agreed otherwise by the DEQ and the applicant. The division director of the DEQ shall review whether or not the amounts of time billed are correct and reasonable for the tasks involved. Disposition of the informal review shall be mailed to the requester within 10 working days after the informal review.
  8. The division director's decision after the informal review shall become final within 30 days after receipt of the decision, unless the applicant requests in writing a hearing pursuant to R18-1-202.
  9. For the purposes of subsection (G), "review hours" means the hours or portions of hours that the DEQ's staff spends on a permit or permit modification. Review hours include the time spent by the project manager and technical review team members, and if requested by the applicant, the supervisor or unit manager.
- H.** § 270.12, titled "Confidentiality of information," paragraph (a) is amended as follows:
- (a) In accordance with [R18-8-260(D)(2)], any information submitted to [the DEQ] pursuant to these regulations may be claimed as confidential by the submitter. [Such a claim shall] be asserted at the time of submission in the manner prescribed [in R18-8-260(D)(2)(c)(ii)]. If no [such] claim is made at the time of submission, [the DEQ] may make the information available to the public without further notice. If a claim is asserted, the information [shall] be treated in accordance with the procedures in [R18-8-260(D)(2)(d) and (e)].
- I.** § 270.13, titled "Contents of Part A of the permit application," paragraph (k)(9) is amended as follows:
- (9) Other relevant environmental permits, including [any federal, state, county, city, or fire department] permits.
- J.** § 270.14, titled "Contents of Part B: General requirements," paragraph (b) is amended by adding the following:
- [(23) Any additional information required by the DEQ to evaluate compliance with facility standards and informational requirements of R18-8-264, R18-8-269 and R18-8-270.
  - (24)(i) A signed statement, submitted on a form supplied by the DEQ that demonstrates:
    - (A) An individual owner or operator has sufficient reliability, expertise, integrity and competence to oper-

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ate a HWM facility, and has not been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the permit application; or

- (B) In the case of a corporation or business entity, no officer, director, partner, key employee, other person, or business entity who holds 10% or more of the equity or debt liability has been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the permit application.
- ii. Failure to comply with subsection (i), the requirements of A.R.S. § 49-922(C)(1), and the requirements of § 270.43 (as incorporated by R18-8-270) and §§ 124.3(d) and 124.5(a) (as incorporated by R18-8-271), may cause the Director to refuse to issue a permit to a TSD facility pursuant to A.R.S. § 49-922(C) as amended, including requirements in § 270.43 (as incorporated by R18-8-270) and §§ 124.3(d) and 124.5(a) (as incorporated by R18-8-271).]
- K.** § 270.30, titled “Conditions applicable to all permits” paragraph (l)(10) is amended as follows:
- (10) Other noncompliance. The permittee shall report all instances of noncompliance not reported under [§ 270.30(l)(4),(5), and (6) (as incorporated by R18-8-270)] at the same time monitoring [(including annual)] reports are submitted. The reports shall contain the information listed in [§ 270.30(l)(6) (as incorporated by R18-8-270)].
- L.** § 270.30, titled “Conditions applicable to all permits” paragraph (L) is amended by adding the following:
- [All reports listed above (as incorporated by R18-8-270) shall be submitted to the Director in such a manner that the reports are received within the time periods required under this Article.]
- M.** § 270.32, titled “Establishing permit conditions,” paragraph (a), is amended by deleting the following:
- “and 270.3 (considerations under Federal law).”
- N.** § 270.32, titled “Establishing permit conditions,” paragraph (b) is amended by deleting the reference to 40 CFR 267.
- O.** § 270.32, titled “Establishing permit conditions,” paragraph (c) is amended by deleting the second sentence.
- P.** § 270.42, titled “Permit modification at the request of permittee”, paragraph (f)(3), is amended as follows:
- (3) An automatic authorization that goes into effect under paragraph (b)(6)(iii) or (v) of this section may be appealed under [Title 41, Chapter 6, Article 10, Arizona Revised Statutes.]
- Q.** § 270.51, titled “Continuation of expiring permits,” paragraph (a) is amended by deleting the following:
- “under 5 USC 558(c).”
- R.** § 270.51, titled “Continuation of expiring permits,” paragraph (d) is amended by replacing “EPA-issued” with “EPA, joint EPA/DEQ, or DEQ-issued.”
- S.** § 270.65, titled “Research, development, and demonstration permits,” is amended as follows:
- (a) The [Director] may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under part 264 or 266 [(as incorporated by R18-8-264 and R18-8-266).] [A research, development, and demonstration] permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits:
- (1) Shall provide for the construction of such facilities as necessary, and for operation of the facility for not longer than one year unless renewed as provided in paragraph (d) of this section, and
  - (2) Shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the [Director] deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment, and
  - (3) Shall include such requirements as the [Director] deems necessary to protect human health and the environment [, including requirements regarding monitoring, operation, financial responsibility, closure, and remedial action, and such requirements as the Director] deems necessary regarding testing and providing of information [relevant] to the [Director] with respect to the operation of the facility.
- (b) For the purpose of expediting review and issuance of permits under this section, the [Director] may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements [, or add conditions to the permit in accordance with the permitting procedures set forth in R18-8-270 and R18-8-271.] except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures regarding public participation.
- (c) The [Director] may order an immediate termination of all operations at the facility at any time [the Director] determines that termination is necessary to protect human health and the environment.
- (d) Any permit issued under this section may be renewed not more than three times. Each such renewal shall be for a period of not more than one year.
- T.** § 270.110, titled “What must I include in my application for a RAP?,” is amended by adding paragraphs (j) and (k) as follows:
- [j] A signed statement, submitted on a form supplied by DEQ that demonstrates:
- (1) An individual owner or operator has sufficient reliability, expertise, integrity and competence to operate a HWM facility, and has not been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the RAP application.
  - (2) In the case of a corporation or business entity, no officer, director, partner, key employee, other person or business entity who holds 10% or more of the equity or debt liability has been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the RAP application.
- (k) Failure to comply with subsection (j), the requirements of A.R.S. § 49-922(C)(1), and the requirements of § 270.43 (as incorporated by R18-8-270) and §§ 124.3(d) and 124.5(a) (as incorporated by R18-8-271), may cause the Director to refuse to issue a permit to a TSD facility pursuant to A.R.S. § 49-922(C) as amended, including requirements in § 270.43 (as incorporated by R18-8-270) and §§ 124.3(d) and 124.5(a) (as incorporated by R18-8-271).]
- U.** § 270.155 titled “May the decision to approve or deny my RAP application be administratively appealed?,” paragraph (a), is amended as follows:

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- (a) Any commenter on the draft RAP or notice of intent to deny, or any participant in any public hearing(s) on the draft RAP, may appeal the Director's decision to approve or deny your RAP application [under Title 41, Chapter 6, Article 10, Arizona Revised Statutes.] Any person who did not file comments, or did not participate in any public hearing(s) on the draft RAP, may petition for administrative review only to the extent of the changes from the draft to the final RAP decision. Appeals of RAPs may be made to the same extent as for final permit decisions under § 124.15 of this chapter [(as incorporated by R18-8-271)] (or a decision under § 270.29 [(as incorporated by R18-8-270)] to deny a permit for the active life of a RCRA hazardous waste management facility or unit.)

**Historical Note**

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsections (A) and (K) effective June 27, 1985 (Supp. 85-3). Amended subsection (A) effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1870 renumbered as R18-8-270, subsection (A) amended and a new subsection (S) added effective May 29, 1987 (Supp. 87-2). Amended subsections (B) and (K) effective December 1, 1988 (Supp. 88-4). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 18 A.A.R. 1202, effective July 1, 2012 (Supp. 12-2). Amended by final rulemaking at 21 A.A.R. 1246, effective September 5, 2015 (Supp. 15-3).

**R18-8-271. Procedures for Permit Administration**

- A. All of 40 CFR 124, revised as of July 1, 2013 (and no future editions), with the exception of §§ 124.1 (b) through (e), 124.2, 124.4, 124.16, 124.20, 124.21, and subparts C, D, and G, and with the exception of the revisions for standardized permits as published at 70 FR 53419, is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 124 are available at [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html).
- B. § 124.1, titled "Purpose and scope," paragraph (a) is replaced by the following:
- [This Section contains the DEQ procedures for issuing, modifying, revoking and reissuing, or terminating all hazardous waste management facility permits. This Section describes the procedures the DEQ shall follow in reviewing permit applications, preparing draft permits, issuing public notice, inviting public comment, and holding public hearings on draft permits. This Section also includes procedures for assembling an administrative record, responding to comments, issuing a final permit decision,

and allowing for administrative appeal of the final permit decision. The procedures of this Section also apply to denial of a permit for the active life of a RCRA HWM facility or unit under § 270.29 (as incorporated by R18-8-270(A)).]

- C. § 124.3, titled "Application for a permit," is replaced by the following:
- [(a) (1) Any person who requires a permit under this Article shall complete, sign, and submit to the Director an application for each permit required under § 270.1 (as incorporated by R18-8-270). Applications are not required for RCRA permits-by-rule in § 270.60 (as incorporated by R18-8-270). (2) The Director shall not begin processing a permit until the applicant has fully complied with the application requirements for that permit. (Refer to §§ 270.10 and 270.13 as incorporated by R18-8-270). (3) An applicant for a permit shall comply with the signature and certification requirements of § 270.11, as incorporated by R18-8-270.
- (b) Reserved.
- (c) The Director shall review for completeness every application for a permit. Each application submitted by a new HWM facility shall be reviewed for completeness by the Director in the order of priority on the basis of hazardous waste capacity established in a list by the Director. The Director shall make the list available upon request. Upon completing the review, the Director shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Director shall list the information necessary to make the application complete. When the application is for an existing HWM facility, the Director shall specify in the notice of deficiency a date for submitting the necessary information. The Director shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Director may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material. Requests for additional information do not render an application incomplete.
- (d) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and the Director may take appropriate enforcement actions against an existing HWM facility pursuant to A.R.S. §§ 49-923, 49-924 and 49-925.
- (e) If the Director decides that a site visit is necessary for any reason in conjunction with the processing of an application, the Director shall notify the applicant and schedule a date for a site visit.
- (f) The effective date of an application is the date on which the Director notifies the applicant that the application is complete as provided in paragraph (c) of this subsection.
- (g) For each application from a new HWM facility, the Director shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule shall specify target dates by which the Director intends to do the following:
- (1) Prepare a draft permit or Notice of Intent to Deny;
  - (2) Give public notice;
  - (3) Complete the public comment period, including any public hearing;
  - (4) Make a decision to issue or deny a final permit; and
  - (5) Issue a final decision.
- D. § 124.5, titled "Modification, revocation and reissuance, or termination of permits," is replaced by the following:

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- (a) Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Director's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in §§ 270.41 or 270.43 (as incorporated by R18-8-270). All requests shall be in writing and shall contain facts or reasons supporting the request.
- (b) If the Director decides the request is not justified, the Director shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings.
- (c) Modification, revocation or reissuance of permits procedures.
- (1) If the Director tentatively decides to modify or revoke and reissue a permit under §§ 270.41 or 270.42(c) (as incorporated by R18-8-270), the Director shall prepare a draft permit under § 124.6 (as incorporated by R18-8-271(E)), incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Director shall require the submission of a new application.
- (2) In a permit modification under this [subsection], only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. The permit modification shall have the same expiration date as the unmodified permit. When a permit is revoked and reissued under this subsection, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.
- (3) "Classes 1 and 2 modifications" as defined in § 270.42 (as incorporated by R18-8-270) are not subject to the requirements of this subsection.
- (d) If the Director tentatively decides to terminate a permit under § 270.43 (as incorporated by R18-8-270), the Director shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under § 124.6 (as incorporated by R18-8-271(E)). In the case of permits that are processed or issued jointly by both the DEQ and the EPA, a notice of intent to terminate shall not be issued if the Regional Administrator and the permittee agree to termination in the course of transferring permit responsibilities from the EPA to the state.
- (e) The Director shall base all draft permits, including notices of intent to terminate, prepared under this subsection on the administrative record as defined in § 124.9 (as incorporated by R18-8-271(H)).]
- E. § 124.6, titled "Draft permits," is replaced by the following:
- (a) Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application.
- (b) If the Director tentatively decides to deny the permit application, the Director shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under (e) of this subsection.
- (c) Reserved.
- (d) If the Director decides to prepare a draft permit, the Director shall prepare a draft permit that contains the following information:
- (1) All conditions under §§ 270.30 and 270.32 (as incorporated by R18-8-270), unless not required under 40 CFR 264 and 265 (as incorporated by R18-8-264 and R18-8-265);
- (2) All compliance schedules under § 270.33 (as incorporated by R18-8-270);
- (3) All monitoring requirements under § 270.31 (as incorporated by R18-8-270); and
- (4) Standards for treatment, storage, and/or disposal and other permit conditions under § 270.30 (as incorporated by R18-8-270).
- (e) All draft permits prepared by the DEQ under this subsection shall be accompanied by a statement of basis (§ 124.7, as incorporated by R18-8-271(F)) or fact sheet (§ 124.8, as incorporated by R18-8-271(G)), and shall be based on the administrative record (§ 124.9, as incorporated by R18-8-271(H)), publicly noticed (§ 124.10, as incorporated by R18-8-271(I)) and made available for public comment (§ 124.11, as incorporated by R18-8-271(J)). The Director shall give notice of opportunity for a public hearing (§ 124.12, as incorporated by R18-8-271(K)), issue a final decision (§ 124.15, as incorporated by R18-8-271(N)) and respond to comments (§ 124.17, as incorporated by R18-8-271(O)).
- F. § 124.7, titled "Statement of basis," is replaced by the following:
- The DEQ shall prepare a statement of basis for every draft permit for which a fact sheet under § 124.8, (as incorporated by R18-8-271(G)), is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.
- G. § 124.8, titled "Fact sheet," is replaced by the following:
- (a) The DEQ shall prepare a fact sheet for every draft permit for a new HWM facility, and for every draft permit that the Director finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person.
- (b) The fact sheet shall include, when applicable:
- (1) A brief description of the type of facility or activity that is the subject of the draft permit;
- (2) The type and quantity of wastes, that are proposed to be or are being treated, stored, or disposed;
- (3) Reserved.
- (4) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by § 124.9, (as incorporated by R18-8-271(H));
- (5) Reasons why any requested variances or alternatives to required standards do or do not appear justified;
- (6) A description of the procedures for reaching a final decision on the draft permit including:

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- (i) The beginning and ending dates of the comment period under §§ 124.10 (as incorporated by R18-8-271(I)) and the address where comments will be received;
- (ii) Procedures for requesting a hearing and the nature of that hearing; and
- (iii) Any other procedures by which the public may participate in the final decision; and
- (7) Name and telephone number of a person to contact for additional information.
- (8) Reserved.
- H.** § 124.9 titled "Administrative record for draft permits" is replaced by the following:
- (a) The provisions of a draft permit prepared under § 124.6 (as incorporated by R18-8-271(E)) shall be based on the administrative record defined in this subsection.
- (b) For preparing a draft permit under § 124.6 (as incorporated by R18-8-271(E)), the record consists of:
- (1) The application, if required, and any supporting data furnished by the applicant, subject to paragraph (e) of this subsection;
- (2) The draft permit or notice of intent to deny the application or to terminate the permit;
- (3) The statement of basis under §§ 124.7 (as incorporated by R18-8-271(F)) or fact sheet under § 124.8 (as incorporated by R18-8-271(G));
- (4) All documents cited in the statement of basis or fact sheet; and
- (5) Other documents contained in the supporting file for the draft permit.
- (6) Reserved.
- (c) Material readily available at the DEQ or published material that is generally available, and that is included in the administrative record under paragraphs (b) and (c) of this subsection, need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the fact sheet.
- (d) This subsection applies to all draft permits when public notice was given after the effective date of these rules.
- (e) All items deemed confidential pursuant to A.R.S. § 49-928 shall be maintained separately and not disclosed to the public.
- I.** § 124.10, titled "Public notice of permit actions and public comment period," is replaced by the following:
- (a) Scope.
- (1) The Director shall give public notice that the following actions have occurred:
- (i) A permit application has been tentatively denied under § 124.6(b) (as incorporated by R18-8-271(E));
- (ii) A draft permit has been prepared under § 124.6(d) (as incorporated by R18-8-271(E)); and
- (iii) A hearing has been scheduled under § 124.12 (as incorporated by R18-8-271(K)).
- (2) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under § 124.5(b) (as incorporated by R18-8-271(D)). Written notice of that denial shall be given to the requester and to the permittee.
- (3) Public notices may describe more than one permit or permit actions.
- (b) Timing.
- (1) Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under paragraph (a) of this subsection shall allow at least 45 days for public comment.
- (2) Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)
- (c) Methods. Public notice of activities described in paragraph (a)(1) of this subsection shall be given by the following methods:
- (1) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this subparagraph may waive his or her rights to receive notice for any classes and categories of permits):
- (i) An applicant;
- (ii) Any other agency which the Director knows has issued or is required to issue a HWM facility permit or any other federal environmental permit for the same facility or activity;
- (iii) Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected states (Indian Tribes). For purposes of this paragraph, and in the context of the Underground Injection Control Program only, the term State includes Indian Tribes treated as States;
- (iv) Reserved.
- (v) Reserved.
- (vi) Reserved.
- (vii) Reserved.
- (viii) For Class I injection well UIC permits only, state and local oil and gas regulatory agencies and state agencies regulating mineral exploration and recovery;
- (ix) Persons on a mailing list developed by:
- (A) Including those who request in writing to be on the list;
- (B) Soliciting persons for "area lists" from participants in past permit proceedings in that area; and
- (C) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state-funded newsletters, environmental bulletins, or state law journals. (The Director may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Director may delete from the list the name of any person who fails to respond to the request.); and
- (x) (A) To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and
- (B) To each state agency having any authority under state law with respect to the construction or operation of the facility;
- (2) By newspaper publication and radio announcement broadcast, as follows:
- (i) Reserved.
- (ii) For all permits, publication of a notice in a daily or weekly major local newspaper of gen-

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- eral circulation within the area affected by the facility or activity, at least once, and in accordance with the provisions of paragraph (b) of this subsection; and
- (iii) For all permits, a radio announcement broadcast over two local radio stations serving the affected area at least once during the period two weeks prior to the public hearing. The announcement shall contain:
- (A) A brief description of the nature and purpose of the hearing;
- (B) The information described in items (i), (ii), (iii), (iv), and (vii) of subparagraph (d)(1) of this subsection;
- (C) The date, time, and place of the hearing; and
- (D) Any additional information considered necessary or proper; or
- (3) Reserved.
- (4) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.
- (d) (1) Each public notice issued under this Article shall contain the following minimum information:
- (i) Name and address of the office processing the permit action for which notice is being given;
- (ii) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by such permit;
- (iii) A brief description of the business conducted at the facility or activity described in the permit application;
- (iv) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the statement of basis or fact sheet;
- (v) A brief description of the comment procedures required by §§ 124.11 (as incorporated by R18-8-271(J) and 124.12 (as incorporated by R18-8-271(K)) and the time and place of any hearing that shall be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;
- (vi) The location of the administrative record required by § 124.9 (as incorporated by R18-8-271(H)), the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant (except for confidential information pursuant to A.R.S. § 49-928) is available as part of the administrative record;
- (vii) The locations where a copy of the application and the draft permit may be inspected and the times at which these documents are available for public review; and
- (viii) Reserved.
- (ix) Any additional information considered necessary or proper.
- (2) Public notices for hearings. In addition to the general public notice described in paragraph (d)(1) of this subsection, the public notice of a hearing under § 124.12 (as incorporated by R18-8-271(K)) shall contain the following information:
- (i) Reference to the date of previous public notices relating to the permit;
- (ii) Date, time, and place of the hearing; and
- (iii) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.
- (iv) Reserved.
- (e) In addition to the general public notice described in paragraph (d)(1) of this subsection, all persons identified in paragraphs (c)(1)(i), (ii), and (iii) of this subsection shall be mailed a copy of the fact sheet or statement of basis, the permit application (if any), and the draft permit (if any).
- J.** § 124.11, titled "Public comments and requests for public hearings," is replaced by the following:
- During the public comment period provided under § 124.10 (as incorporated by R18-8-271(I)), any person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in § 124.17 (as incorporated by R18-8-271(O)).
- K.** § 124.12, titled "Public hearings," is replaced by the following:
- [(a) (1) The Director shall hold a public hearing whenever the Director finds, on the basis of requests, a significant degree of public interest in a draft permit.
- (2) The Director may also hold a public hearing at the Director's discretion whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.
- (3) The Director shall hold a public hearing whenever written notice of opposition to a draft permit and a request for a hearing has been received within 45 days of public notice under § 124.10(b)(1) (as incorporated by R18-8-271(I)). Whenever possible the Director shall schedule a hearing under this subsection at a location convenient to the nearest population center to the proposed facility.
- (4) Public notice of the hearing shall be given as specified in § 124.10 (as incorporated by R18-8-271(I)).
- (b) Reserved.
- (c) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under § 124.10 (as incorporated by R18-8-271(I)) shall automatically be extended to the close of any public hearing under this subsection. The hearing officer may also extend the comment period by so stating at the hearing.
- (d) A tape recording or written transcript of the hearing shall be made available to the public.
- (e) Reserved.]
- L.** § 124.13, titled "Obligation to raise issues and provide information during the public comment period," is replaced by the following:
- [All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, shall raise all reasonably ascertainable issues and submit all

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reasonably available arguments supporting their position by the close of the public comment period (including any public hearing) under § 124.10, (as incorporated by R18-8-271(I)). Any supporting materials that a commenter submits shall be included in full and shall not be incorporated by reference, unless they are already part of the administrative record in the same proceeding or consist of state or federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials. Commenters shall make supporting material not already included in the administrative record available to the DEQ as directed by the Director.]

**M.** § 124.14, titled "Reopening of the public comment period," is replaced by the following:

- (a) (1) The Director may order the public comment period reopened if the procedures of this paragraph could expedite the decision-making process. When the public comment period is reopened under this paragraph, all persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must submit all reasonably available factual grounds supporting their position, including all supporting material, by a date, not less than 60 days after public notice under paragraph (a)(2) of this subsection, set by the Director. Thereafter, any person may file a written response to the material filed by any other person, by a date, not less than 20 days after the date set for filing of the material, set by the Director.
- (2) Public notice of any comment period under this paragraph shall identify the issues to which the requirements of § 124.14(a) (as incorporated by R18-8-271(M)) apply.
- (3) On the Director's own motion or on the request of any person, the Director may direct that the requirements of paragraph (a)(1) of this subsection shall apply during the initial comment period where it reasonably appears that issuance of the permit will be contested and that applying the requirements of paragraph (a)(1) of this subsection will substantially expedite the decision-making process. The notice of the draft permit shall state whenever this has been done.
- (4) A comment period of longer than 60 days will often be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this subsection. Commenters may request longer comment periods and they shall be granted under § 124.10 (as incorporated by R18-8-271(I)) to the extent they appear necessary.
- (b) If any data, information, or arguments submitted during the public comment period, including information or arguments required under § 124.13 (as incorporated by R18-8-271(L)), appear to raise substantial new questions concerning a permit, the Director may take one or more of the following actions:
  - (1) Prepare a new draft permit, appropriately modified, under §§ 124.6 (as incorporated by R18-8-271(E));
  - (2) Prepare a revised statement of basis under § 124.7 (as incorporated by R18-8-271(F)), a fact sheet or revised fact sheet under this § 124.8 (as incorporated by R18-8-271(G)), and reopen the comment period under this subsection; or,
  - (3) Reopen or extend the comment period under § 124.10 (as incorporated by R18-8-271(I)) to give

interested persons an opportunity to comment on the information or arguments submitted.

- (c) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under § 124.10 (as incorporated by R18-8-271(I)) shall define the scope of the reopening.
  - (d) Reserved.
  - (e) Public notice of any of the above actions shall be issued under §§ 124.10 (as incorporated by R18-8-271(I)).
- N.** § 124.15, titled "Issuance and effective date of permit," is replaced by the following:
- (a) After the close of the public comment period under § 124.10 (as incorporated by R18-8-271(I)) on a draft permit, the Director shall issue a final permit decision or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29 (as incorporated by R18-8-270(A)). The Director shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a permit or a decision to terminate a permit. For purposes of this subsection, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.
  - (b) A final permit decision or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29 (as incorporated by R18-8-270(A)) becomes effective on the date specified by the Director in the final permit notice.
    - (1) Reserved.
    - (2) Reserved.
    - (3) Reserved.
- O.** § 124.17, titled "Response to comments," is replaced by the following:
- (a) At the time that any final decision to issue a permit is made under § 124.15 (as incorporated by R18-8-271(N)), the Director shall issue a response to comments. This response shall:
    - (1) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
    - (2) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.
  - (b) Any documents cited in the response to comments shall be included in the administrative record for the final permit decision as defined in § 124.18 (as incorporated by R18-8-271(P)). If new points are raised or new material supplied during the public comment period, the DEQ may document its response to those matters by adding new materials to the administrative record.
  - (c) The response to comments shall be available to the public.
- P.** § 124.18, titled "Administrative record for final permit" is replaced by the following:
- (a) The Director shall base final permit decisions under § 124.15 (as incorporated by R18-8-271(N)) on the administrative record defined in this subsection.
  - (b) The administrative record for any final permit shall consist of the administrative record for the draft permit, and:
    - (1) All comments received during the public comment period provided under § 124.10 (as incorporated by R18-8-271(I)), including any extension or reopening under § 124.14, (as incorporated by R18-8-271(M));

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- (2) The tape or transcript of any hearing(s) held under § 124.12 (as incorporated by R18-8-271(K));
- (3) Any written materials submitted at such a hearing;
- (4) The response to comments required by § 124.17 (as incorporated by R18-8-271(O)) and any new material placed in the record under that subsection;
- (5) Reserved.
- (6) Other documents contained in the supporting file for the permit; and
- (7) The final permit.
- (c) The additional documents required under (b) of this subsection shall be added to the record as soon as possible after their receipt or publication by the DEQ. The record shall be complete on the date the final permit is issued.
- (d) This subsection applies to all final permits when the draft permit was subject to the administrative record requirement of § 124.9 (as incorporated by R18-8-271(H)).
- (e) Material readily available at the DEQ, or published materials which are generally available and which are included in the administrative record under the standards of this subsection or of § 124.17 (as incorporated by R18-8-271(O)), (“Response to comments”), need not be physically included in the same file as the rest of the record as long as the materials and their location are specifically identified in the statement of basis or fact sheet or in the response to comments.
- Q.** § 124.19, titled “Appeal of RCRA, UIC, and PSD permits,” is replaced by the following:
- A final permit decision (or a decision under § 270.29 (as incorporated by R18-8-270(A)) to deny a permit for the active life of a RCRA hazardous waste management facility or unit issued under § 124.15 (as incorporated by R18-8-271(N)) is an appealable agency action as defined in A.R.S. § 41-1092 and is subject to appeal under A.R.S. Title 41, Ch. 6, Art. 10.
- R.** § 124.31(a) titled “Pre-application public meeting and notice” is amended by deleting the following sentence:
- “For the purpose of this section only, ‘hazardous waste management units over which EPA has permit issuance authority’ refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR 271.”
- S.** § 124.32(a) titled “Public notice requirements at the application stage” is amended by deleting the following sentence:
- “For the purpose of this section only, ‘hazardous waste management units over which EPA has permit issuance authority’ refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR 271.”
- T.** § 124.33(a) titled “Information repository” is amended by deleting the following sentence:
- “For the purpose of this section only, ‘hazardous waste management units over which EPA has permit issuance authority’ refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR 271.”

**Historical Note**

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsection (A) effective June 27, 1985 (Supp. 85-3). Amended subsection (A) effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1871 renumbered as R18-8-271; subsections (A), (C), (E), (I), (L) and (M) amended

effective May 29, 1987 (Supp. 87-2). Amended subsection (C) effective December 1, 1988 (Supp. 88-4). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 21 A.A.R. 1246, effective September 5, 2015 (Supp. 15-3).

**R18-8-272. Reserved****R18-8-273. Standards for Universal Waste Management**

All of 40 CFR 273, revised as of July 1, 2013 (and no future editions), is incorporated by reference and on file with the DEQ. Copies of 40 CFR 273 are available at [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html).

**Historical Note**

Adopted effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 21 A.A.R. 1246, effective September 5, 2015 (Supp. 15-3).

**R18-8-274. Reserved****R18-8-275. Reserved****R18-8-276. Reserved****R18-8-277. Reserved****R18-8-278. Reserved****R18-8-279. Reserved****R18-8-280. Compliance**

- A.** Inspection and entry. For purposes of ensuring compliance with the provisions of HWMA, any person who generates, stores, treats, transports, disposes of, or otherwise handles hazardous wastes, including used oil that may be classified as hazardous waste pursuant to A.R.S. Title 49, Chapter 4, Article 7 shall, upon request of any officer, employee, or representative of the DEQ duly designated by the Director, furnish information pertaining to such wastes and permit such person at reasonable times:

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1. To enter any establishment or other place maintained by such person where hazardous wastes are or have been generated, stored, treated, disposed, or transported from;
  2. To have access to, and to copy all records relating to such wastes;
  3. To inspect any facilities, equipment (including monitoring and control equipment), practices, and operations, relating to such wastes;
  4. To inspect, monitor, and obtain samples from such person of any such wastes and of any containers or labeling for such wastes; and
  5. To record any inspection by use of written, electronic, magnetic and photographic media.
- B. Penalties.** A person who violates HWMA or any permit, rule, regulation, or order issued pursuant to HWMA is subject to civil and/or criminal penalties pursuant to A.R.S. §§ 49-923 through 49-925, as amended. Nothing in this Article shall be construed to limit the Director's or Attorney General's enforcement powers authorized by law including but not limited to the seeking or recovery of any civil or criminal penalties.
- C.** A certification statement may be required on written submittals to the DEQ in response to Compliance Orders or in response to information requested pursuant to subsection (A) of this Section. In addition, the DEQ may request in writing that a certification statement appear in any written submittal to the DEQ. The certification statement shall be signed by a person authorized to act on behalf of the company or empowered to make decisions on behalf of the company on the matter contained in the document.
- D. Site assessment plan.**
1. The requirement to develop a site assessment plan shall be contained in a Compliance Order. The Director may require an owner or operator to develop a site assessment plan based on one or more of the following conditions:
    - a. Unauthorized disposal or discharges of hazardous waste or hazardous waste constituents which have not been remediated.
    - b. Results of environmental sampling by the DEQ that indicate the presence of a hazardous waste or hazardous waste constituents.
    - c. Visual observation of unauthorized disposal or discharges which cannot be verified pursuant to § 262.11 (as incorporated by R18-8-262), § 264.13 (as incorporated by R18-8-264), or § 265.13 (as incorporated by R18-8-265) as not containing a hazardous waste or hazardous waste constituents.
    - d. Other evidence of disposal or discharges of hazardous waste or hazardous waste constituents into the environment which have not been remediated.
  2. The site assessment plan shall describe in detail the procedures to determine the nature, extent and degree of hazardous waste contamination in the environment.
  3. The site assessment plan shall be approved by the DEQ before implementation.
  4. The site assessment shall be conducted and the results shall be submitted to the DEQ within the time limitations established by the DEQ.
  5. The DEQ may request in writing that a site assessment plan be conducted. The DEQ will review a voluntarily submitted site assessment plan if the plan satisfies the requirements listed in subsections (D)(2) through (4).

**Historical Note**

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsection (B) effective June 27, 1985 (Supp. 85-3). Former Section R9-8-1880 renumbered as Section R18-8-

280, and subsection (A) amended effective May 29, 1987 (Supp. 87-2). Amended subsection (B) effective December 1, 1988 (Supp. 88-4). Amended October 11, 1989 (Supp. 89-4). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective June 13, 1996 (Supp. 96-2).

**ARTICLE 3. RECODIFIED**

*Title 18, Chapter 8, Article 3, consisting of Sections R18-8-301 through R18-8-305, R18-8-307, Table A, Exhibit 1, and Appendices A and B, recodified to Title 18, Chapter 13, Article 13, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).*

**R18-8-301. Recodified****Historical Note**

Adopted effective August 16, 1993 (Supp. 93-3). Amended effective March 24, 1994 (Supp. 94-1). Section recodified to A.A.C. R18-13-1301, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-302. Recodified****Historical Note**

Adopted effective August 16, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1302, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-303. Recodified****Historical Note**

Adopted effective August 16, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1303, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-304. Recodified****Historical Note**

Adopted effective August 16, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1304, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-305. Recodified****Historical Note**

Adopted effective August 16, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1305, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-306. Repealed****Historical Note**

Emergency rule adopted effective February 22, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency expired. Emergency rule adopted again effective May 26, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-2). Emergency expired. Emergency rule adopted again effective August 30, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 2, 1993 (Supp. 93-4). The permanent rule that was adopted effective December 2, 1993, was inadvertently published without the changes the agency made.

Those changes appear here. (Supp. 95-4). Section repealed by summary rulemaking with an interim effective date of July 16, 1999, filed in the Office of the Secretary of State June 25, 1999 (Supp. 99-2). Interim effective date of July 16, 1999 now the permanent effective date (Supp. 99-4).

**R18-8-307. Recodified**

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**Historical Note**

Emergency rule adopted effective December 21, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-4). Permanent rule adopted with changes effective March 24, 1994 (Supp. 94-1). Section recodified to A.A.C. R18-13-1307, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**Table A. Recodified****Historical Note**

Emergency rule adopted effective December 21, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-4). Permanent rule adopted with changes effective March 24, 1994 (Supp. 94-1). Table A recodified to 18 A.A.C. 13, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**Exhibit 1. Recodified****Historical Note**

Emergency rule adopted effective December 21, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-4). Permanent rule adopted with changes effective March 24, 1994 (Supp. 94-1). Exhibit 1 recodified to 18 A.A.C. 13, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**Appendix A. Recodified****Historical Note**

Adopted effective August 16, 1993 (Supp. 93-3). Appendix A recodified to 18 A.A.C. 13, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**Appendix B. Recodified****Historical Note**

Adopted effective August 16, 1993 (Supp. 93-3). Appendix B recodified to 18 A.A.C. 13, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**ARTICLE 4. RECODIFIED**

*Title 18, Chapter 8, Article 4, consisting of Section R18-8-402, recodified to Title 18, Chapter 13, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).*

**R18-8-401. Expired****Historical Note**

Adopted effective December 21, 1977 (Supp. 77-6). Former Section R9-8-1711 renumbered without change as Section R18-8-401 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

**R18-8-402. Recodified****Historical Note**

Adopted effective December 21, 1977 (Supp. 77-6). Former Section R9-8-1717 renumbered without change as Section R18-8-402 (Supp. 87-3). Section recodified to A.A.C. R18-13-902, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**ARTICLE 5. RECODIFIED**

*Title 18, Chapter 8, Article 5, consisting of Sections R18-8-502 through R18-8-512, recodified to Title 18, Chapter 13, Article 3, filed in the Office of the Secretary of State September 29, 2000*

*(Supp. 00-3).*

**R18-8-501. Expired****Historical Note**

Former Section R9-8-411 renumbered without change as Section R18-8-501 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

**R18-8-502. Recodified****Historical Note**

Former Section R9-8-412 renumbered without change as Section R18-8-502 (Supp. 87-3). Section recodified to A.A.C. R18-13-302, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-503. Recodified****Historical Note**

Former Section R9-8-413 renumbered without change as Section R18-8-503 (Supp. 87-3). Section recodified to A.A.C. R18-13-303, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-504. Recodified****Historical Note**

Former Section R9-8-414 renumbered without change as Section R18-8-504 (Supp. 87-3). Section recodified to A.A.C. R18-13-304, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-505. Recodified****Historical Note**

Former Section R9-8-415 renumbered without change as Section R18-8-505 (Supp. 87-3). Section recodified to A.A.C. R18-13-305, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-506. Recodified****Historical Note**

Former Section R9-8-416 renumbered without change as Section R18-8-506 (Supp. 87-3). Section recodified to A.A.C. R18-13-306, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-507. Recodified****Historical Note**

Former Section R9-8-421 renumbered without change as Section R18-8-507 (Supp. 87-3). Section recodified to A.A.C. R18-13-307, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-508. Recodified****Historical Note**

Amended effective August 6, 1976 (Supp. 76-4). Former Section R9-8-426 renumbered without change as Section R18-8-508 (Supp. 87-3). Section recodified to A.A.C. R18-13-308, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-509. Recodified****Historical Note**

Former Section R9-8-427 renumbered without change as Section R18-8-509 (Supp. 87-3). Section recodified to

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A.A.C. R18-13-309, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

recodified to R18-13-1104 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-510. Recodified****Historical Note**

Former Section R9-8-428 renumbered without change as Section R18-8-510 (Supp. 87-3). Section recodified to A.A.C. R18-13-310, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-605. Expired****Historical Note**

Former Section R9-8-1215 renumbered without change as Section R18-8-605 (Supp. 87-3). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

**R18-8-511. Recodified****Historical Note**

Former Section R9-8-431 renumbered without change as Section R18-8-511 (Supp. 87-3). Section recodified to A.A.C. R18-13-311, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-606. Recodified****Historical Note**

Former Section R9-8-1216 renumbered without change as Section R18-8-606 (Supp. 87-3). Section R18-8-606 recodified to R18-13-1106 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-512. Recodified****Historical Note**

Amended effective August 6, 1976 (Supp. 76-4). Correction in spelling, paragraph (5), "feeding"; former Section R9-8-432 renumbered without change as Section R18-8-512 (Supp. 87-3). Section recodified to A.A.C. R18-13-312, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-607. Expired****Historical Note**

Former Section R9-8-1221 renumbered without change as Section R18-8-607 (Supp. 87-3). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

**R18-8-513. Expired****Historical Note**

Adopted effective March 14, 1979 (Supp. 79-2). Former Section R9-8-433 renumbered without change as Section R18-8-513 (Supp. 87-3). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

**R18-8-608. Recodified****Historical Note**

Former Section R9-8-1222 renumbered without change as Section R18-8-608 (Supp. 87-3). Section R18-8-608 recodified to R18-13-1108 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-609. Expired****Historical Note**

Former Section R9-8-1223 renumbered without change as Section R18-8-609 (Supp. 87-3). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

**ARTICLE 6. RECODIFIED**

*Existing Sections in Article 6 recodified to 18 A.A.C. 13, Article 11 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).*

**R18-8-601. Expired****Historical Note**

Former Section R9-8-1211 renumbered without change as Section R18-8-601 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

**R18-8-610. Expired****Historical Note**

Former Section R9-8-1224 renumbered without change as Section R18-8-610 (Supp. 87-3). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

**R18-8-602. Recodified****Historical Note**

Former Section R9-8-1212 renumbered without change as Section R18-8-602 (Supp. 87-3). Section R18-8-602 recodified to R18-13-1102 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-611. Expired****Historical Note**

Former Section R9-8-1225 renumbered without change as Section R18-8-611 (Supp. 87-3). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

**R18-8-603. Recodified****Historical Note**

Former Section R9-8-1213 renumbered without change as Section R18-8-603 (Supp. 87-3). Section R18-8-603 recodified to R18-13-1103 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-612. Recodified****Historical Note**

Former Section R9-8-1231 renumbered without change as Section R18-8-612 (Supp. 87-3). Section R18-8-612 recodified to R18-13-1112 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-604. Recodified****Historical Note**

Former Section R9-8-1214 renumbered without change as Section R18-8-604 (Supp. 87-3). Section R18-8-604

**R18-8-613. Recodified****Historical Note**

Former Section R9-8-1232 renumbered without change as Section R18-8-613 (Supp. 87-3). Section R18-8-613

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recodified to R18-13-1113 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-614. Recodified****Historical Note**

Former Section R9-8-1233 renumbered without change as Section R18-8-614 (Supp. 87-3). Section R18-8-614 recodified to R18-13-1114 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-615. Recodified****Historical Note**

Former Section R9-8-1234 renumbered without change as Section R18-8-615 (Supp. 87-3). Section R18-8-615 recodified to R18-13-1115 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-616. Recodified****Historical Note**

Former Section R9-8-1235 renumbered without change as Section R18-8-616 (Supp. 87-3). Section R18-8-616 recodified to R18-13-1116 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-617. Recodified****Historical Note**

Former Section R9-8-1236 renumbered without change as Section R18-8-617 (Supp. 87-3). Section R18-8-617 recodified to R18-13-1117 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-618. Recodified****Historical Note**

Former Section R9-8-1241 renumbered without change as Section R18-8-618 (Supp. 87-3). Section R18-8-618 recodified to R18-13-1118 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-619. Recodified****Historical Note**

Former Section R9-8-1242 renumbered without change as Section R18-8-619 (Supp. 87-3). Section R18-8-619 recodified to R18-13-1119 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-620. Recodified****Historical Note**

Former Section R9-8-1243 renumbered without change as Section R18-8-620 (Supp. 87-3). Section R18-8-620 recodified to R18-13-1120 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-621. Expired****Historical Note**

Former Section R9-8-1244 renumbered without change as Section R18-8-621 (Supp. 87-3). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

**ARTICLE 7. RECODIFIED**

*18 A.A.C. 8, Article 7, consisting of Sections R18-8-701 through R18-8-710, recodified to Title 18, Chapter 13, Article 12, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).*

**R18-8-701. Recodified****Historical Note**

Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1201, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-702. Recodified****Historical Note**

Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1202, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-703. Recodified****Historical Note**

Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1203, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-704. Recodified****Historical Note**

Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1204, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-705. Recodified****Historical Note**

Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1205, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-706. Recodified****Historical Note**

Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1206, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-707. Recodified****Historical Note**

Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1207, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-708. Recodified****Historical Note**

Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1208, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-709. Recodified****Historical Note**

Emergency rule adopted effective February 5, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency rule adopted again effective May 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-2). Emergency expired (Supp. 93-3). Emergency rule permanently adopted without change effective February 1, 1994 (Supp. 94-1). Section recodified to A.A.C. R18-13-1209, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-710. Recodified****Historical Note**

Emergency rule adopted effective February 5, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency rule adopted again effective May 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90

days (Supp. 93-2). Emergency expired (Supp. 93-3). Emergency rule permanently adopted without change effective February 1, 1994 (Supp. 94-1). Section recodified to A.A.C. R18-13-1210, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**ARTICLE 8. RESERVED****ARTICLE 9. RESERVED****ARTICLE 10. RESERVED****ARTICLE 11. RESERVED****ARTICLE 12. RESERVED****ARTICLE 13. RESERVED****ARTICLE 14. RESERVED****ARTICLE 15. RESERVED****ARTICLE 16. RECODIFIED**

*Article 16, consisting of Sections R18-8-1601 through R18-8-1614, recodified to 18 A.A.C. 13, Article 16 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).*

**R18-8-1601. Recodified****Historical Note**

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1601 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-1602. Recodified****Historical Note**

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1602 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-1603. Recodified****Historical Note**

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1603 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-1604. Recodified****Historical Note**

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1604 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-1605. Recodified****Historical Note**

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1605 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-1606. Recodified****Historical Note**

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1606 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-1607. Recodified****Historical Note**

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1607 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-1608. Recodified****Historical note**

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1608 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-1609. Recodified****Historical Note**

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1609 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-1610. Recodified****Historical Note**

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1610 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-1611. Recodified****Historical Note**

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1611 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-1612. Recodified****Historical Note**

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1612 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-1613. Recodified****Historical Note**

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1613 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-1614. Recodified****Historical Note**

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1614 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

## **Authorizing Statutes-ADEQ Hazardous Waste rule**

### **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.

### **49-104. Powers and duties of the department and director See (B)(4)**

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.
2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.
3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.
4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.
5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.
6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.
7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.
8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.
9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.

10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.

11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. The department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.

12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.

13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.

14. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

15. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

16. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This paragraph does not adversely affect standards adopted by an Indian tribe under federal law.

17. Provide administrative and staff support for the oil and gas conservation commission.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.

3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.

5. Contract with other agencies, including laboratories, in furthering any department program.

6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.

7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the

standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at those places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection I, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules may:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition

of licensure. The department may establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rulemaking process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. The department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on:

(a) The direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

(b) The availability of other funds for the duties performed.

(c) The impact of the fees on the parties subject to the fees.

(d) The fees charged for similar duties performed by the department, other agencies and the private sector.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203, except that state agencies are exempt from paying those fees that are not associated with the dredge and fill permit program established pursuant to chapter 2, article 3.2 of this title. For services provided under the dredge and fill permit program, a state agency shall pay either:

(a) The fees established by the department under the dredge and fill permit program.

(b) The reasonable cost of services provided by the department pursuant to an interagency service agreement.

2. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

3. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

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

#### 49-922. Department rules and standards; prohibited permittees

A. The director shall adopt rules to establish a hazardous waste management program equivalent to and consistent with the federal hazardous waste regulations promulgated pursuant to subtitle C of the federal act. Federal hazardous waste regulations may be adopted by reference. The director shall not adopt a nonprocedural standard that is more stringent than or conflicts with those found in 40 Code of Federal Regulations parts 260 through 268, 270 through 272, 279 and 124. The director shall not identify a waste as hazardous, if not so identified in the federal hazardous waste regulations, unless the director finds, based on all the factors in 40 Code of Federal Regulations section 261.11(a)(1), (2), or (3), that the waste may cause or significantly contribute to an increase in serious irreversible, or incapacitating reversible, illness or pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed or otherwise managed.

B. These rules shall establish criteria and standards for the characteristics, identification, listing, generation, transportation, treatment, storage and disposal of hazardous waste within this state. In establishing the standards the director shall, where appropriate, distinguish between new and existing facilities. The criteria and standards shall include requirements respecting:

1. Maintaining records of hazardous waste identified under this article and the manner in which the waste is generated, transported, treated, stored or disposed.
  2. Submission of reports, data, manifests and other information necessary to ensure compliance with such standards.
  3. The transportation of hazardous waste, including appropriate packaging, labeling and marking requirements and requirements respecting the use of a manifest system, which are consistent with the regulations of the state and United States departments of transportation governing the transportation of hazardous materials.
  4. The operation, maintenance, location, design and construction of hazardous waste treatment, storage or disposal facilities, including such additional qualifications as to ownership, continuity of operation, contingency plans, corrective actions and abatement of continuing releases, monitoring and inspection programs, personnel training, closure and postclosure requirements and financial responsibility as may be necessary and appropriate.
  5. Requiring a permit for a hazardous waste treatment, storage or disposal facility including the modification and termination of permits, the authority to continue activities and permits existing on July 27, 1983 consistent with the federal hazardous waste regulations, and the payment of reasonable fees. The director shall establish and collect reasonable fees from the applicant to cover the cost of administrative services and other expenses associated with evaluating the application and issuing or denying the permit. After the effective date of this amendment to this section, the director shall establish by rule an application fee to cover the cost of administrative services and other expenses associated with evaluating the application and issuing or denying the permit, including a maximum fee. As part of the rule making process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the director 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 hazardous waste management fund established by section 49-927.
  6. Providing the right of entry for inspection and sampling to ensure compliance with the standards.
  7. Providing for appropriate public participation in developing, revising, implementing, amending and enforcing any rule, guideline, information or program under this article consistent with the federal hazardous waste program.
- C. The director may refuse to issue a permit for a facility for storage, treatment or disposal of hazardous waste to a person if any of the following applies:
1. The person fails to demonstrate sufficient reliability, expertise, integrity and competence to operate a hazardous waste facility.
  2. The person has been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the permit application.
  3. In the case of a corporation or business entity, if any of its officers, directors, partners, key employees or persons or business entities holding ten per cent or more of its equity or debt liability has been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the permit application.

D. Nothing in this article shall affect the validity of any existing rules adopted by the director that are equivalent to and consistent with the federal hazardous waste regulations until new rules for hazardous waste are adopted.

E. Nothing in this article shall authorize the regulation of small quantity generators as defined by 40 Code of Federal Regulations section 261.5 in a manner inconsistent with the federal hazardous waste regulations. However, the director may require reports of any small quantity generator or group of small quantity generators regarding the treatment, storage, transportation, disposal or management of hazardous waste if the hazardous waste of such generator or generators may pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed or otherwise managed.

## Definitions in Other Statutes and Rules

### 41-1092. Definitions

In this article, unless the context otherwise requires:

1. "Administrative law judge" means an individual or an agency head, board or commission that sits as an administrative law judge, that conducts administrative hearings in a contested case or an appealable agency action and that makes decisions regarding the contested case or appealable agency action.
2. "Administrative law judge decision" means the findings of fact, conclusions of law and recommendations or decisions issued by an administrative law judge.
3. "**Appealable agency action**" means an action that determines the legal rights, duties or privileges of a party and that is not a contested case. Appealable agency actions do not include interim orders by self-supporting regulatory boards, rules, orders, standards or statements of policy of general application issued by an administrative agency to implement, interpret or make specific the legislation enforced or administered by it or clarifications of interpretation, nor does it mean or include rules concerning the internal management of the agency that do not affect private rights or interests. For the purposes of this paragraph, administrative hearing does not include a public hearing held for the purpose of receiving public comment on a proposed agency action.
4. "Director" means the director of the office of administrative hearings.
5. "Final administrative decision" means a decision by an agency that is subject to judicial review pursuant to title 12, chapter 7, article 6.
6. "Office" means the office of administrative hearings.
7. "Self-supporting regulatory board" means any one of the following:
  - (a) The Arizona state board of accountancy.
  - (b) The state board of appraisal.
  - (c) The board of barbers.
  - (d) The board of behavioral health examiners.
  - (e) The Arizona state boxing and mixed martial arts commission.
  - (f) The state board of chiropractic examiners.
  - (g) The board of cosmetology.
  - (h) The state board of dental examiners.
  - (i) The state board of funeral directors and embalmers.
  - (j) The Arizona game and fish commission.
  - (k) The board of homeopathic and integrated medicine examiners.
  - (l) The Arizona medical board.
  - (m) The naturopathic physicians medical board.
  - (n) The state board of nursing.
  - (o) The board of examiners of nursing care institution administrators and adult care home managers.
  - (p) The board of occupational therapy examiners.
  - (q) The state board of dispensing opticians.
  - (r) The state board of optometry.
  - (s) The Arizona board of osteopathic examiners in medicine and surgery.
  - (t) The Arizona peace officer standards and training board.
  - (u) The Arizona state board of pharmacy.
  - (v) The board of physical therapy.

- (w) The state board of podiatry examiners.
- (x) The state board for private postsecondary education.
- (y) The state board of psychologist examiners.
- (z) The board of respiratory care examiners.
- (aa) The office of pest management.
- (bb) The state board of technical registration.
- (cc) The Arizona state veterinary medical examining board.
- (dd) The acupuncture board of examiners.
- (ee) The Arizona regulatory board of physician assistants.
- (ff) The board of athletic training.
- (gg) The board of massage therapy.

#### 49-921. Definitions

In this article, unless the context otherwise requires:

1. "**Disposal**" means discharging, depositing, injecting, dumping, spilling, leaking or placing hazardous waste into or on land or water so that hazardous waste or any constituent of hazardous waste may enter the environment, be emitted into the air or discharged into any waters, including groundwater.
2. "**Facility**" includes all contiguous land and structures, other appurtenances and improvements on the land used for treating, storing or disposing of hazardous waste. A facility may consist of several treatment, storage or disposal units.
3. "Federal act" means the solid waste disposal act, as amended by the resource conservation and recovery act of 1976 and the hazardous and solid waste amendments of 1984 (P.L. 94-580; 90 Stat. 2795).
4. "Generation" means the act or process of producing hazardous waste.
5. "**Hazardous waste**" means garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, or other discarded materials, including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations or from community activities which because of its quantity, concentration or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or pose a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, disposed of or otherwise managed or any waste identified as hazardous pursuant to section 49-922. Hazardous waste does not include solid or dissolved material in domestic sewage, solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the federal water pollution control act (P.L. 92-500; 86 Stat. 816), as amended, or source, special nuclear or by-product material as defined by the atomic energy act of 1954 (68 Stat. 919), as amended.
6. "Key employee" means any person employed by an applicant or permittee in a supervisory capacity or empowered to make discretionary decisions with respect to the solid waste or hazardous waste operations of the business concern. Key employee does not include an employee exclusively engaged in the physical or mechanical collection, transportation, treatment, storage or disposal of solid or hazardous waste.

7. "Manifest" means the form used for identifying the quantity, composition, origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.
8. "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, state, municipality, commission, political subdivision of the state, interstate body or federal facility.
9. "Storage" means the holding of hazardous waste for a temporary period at the end of which the hazardous waste is treated, disposed of or stored elsewhere.
10. "Transportation" means the movement of hazardous waste by air, rail, highway or water.
11. "Treatment" means a method, technique or process designed to change the physical, chemical or biological character or composition of hazardous waste so as to neutralize such waste or to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume.

**D-6**

**BOARD OF PHYSICIAN ASSISTANTS (R-19-0207)**  
Title 4, Chapter 17, Article 2, Physician Assistant Licensure

**Amend:** R4-17-203

# GOVERNOR'S REGULATORY REVIEW COUNCIL

## STAFF MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** February 5, 2019

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

**FROM:** Council Staff

**DATE:** January 22, 2019

**SUBJECT: BOARD OF PHYSICIAN ASSISTANTS (R-19-0207)**  
Title 4, Chapter 17, Article 2, Physician Assistant Licensure

**Amend:** R4-17-203

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This rulemaking, from the Board of Physician Assistants (Board), seeks to amend one rule in A.A.C. Title 4, Chapter 17, Article 2, related to physician assistant licensure.

The Board is amending R4-17-203 in response to 2018 amendments to A.R.S. § 32-2504 that allow a licensed and otherwise qualified physician assistant to prescribe a 90-day supply of a schedule II or schedule III controlled substance, that is not an opioid or benzodiazepine, rather than the current 30-day supply of a schedule II or schedule III controlled substance. When prescribing an opioid or benzodiazepine, the Board notes that a physician assistant must continue to comply with the limits imposed by the Arizona Opioid Epidemic Act.

An exemption from the rulemaking moratorium was approved by the Governor's Office on June 8, 2018.

**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 the rule.

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

No. The rule does not establish a new fee or contain a fee increase.

**3. Summary of the agency’s economic impact analysis:**

There are currently 3,236 licensed physician assistants in Arizona. 2,624 of these are authorized to prescribe a 30-day supply of a schedule II or schedule III controlled substance. Once this rulemaking becomes effective, these physician assistants will be authorized to prescribe a 90-day supply of these controlled substances with the exception of opioids and benzodiazepines.

**4. 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 incurred the costs associated with creating this rulemaking. Physician assistants and their patients will benefit from increased flexibility. The benefits outweigh the costs.

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

Key stakeholders are the Board, physician assistants, and the general public.

The Board incurred the costs associated with creating the rulemaking. The Board will benefit from having rules that are consistent with state statute.

Physician assistants who are currently authorized to prescribe a 30-day supply of a schedule II or schedule III controlled substance will benefit because they can now prescribe a 90-day supply as long as the controlled substance is not an opioid or a benzodiazepine. This provides physician assistants with more flexibility.

The general public will benefit from this rulemaking because it provides more flexibility for individuals who use schedule II or schedule III controlled substances that are not opioids or benzodiazepines.

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

Yes. The Board indicates that it received one comment at the November 13, 2018 oral proceeding held on the rulemaking. Ms. Jennifer Feirstein, President and Chair of the Legislative Committee of the Arizona State Association of Physician Assistants (ASAPA), suggested that language be added indicating a physician assistant currently certified for 30-day prescription privileges for schedule II or III controlled substances that are opioids or benzodiazepines continues to have the same 30-day privileges. The Board did not make the requested change, as the Board believes it would run counter to A.R.S. §§ 32-3248 and 32-3248.01, which place a five-day cap on most new opioid prescriptions and a 14-day limit for opioids prescribed after a surgical procedure. Council staff believes that the Board has adequately addressed the comment.

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

No. Only non-substantive technical corrections have been made between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

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

No. Federal law is not directly applicable to the subject matter of the rule.

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

Yes. The Board indicates that the license issued under R4-17-203 is a general permit consistent with A.R.S. § 41-1037 because it is issued to qualified individuals to conduct activities that are substantially similar in nature.

**10. 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?**

No. The Board did not review or rely on any study for this rulemaking.

**11. Conclusion**

The Board accepts the usual 60-day delayed effective date for the rulemaking. Council staff recommends approval of the rulemaking.



## Arizona Regulatory Board of Physician Assistants

1740 W. Adams, Suite 4000 • Phoenix, Arizona 85007  
Telephone: 480-551-2700 • Toll Free: 877-255-2212 • Fax: 480-551-2704  
Website: [www.azpa.gov](http://www.azpa.gov) • Email: [questions@azpa.gov](mailto:questions@azpa.gov)

December 18, 2018

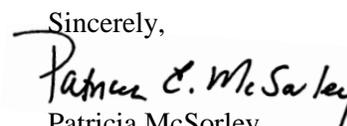
Ms. Nicole Sornsin, Chair  
The Governor's Regulatory Review Council  
100 North 15th Avenue, Ste. 305  
Phoenix, AZ 85007

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

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 November 16, 2018, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).
- B. Relation of the rulemaking to a five-year-review report: The rulemaking does not relate to a five-year-review report.
- C. New fee: The rulemaking does not establish a new fee.
- D. Fee increase: The rulemaking does not increase an existing fee.
- E. Immediate effective date: An immediate effective date is not requested.
- F. Certification regarding studies: I certify that the preamble accurately discloses 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 comment

Sincerely,  
  
Patricia McSorley  
Executive Director

**NOTICE OF FINAL RULEMAKING**  
**TITLE 4. PROFESSIONS AND OCCUPATIONS**  
**CHAPTER 17. ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS**

**PREAMBLE**

- |   |                                 |
|---|---------------------------------|
| <b>1. <u>Articles, Parts, and Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
| R4-17-203   | Amend                           |
- 2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**  
Authorizing statute: A.R.S. § 32-2504(B)  
Implementing statute: A.R.S. §§ 32-2504(A)(11) and 32-2532
- 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: 24 A.A.R. 2772, October 5, 2018  
Notice of Proposed Rulemaking: 24 A.A.R. 2731, October 5, 2018
- 5. The agency's contact person who can answer questions about the rulemaking:**  
Name: Patricia McSorley, Executive Director  
Address: Arizona Medical Board  
1740 W Adams Street, Suite 4000  
Phoenix, AZ 85007  
Telephone: (480) 551-2700

Fax: (480) 551-2704  
E-mail: patricia.mcsorley@azmd.gov  
Web site: www.azpa.gov

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

Under Laws 2018, Chapter 233, the legislature amended A.R.S. § 32-2504(A)(11) to allow a licensed and otherwise qualified physician assistant to prescribe a 90-day supply of a schedule II or schedule III controlled substance that is not an opioid or benzodiazepine rather than the current 30-day supply of a schedule II or schedule III controlled substance. When prescribing an opioid or benzodiazepine, a physician assistant must continue to comply with the limits imposed by the Arizona Opioid Epidemic Act. Except in an emergency, all prescribing by a physician assistant is subject to delegation by the supervising physician. This rulemaking places the 2018 statutory change in rule and allows current physician assistants with prescribing authority for schedule II or schedule III controlled substance to prescribe consistent with the new statute. An exemption from Executive Order 2018-02 was provided for this rulemaking by Emily Rajakovich, of the Governor's Office, in an e-mail dated June 8, 2018.

**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 the rule.

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

Not applicable

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

Because the rulemaking simply makes the rule consistent with statute, the Board expects the economic impact will be minimal. To the extent that being able to prescribe and receive a 90-day rather than 30-day supply of medication has economic impact, it is the statutory change rather than this rulemaking that produced the economic impact.

**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:**

At an oral proceeding held November 13, 2018, Jennifer Feirstein, President and Chair of the Legislative Committee of the ASAPA, suggested language be added indicating a physician assistant currently certified for 30-day prescription privileges for schedule II or III controlled substances that are opioids or benzodiazepines continues to have the same 30-day privileges. The Board did not make the requested change because it runs counter to new statutes enacted under the Arizona Opioid Epidemic Act during the last legislative session. A.R.S. §§ 32-3248 and 32-3248.01 place a five-day cap on most new opioid prescriptions and a 14-day limit for opioids prescribed after a surgical procedure. These prescribing limits apply to all prescribing professionals, including physician assistants.

**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 license issued under R4-17-203 is a general permit consistent with A.R.S. § 41-1037 because it is issued to qualified individuals to conduct activities that are substantially similar in nature.

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

There are numerous federal laws regulating the practice of medicine and controlled substances. A physician assistant who prescribes, dispenses, or administers a schedule II through schedule V controlled substance is required to have a registration number from the U.S. Drug Enforcement Agency. However, none of these requirements is applicable to this rulemaking.

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

No analysis was submitted

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

The rule was not previously made, amended, or repealed as an emergency rule.

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

**TITLE 4. PROFESSIONS AND OCCUPATIONS  
CHAPTER 17. ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS  
ARTICLE 2. PHYSICIAN ASSISTANT LICENSURE**

Section

R4-17-203. Regular License Application

## ARTICLE 2. PHYSICIAN ASSISTANT LICENSURE

### R4-17-203. Regular License Application

#### A. No change

1. No change
  - 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
5. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
  - f. No change
  - g. No change
  - h. No change
  - i. No change
  - j. No change
  - k. No change
  - l. No change
  - m. No change
  - n. No change;
  - o. No change
  - p. No change
6. No change
  - a. No change

- b. No change
  - i. No change
  - ii. No change
- c. No change
- 7. No change
- 8. No change
- B.** No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
    - a. No change
    - b. No change
    - c. No change
  - 5. No change
- C.** No change
  - 1. No change
  - 2. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
    - e. No change
- D.** The Board's issuance of a regular license to an applicant ~~also approves~~ certifies the applicant to issue, ~~prescriptions and dispense,~~ or ~~issue~~ administer schedule II or schedule III controlled substances, subject to the limits and requirements specified in A.R.S. § 32-2532. Additionally, beginning October 1, 2018, a physician assistant previously certified by the Board for 30-day prescription privileges for schedule II or schedule III controlled substances is certified for 90-day prescription privileges for schedule II or schedule III controlled substances that are not opioids or benzodiazepine.

'A physician assistant previously certified by the Board for 30-day prescription privileges for schedule II or schedule III controlled substances continues to be certified for 30-day prescription privileges for schedule II or schedule III controlled substances that are opioids or benzodiazepines.

Jennifer Feirstein

ASAPA/Pres. & Chair Legislative Committee

→ Comment received 11/13/2018 at 10:00 AM

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**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT<sup>1</sup>**  
**TITLE 4. PROFESSIONS AND OCCUPATIONS**  
**CHAPTER 17. ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS**

1. Identification of the rulemaking:

Under Laws 2018, Chapter 233, the legislature amended A.R.S. § 32-2504(A)(11) to authorize a licensed and otherwise qualified physician assistant to prescribe a 90-day supply of a schedule II or schedule III controlled substance that is not an opioid or benzodiazepine rather than the current 30-day supply of a schedule II or schedule III controlled substance. When prescribing an opioid or benzodiazepine, a physician assistant must continue to comply with the limits imposed by the Arizona Opioid Epidemic Act. Except in an emergency, all prescribing by a physician assistant is subject to delegation by the supervising physician. This rulemaking places the 2018 statutory change in rule and authorizes current physician assistants with prescribing authority for schedule II or schedule III controlled substances to prescribe consistent with the new statute.

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

Until the rulemaking is completed, it will not be clear that currently licensed and otherwise qualified physician assistants have prescription privileges consistent with the recent statutory change.

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

Currently licensed and otherwise qualified physician assistants are harmed by being uncertain of the extent of their prescription privileges.

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

When the rulemaking is completed, it will be clear that currently licensed and otherwise qualified physician assistants are authorized to prescribe a 90-day supply of a schedule II or schedule III controlled substance that is not an opioid or benzodiazepine rather than the current 30-day supply of a schedule II or schedule III controlled substance.

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

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

There are currently 3,236 licensed physician assistants. Of these, 2,624 are currently authorized to prescribe a 30-day supply of a schedule II or schedule III controlled substance. This rulemaking will authorize these physician assistants to prescribe a 90-day supply of a schedule II or schedule III controlled substance that is not an opioid or benzodiazepine. This will reduce the need for patients to incur the expense of returning for an additional prescription. It will free the time of the physician assistants to address the needs of other patients. This economic impact results from the statutory change rather than from this rulemaking.

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

Name: Patricia McSorley, Executive Director

Address: Arizona Medical Board

1740 W Adams Street, Suite 4000

Phoenix, AZ 85007

Telephone: (480) 551-2700

Fax: (480) 551-2704

E-mail: [patricia.mcsorley@azmd.gov](mailto:patricia.mcsorley@azmd.gov)

Web site: [www.azpa.gov](http://www.azpa.gov)

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

Persons directly affected by, bearing the costs of, and directly benefiting from the rulemaking are the 2,624 physician assistants identified in item 2. Applicants who are otherwise qualified will also benefit from the rulemaking. The Board incurred the cost of doing the rulemaking and will benefit from having rules consistent with statute.

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 identified in item 4. The Board will not need an additional full-time employee to implement and enforce the rulemaking.

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

No political subdivision is directly affected by the rulemaking.

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

Physician assistants are businesses directly affected by the rulemaking. Their costs and benefits are identified in item 2.

6. Impact on private and public employment:

The Board expects the rulemaking to have no impact on private or public employment.

7. Impact on small businesses<sup>2</sup>:

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

Licensed physician assistants are small businesses subject to the rulemaking. Their costs and benefits are identified in item 2.

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

An applicant is required to apply for licensure. This cost is currently incurred by all applicants.

The rulemaking adds no additional administrative or other costs.

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

Because the economic impact results from the statutory change rather than this rulemaking, no methods were considered to reduce the impact on small businesses.

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

No private persons or consumers are directly affected by the rulemaking. Patients requiring a 90-day supply of a schedule II or schedule III controlled substance that is not an opioid or benzodiazepine will be indirectly affected by the statute and rulemaking.

9. Probable effects on state revenues:

The Board expects there to be no effect on state revenue.

10. Less intrusive or less costly alternative methods considered:

The rulemaking simply makes the rule consistent with statute. No less intrusive or less costly alternative method was considered.

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

#### **R4-17-203. Regular License Application**

- A. An applicant for a regular license shall submit a completed application to the Board that includes:
1. The applicant's:
    - a. First, last, and middle name;
    - b. Every other name used by the applicant;
    - c. Social Security number;
    - d. Office, mailing, e-mail, and home addresses;
    - e. Office, mobile, and home telephone numbers; and
    - f. Birth date and state or country of birth;
  2. The name and address of the approved program completed by the applicant and the date of completion;
  3. The name of each state or province in which the applicant has ever been certified, registered, or licensed as a physician assistant, including the certificate, registration, or license number, and current status;
  4. Whether the applicant has practiced as a physician assistant since graduation from a physician assistant program or for 10 continuous years before the date the application was submitted to the Board and if not, an explanation;
  5. A questionnaire that includes answers to the following:
    - a. Whether the applicant has had an application for a certificate, registration, or license refused or denied by any licensing authority, and if so, an explanation;
    - b. Whether the applicant has had the privilege of taking an examination for a professional license refused or denied by any entity, and if so, an explanation;
    - c. Whether the applicant has ever resigned or been requested to resign, been suspended or expelled from, been placed on probation, or been fined while enrolled in an approved program in a medical school or a postsecondary educational program, and if so, an explanation;
    - d. Whether, while attending an approved program, the applicant has ever had any action taken against the applicant by the approved program, resigned, or been asked to leave the approved program for any amount of time, and if so, an explanation;
    - e. Whether the applicant has ever surrendered a health professional license, and if so, an explanation;
    - f. Whether the applicant has ever had a health professional license suspended or revoked, or whether any other disciplinary action has ever been taken against a health professional license held by the licensee, and if so, an explanation;
    - g. Whether the applicant is currently under investigation by any health profession regulatory authority, health care association, licensed health care institution, or there are any pending complaints or disciplinary actions against the applicant, and if so, an explanation;
    - h. Whether the applicant has ever had any action taken against the applicant's privileges, including termination, resignation, or withdrawal by a health care institution or health profession regulatory authority, and if so, an explanation;
    - i. Whether the applicant has ever had a federal or state regulatory authority take any action against the applicant's authority to prescribe, dispense, or administer controlled substances including revocation, suspension, or denial, or whether the applicant ever surrendered the authority in lieu of any of these actions, and if so, an explanation;
    - j. Whether the applicant has ever been charged with, convicted of, pleaded guilty to, or entered into a plea of no contest to a felony or misdemeanor involving moral

- turpitude or has been pardoned or had a record expunged or vacated, and if so, an explanation;
- k. Whether the applicant has ever been charged with or convicted of a violation of any federal or state drug statute, rule, or regulation, regardless of whether a sentence was or was not imposed, and if so, an explanation;
  - l. Whether the applicant has been named as a defendant in a malpractice matter currently pending or that resulted in a judgment or settlement entered against the applicant, and if so, an explanation;
  - m. Whether the applicant has ever been court-martialed or discharged other than honorably from any branch of military service, and if so, an explanation;
  - n. Whether the applicant has ever been involuntarily terminated from a health professional position, resigned, or been asked to leave the health care position, and if so, an explanation;
  - o. Whether the applicant has ever been convicted of insurance fraud or received a sanction, including limitation, suspension, or removal from practice, imposed by any state or the federal government, and if so, an explanation; and
  - p. Whether the applicant, within the three years before the date of the application, has completed 45 hours in pharmacology or clinical management of drug therapy or is certified by a national commission on the certification of physician assistants or its successor;
6. A confidential questionnaire that includes answers to the following:
    - a. Whether the applicant has received treatment within the last five years for use of alcohol or a controlled substance, prescription-only drug, or dangerous drug or narcotic or a physical, mental, emotional, or nervous disorder or condition that currently impairs the applicant's ability to exercise the judgment and skills of a medical professional;
    - b. If the answer to subsection (A)(6)(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;
  7. Consistent with the Board's statutory authority, other information the Board may deem necessary to evaluate the applicant fully; and
  8. A sworn statement that complies with A.R.S. § 32-2522(C).
- B.** In addition to the requirements in subsection (A), an applicant shall submit the following to the Board:
1. Documentation of citizenship or alien status that conforms to A.R.S. § 41-1080;
  2. Documentation of a legal name change if the applicant's legal name is different from that shown on the document submitted in accordance with subsection (B)(1);
  3. A form provided by the Board and completed by the applicant that lists all current or past employment with health professionals or health care institutions within five years before the date of application or since graduation from a physician assistant program, if less than five years, including each health professional's or health care institution's name, address, and dates of employment;
  4. Verification of any medical malpractice matter currently pending or resulting in a

settlement or judgment against the applicant, including a copy of the complaint and either the agreed terms of settlement or the judgment and a narrative statement specifying the nature of the occurrence resulting in the medical malpractice action. An applicant who is unable to obtain a document required under this subsection may submit a written request for a waiver of the requirement. The applicant shall include the following information in a request for waiver:

- a. The document for which waiver is requested;
  - b. Detailed description of efforts made by the applicant to provide the required document; and
  - c. Reason the applicant's inability to provide the required document is due to no fault of the applicant; and
5. The fee required in R4-17-204.
- C.** In addition to the requirements in subsections (A) and (B), an applicant shall have the following directly submitted to the Board:
1. A copy of the applicant's certificate of successful completion of the PANCE or PANRE and the applicant's examination score provided by the NCCPA;
  2. An approved program form provided by the Board, completed and signed by the director or administrator of the approved program that granted the applicant a physician assistant degree, that includes the:
    - a. Applicant's full name,
    - b. Type of degree earned by the applicant,
    - c. Name of the physician assistant program completed by the applicant,
    - d. Starting and ending dates, and
    - e. Date the applicant's degree was granted.
- D.** The Board's issuance of a regular license to an applicant also approves the applicant to issue prescriptions and dispense or issue schedule II or schedule III controlled substances subject to the limits and requirements specified in A.R.S. § 32-2532.

32-2504. Powers and duties; delegation of authority; rules; subcommittees; immunity

A. The board shall:

1. As its primary duty, protect the public from unlawful, incompetent, unqualified, impaired or unprofessional physician assistants.
2. License and regulate physician assistants pursuant to this chapter.
3. Order and evaluate physical, psychological, psychiatric and competency testing of licensees and applicants the board determines is necessary to enforce this chapter.
4. Review the credentials and the abilities of applicants for licensure whose professional records or physical or mental capabilities may not meet the requirements of this chapter.
5. Initiate investigations and determine on its own motion whether a licensee has engaged in unprofessional conduct or is or may be incompetent or mentally or physically unable to safely perform health care tasks.
6. Establish fees and penalties pursuant to section 32-2526.
7. Develop and recommend standards governing the profession.
8. Engage in the full exchange of information with the licensing and disciplinary boards and professional associations of other states and jurisdictions of the United States and foreign countries and a statewide association for physician assistants.
9. Direct the preparation and circulation of educational material the board determines is helpful and proper for its licensees.
10. Discipline and rehabilitate physician assistants pursuant to this chapter.
11. Beginning October 1, 2018, certify physician assistants for ninety-day prescription privileges for schedule II or schedule III controlled substances that are not opioids or benzodiazepine if the physician assistant either:
  - (a) Within the preceding three years of application, completed forty-five hours in pharmacology or clinical management of drug therapy or at the time of application is certified by a national commission on the certification of physician assistants or its successor.
  - (b) Met any other requirement established by board rule.

B. The board may delegate to the executive director the board's authority pursuant to this section or section 32-2551. The board shall adopt a substantive policy statement pursuant to section 41-1091 for each specific licensing and regulatory authority the board delegates to the executive director.

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

chapter.

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

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

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

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

32-2532. Prescribing, administering and dispensing drugs; limits and requirements; notice

A. Except as provided in subsection F of this section, a physician assistant shall not prescribe, dispense or administer:

1. A schedule II or schedule III controlled substance as defined in the federal controlled substances act of 1970 (P.L. 91-513; 84 Stat. 1242; 21 United States Code section 802) without delegation by the supervising physician, board approval and United States drug enforcement administration registration.

2. A schedule IV or schedule V controlled substance as defined in the federal controlled substances act of 1970 without United States drug enforcement administration registration and delegation by the supervising physician.

3. Prescription-only medication without delegation by the supervising physician.

4. Prescription medication intended to perform or induce an abortion.

B. All prescription orders issued by a physician assistant shall contain the name, address and telephone number of the physician assistant. A physician assistant shall issue prescription orders for controlled substances under the physician assistant's own United States drug enforcement administration registration number.

C. Unless certified for ninety-day prescription privileges pursuant to section 32-2504, subsection A, a physician assistant shall not prescribe a schedule II or schedule III controlled substance for a period exceeding seventy-two hours. For each schedule IV or schedule V controlled substance, a physician assistant may not prescribe the controlled substance more than five times in a six-month period for each patient.

D. A prescription for a schedule II or III controlled substance that is an opioid or

benzodiazepine is not refillable without the written consent of the supervising physician.

E. Prescription-only drugs shall not be dispensed, prescribed or refillable for a period exceeding one year.

F. Except in an emergency, a physician assistant may dispense schedule II or schedule III controlled substances for a period of use of not to exceed seventy-two hours with board approval or any other controlled substance for a period of use of not to exceed ninety days and may administer controlled substances without board approval if it is medically indicated in an emergency dealing with potential loss of life or limb or major acute traumatic pain. Notwithstanding the authority granted in this subsection, a physician assistant may not dispense a schedule II controlled substance that is an opioid, except for an implantable device or an opioid that is for medication-assisted treatment for substance use disorders.

G. Except for samples provided by manufacturers, all drugs dispensed by a physician assistant shall be:

1. Prepackaged in a unit-of-use package by a pharmacist.
2. Labeled to show the name of the physician assistant.

H. A physician assistant shall not obtain a drug from any source other than the supervising physician or a pharmacist. A physician assistant may receive manufacturers' samples if delegated to do so by the supervising physician.

I. If a physician assistant is approved by the board to prescribe, administer or dispense schedule II and schedule III controlled substances, the physician assistant shall maintain an up-to-date and complete log of all schedule II and schedule III controlled substances the physician assistant administers or dispenses. The board may not grant a physician assistant the authority to dispense schedule II controlled substances that are opioids, except for implantable devices or opioids that are for medication-assisted treatment for substance use disorders.

J. The board shall advise the Arizona state board of pharmacy and the United States drug enforcement administration of all physician assistants who are authorized to prescribe or dispense drugs and any modification of their authority.

K. The Arizona state board of pharmacy shall notify all pharmacies at least quarterly of physician assistants who are authorized to prescribe or dispense drugs.

**D-7**

**DEPARTMENT OF AGRICULTURE (R-19-0208)**  
Title 3, Chapter 8, Article 1, Fees; Charges; Exemption

**Amend:** R3-8-103

# GOVERNOR'S REGULATORY REVIEW COUNCIL

## STAFF MEMORANDUM - EXPEDITED RULEMAKING

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**MEETING DATE:** February 5, 2019

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

**FROM:** Council Staff

**DATE:** January 22, 2019

**SUBJECT: DEPARTMENT OF AGRICULTURE (R-19-0208)**  
Title 3, Chapter 8, Article 1, Fees; Charges; Exemption

**Amend:** R3-8-103

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This expedited rulemaking, from the Department of Agriculture (Department), seeks to amend one rule in A.A.C. Title 3, Chapter 8, Article 1, related to fees charged by the Department's Pest Management Division (Division).

The Department is implementing a temporary reduction, through June 30, 2020, on all license related fees. This reduction is intended to provide financial relief to industry members who desire to legally operate a pest control business. As the fee amounts collected currently exceed the operating expenses of the Division, a temporary fee reduction is not expected to negatively impact the Division's operations. Effective March 1, 2019 through June 30, 2020, the Department is reducing the following application and renewal fees:

- For an applicator:
  - **Applicator certification:** From \$75 to \$55
  - **Qualified Applicator (QA) certification:** From \$100 to \$75
  - **QA certification broadening application:** From \$25 to \$15
- For a qualifying party:
  - **Registration at a different time than application for or renewal of the business license:** From \$50 to \$35
  - **Registration broadening:** From \$25 to \$15
  - **Temporary qualifying party registration:** From \$100 to \$75
- For a business:
  - **Business license:** From \$250 to \$185
- For a branch:
  - **Branch office registration:** From \$50 per branch to \$35 per branch

- **Branch supervisor registration at a different time than branch office registration:** From \$25 to \$15

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

Yes. As statutory authority for the rule, the Department cites to A.R.S. § 3-107(A)(1), A.R.S. § 3-3603(A)(1), and A.R.S. § 3-3618.

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

No. The rule contains decreased fees and no increased fees.

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

Yes. The Department indicates that it received only positive public and stakeholder comments about the rulemaking.

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

No. No changes were made between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

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

No. Federal law is not directly applicable to the subject matter of the rule.

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

No. While the rule establishes licensing fees, it does not require a permit or license.

**7. 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?**

No. The Department did not review or rely on any study for this rulemaking.

**8. Conclusion**

The rule will become effective immediately upon filing with the Secretary of State. Council staff recommends approval of the rulemaking.



# Arizona Department of Agriculture

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

January 16, 2019

Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 N. 15th Avenue, Suite 402  
Phoenix, Arizona 85007

RE: Expedited Rulemaking A.A.C. R3-8-103

Dear Ms. Sornsin:

Enclosed please find the Arizona Department of Agriculture's Notice of Final Expedited Rulemaking for A.A.C. R3-8-103. The record for this rulemaking was closed on December 11, 2018. This rulemaking is eligible for expedited status pursuant to A.R.S. § 41-1027 because it does not increase the cost of regulatory compliance, increase a fee, or reduce the procedural rights of any regulated person, yet does amend a rule that is currently outdated and as written is not currently necessary for the operation of the Pest Management Division. This rulemaking is in response to a request by the regulated community to reduce the fees collected by the Department and is not related to the five-year review report. There were no studies that were relevant to the rule.

Please find the following attachments:

- Notice of Final Expedited Rulemaking
- A letter of support for the rulemaking by the Arizona Pest Professional's Association
- A copy of A.R.S. § 3-3618
- A Copy of A.A.C. R3-8-103
- Request and Approval to conduct rulemaking.

Please contact Chris McCormack at (602) 542-7186 or email [cmccormack@azda.gov](mailto:cmccormack@azda.gov) or Vince Craig at 602-255-3664 with any questions about this rulemaking.

Sincerely,

Mark Killian, Director  
Arizona Department of Agriculture



E-mail: [vcraig@azda.gov](mailto:vcraig@azda.gov)

or

Name: Louise Houseworth, Asst Director, Budget & Strategic Planning

Address: Arizona Department of Agriculture

1688 W. Adams Street

Phoenix, Arizona 85007

Phone: 602 542 0952

Phoenix, AZ 85007

Telephone: (602) 542-0952

Fax: (602) 542-5420

E-mail: [lhouseworth@azda.gov](mailto:lhouseworth@azda.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:**

The Division has received significant feedback from its customers requesting the licensing fees be temporarily reduced. The Division agrees with this recommendation and intends to implement a temporary, two year fee reduction, of at least 25% on all license related fees. This reduction will provide financial relief to industry members who desire to legally operate a pest control business. Because the fees collected from the industry annually exceed the operating expenses of the Division, a temporary fee reduction will not negatively impact the Division's operations.

This rulemaking is eligible for expedited status pursuant to A.R.S. § 41-1027 because it does not increase the cost of regulatory compliance, increase a fee, or reduce the procedural rights of any regulated person, yet does amend a rule that is currently outdated and as written is not currently necessary for the operation of the Pest Management Division.

**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:**

None.

**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 held accepted comment on the proposed rule from November 9, 2018 until the oral proceeding, held on December 11, 2018. The Department only received positive public or stakeholder comments about the rulemaking and thanked the stakeholders for their support.

**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:**

This rule does not require a permit, it simply implements licensing fees as required by A.R.S. § 3-3618.

**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 laws do not apply to the rules in A.A.C. R3-8-103

**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:**

None

**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:**

**R3-8-103. Fees; Charges; Exemption**

A. Beginning March 1, 2019 through June 30, 2020, a person shall pay the following application and renewal fees for licensure, certification, and registration:

1. For an applicator:

a. Applicator certification, \$55.

b. Applicator certification broadening application, \$0.

c. QA certification, \$75.

d. QA certification broadening application, \$15.

2. For a qualifying party:

a. Registration at same time as application for or renewal of the business license, \$0.

- b. Registration at a different time than application for or renewal of the business license, \$35.
- c. Registration broadening, \$15.
- d. Temporary qualifying party registration, \$75.
- 3. For a business:
  - a. Business license, \$185.
  - b. Business license for federal entity, \$0.
  - c. Applicator registration, \$0 per applicator.
- 4. For a branch:
  - a. Branch office registration, \$35 per branch.
  - b. Branch supervisor registration at same time as branch office registration, \$0.
  - c. Branch supervisor registration at a different time than branch office registration, \$15.

~~A.B.~~ Beginning July 1, 2020, A person shall pay the following application and renewal fees for licensure, certification, and registration:

- 1. For an applicator:
  - a. Applicator certification, \$75.
  - b. Applicator certification broadening application, \$0.
  - c. QA certification, \$100.
  - d. QA certification broadening application, \$25.
- 2. For a qualifying party:
  - a. Registration at same time as application for or renewal of the business license, \$0.
  - b. Registration at a different time than application for or renewal of the business license, \$50.
  - c. Registration broadening, \$25.
  - d. Temporary qualifying party registration, \$100.
- 3. For a business:
  - a. Business license, \$250.
  - b. Business license for federal entity, \$0.
  - c. Applicator registration, \$0 per applicator.
- 4. For a branch:
  - a. Branch office registration, \$50 per branch.
  - b. Branch supervisor registration at same time as branch office registration, \$0.
  - c. Branch supervisor registration at a different time than branch office registration, \$25.

~~B.C.~~ A person renewing an applicator certification, QA certification, business license, branch office registration, or branch supervisor registration shall receive a 10 percent reduction in the renewal fee for renewals submitted for a two year renewal period.

~~C.D.~~ In addition to the fees listed in subsection (A), a person shall pay a \$10 handling fee for each application or renewal form not submitted electronically when PMD allows electronic submission.

~~D.E.~~ A person shall pay a late fee equal to ten percent of the renewal fee for any license, certification, or registration that is not renewed timely.

- 1. If a business license remains expired for more than 30 days, to renew the license, a person shall also pay an additional late fee of \$15 per month that the license remains expired, not to exceed \$165. Late fees are in addition to the renewal fee.

2. If a certification remains expired for more than 30 days, to renew the certification, a person shall also pay an additional late fee of \$10 per month the certification remains expired, not to exceed \$110. Late fees are in addition to the renewal fee.

**E.F.**A business licensee shall pay the following TARF fees:

1. Electronic submissions, \$2;
2. Electronic final grade treatment TARF submissions, \$0;
3. Electronic TARF submissions for a pretreatment or new-construction treatment of an addition that abuts the slab of an originally treated structure, \$0, if the business licensee:
  - a. Performed the pretreatment or new-construction treatment of the main structure,
  - b. Filed a TARF regarding the pretreatment or new-construction treatment,
  - c. Has the structure under warranty, and
  - d. Treats the abutting addition under the terms of the site warranty;
4. All paper submissions, \$8; and
5. Late fee equal to the original TARF fee for any TARF submission more than 30 days after the due date, except that the late fee for an electronic final grade treatment TARF submission more than 30 days after the due date shall be \$2.

**F.G.**If the PMD administers a certification examination, an applicant shall pay \$50 to take the examination. If an examination service or testing vendor administers a certification examination, an applicant shall pay the examination service or testing vendor the examination cost established in the vendor's contract with the PMD.

**G.H.**PMD employees are exempt from the applicator and examination fees listed in this Section.

**H.I.**An applicant who makes a payment for a fee due under this Section that is rejected by a financial institution will be subject to all of the following:

1. The PMD shall void any approval of the application or renewal.
2. The applicant shall pay any financial institution fee incurred by the PMD.
3. The PMD may require the applicant to pay all fees due using a method other than a personal or business check.
4. An application for renewal will be considered untimely if the substitute payment is not received by the PMD by the original due date, and the applicant will be subject to a late fee based on the date of receipt of the substitute payment.

**I.J.**The PMD may reject an application or request for service that is submitted with the incorrect fee and not process the application or provide the service. An application for renewal will be considered untimely if the substitute payment is not received by the PMD by the original due date, and the applicant will be subject to a late fee based on the date of receipt of the substitute payment.



December 9, 2018

The Honorable Mark Killian  
Director  
Arizona Department of Agriculture  
1688 West Adams  
Phoenix, Arizona 85007

Dear Mr. Killian:

On behalf of the Arizona Pest Professional Organization (AzPPO), I would like to take this opportunity to express the Association's support for the Arizona Department of Agriculture's proposed rule-making to temporarily reduce the licensing fees for the pest management industry.

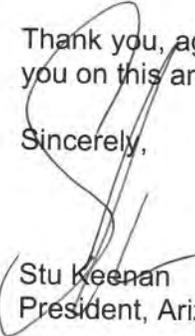
As you are aware, with the financial efficiencies associated with the consolidation of the former Structural Pest Control Commission into the Arizona Department of Agriculture, the fund balance for regulation of the industry has grown steadily over course of time, currently exceeding over \$1,000,000.

As such, per our joint stakeholder discussions over the past several months, AzPPO strongly believes that the proposed temporary reductions of the licensing fees is an equitable solution to reduce the excessive fund balance, which is funded entirely by licensing fees paid by industry licensees, without jeopardizing the Department's responsibility and obligation to protect the public from unlicensed activity, which poses a health risk to people and animals.

Accordingly, AzPPO supports the department's proposed rule-making to enact a temporary reduction in licensing fees in the amount of 25% for the next two years. AzPPO is committed to working with the industry in order to provide education on the composition and limitations of the temporary licensing fee reduction.

Thank you, again, for your critical leadership on this important issue. We look forward to working with you on this and other matters of mutual interest and concern.

Sincerely,

  
Stu Keenan  
President, Arizona Pest Professional Organization

cc: Stuart Goodman

“Specimen label” means a label other than the label attached to a pesticide container that contains the same information as the labeling; including an electronic label.

“Structure” means all parts of a building, whether vacant or occupied, in all stages of construction.

“Subterranean termites” means the several species of termites that usually maintain contact with the soil, including those in the families Rhinotermitidae and Termitidae.

“Supplemental wood-destroying insect inspection” means a re-examination made by an applicator of the business licensee that conducted a previous wood-destroying insect inspection and within 30 days of the previous examination to determine whether corrective treatment has been performed or conditions conducive to wood-destroying insects have been corrected.

“Tag” means a written document that is required under this Chapter to be posted conspicuously at a pretreatment or new-construction treatment site.

“TARF” means termite action report form.

“Termiticide” means a chemical registered by the EPA and the Department and used for control of termites.

“Water-retention basin” means an area to temporarily hold water run-off until the water dissipates.

“WDIIR” means wood-destroying insect inspection report.

“Wood-destroying insect inspection” means an inspection for the presence or absence of wood-destroying insects.

#### Historical Note

New Section recodified from R4-29-101 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

#### R3-8-102. Certification Categories; Scope

The name and scope of each certification category are as follows:

1. Industrial and institutional: pest management in, on, around or adjacent to a structure not covered by another category; pest management in or on asphalt, concrete, gravel, rocks and similar surfaces, including man holes, not covered by another certification category; pest management of health related pests wherever found; but excluding anti-microbial pest management and fungi inspection
2. Wood-destroying organism management.
  - a. Wood-destroying organism treatment: inspecting for the presence or absence of wood-destroying organisms and treating for wood-destroying organisms in or about a residential or other structure by a means other than use of a fumigant.
  - b. Wood-destroying insect inspection: inspecting for the presence or absence of wood-destroying insects only and excluding preparing treatment proposals.
3. Ornamental and turf: pest management, including weeds, pests in trees, shrubs, and flowers, turf and bare ground, not covered by the right-of-way category, by means other than the use of a fumigant. Excludes any pests within a structure.
4. Right-of-way: pest management of pests, including weeds, in the maintenance of public roads, electric powerlines, pipelines, railway rights-of-way or other similar areas by a means other than use of a fumigant, but excluding pest management in the maintenance of ornamental trees, shrubs and flowers.

5. Aquatic: pest management, including weeds, in standing or running water.
6. Fumigation: pest management using fumigants; except as provided in the wood preservation category.
7. Wood preservation: application of pesticides, including fumigants labeled for use on utility poles or railroad ties, directly to structural components of wood or wood products, to prevent or manage wood degradation by wood-destroying organisms including fungi and bacteria, which are not part of an existing structure.

#### Historical Note

New Section recodified from R4-29-102 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

#### R3-8-103. Fees; Charges; Exemption

- A. A person shall pay the following application and renewal fees for licensure, certification, and registration:
  1. For an applicator:
    - a. Applicator certification, \$75.
    - b. Applicator certification broadening application, \$0.
    - c. QA certification, \$100.
    - d. QA certification broadening application, \$25.
  2. For a qualifying party:
    - a. Registration at same time as application for or renewal of the business license, \$0.
    - b. Registration at a different time than application for or renewal of the business license, \$50.
    - c. Registration broadening, \$25.
    - d. Temporary qualifying party registration, \$100.
  3. For a business:
    - a. Business license, \$250.
    - b. Business license for federal entity, \$0.
    - c. Applicator registration, \$0 per applicator.
  4. For a branch:
    - a. Branch office registration, \$50 per branch.
    - b. Branch supervisor registration at same time as branch office registration, \$0.
    - c. Branch supervisor registration at a different time than branch office registration, \$25.
- B. A person renewing an applicator certification, QA certification, business license, branch office registration, or branch supervisor registration shall receive a 10 percent reduction in the renewal fee for renewals submitted for a two year renewal period.
- C. In addition to the fees listed in subsection (A), a person shall pay a \$10 handling fee for each application or renewal form not submitted electronically when PMD allows electronic submission.
- D. A person shall pay a late fee equal to ten percent of the renewal fee for any license, certification, or registration that is not renewed timely.
  1. If a business license remains expired for more than 30 days, to renew the license, a person shall also pay an additional late fee of \$15 per month that the license remains expired, not to exceed \$165. Late fees are in addition to the renewal fee.
  2. If a certification remains expired for more than 30 days, to renew the certification, a person shall also pay an additional late fee of \$10 per month the certification remains expired, not to exceed \$110. Late fees are in addition to the renewal fee.
- E. A business licensee shall pay the following TARF fees:
  1. Electronic submissions, \$2;
  2. Electronic final grade treatment TARF submissions, \$0;

## Department of Agriculture - Pest Management Division

3. Electronic TARF submissions for a pretreatment or new-construction treatment of an addition that abuts the slab of an originally treated structure, \$0, if the business licensee:
    - a. Performed the pretreatment or new-construction treatment of the main structure,
    - b. Filed a TARF regarding the pretreatment or new-construction treatment,
    - c. Has the structure under warranty, and
    - d. Treats the abutting addition under the terms of the site warranty;
  4. All paper submissions, \$8; and
  5. Late fee equal to the original TARF fee for any TARF submission more than 30 days after the due date, except that the late fee for an electronic final grade treatment TARF submission more than 30 days after the due date shall be \$2.
- F.** If the PMD administers a certification examination, an applicant shall pay \$50 to take the examination. If an examination service or testing vendor administers a certification examination, an applicant shall pay the examination service or testing vendor the examination cost established in the vendor's contract with the PMD.
- G.** PMD employees are exempt from the applicator and examination fees listed in this Section.
- H.** An applicant who makes a payment for a fee due under this Section that is rejected by a financial institution will be subject to all of the following:
1. The PMD shall void any approval of the application or renewal.
  2. The applicant shall pay any financial institution fee incurred by the PMD.
  3. The PMD may require the applicant to pay all fees due using a method other than a personal or business check.
  4. An application for renewal will be considered untimely if the substitute payment is not received by the PMD by the original due date, and the applicant will be subject to a late fee based on the date of receipt of the substitute payment.
- I.** The PMD may reject an application or request for service that is submitted with the incorrect fee and not process the application or provide the service. An application for renewal will be considered untimely if the substitute payment is not received by the PMD by the original due date, and the applicant will be subject to a late fee based on the date of receipt of the substitute payment.
- Historical Note**  
New Section recodified from R4-29-103 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).
- R3-8-104. Pest Management Division Council**
- A.** A five-member Pest Management Division Council is established to assist and make recommendations to the director regarding the administration and implementation of A.R.S. Title 3, Chapter 20.
- B.** The members shall meet the following qualifications:
1. Three members shall be business licensees or qualifying parties and shall each have a minimum of five years of pest management experience.
    - a. At least one of these three members shall be a business licensee who has five or fewer applicators.
    - b. For one of these three members, first priority shall be given to a business licensee or QP based outside of Maricopa and Pima Counties and secondary priority shall be given to a business licensee or QP who is not based outside of those counties but is associated with a business that has an office in Arizona outside of those counties. If there are no qualified first or secondary priority applicants, the Director may appoint any business licensee or QP with a minimum of five years of pest management experience.
  2. One member shall be a representative of a political subdivision.
  3. One member shall be a public member who does not provide pest management services or work for a business licensee.
- C.** Members shall serve three year staggered terms. Members shall not serve consecutive terms, except that a member who is appointed to fill a vacancy may serve the unexpired term that fills the vacancy plus one regular term. A member shall be ineligible for reappointment for three years.
- D.** The office of a member shall be deemed vacant under any of the following circumstances:
1. The member no longer satisfies the qualification in subsection (B).
  2. The member is unable to perform the duties of the office.
  3. The absence of the member from three consecutive Committee meetings if the absences have not been excused by the Committee.
- E.** The Committee shall annually select a chairman and vice-chairman from among its members.
- Historical Note**  
New Section recodified from R4-29-104 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).
- R3-8-105. Reserved**
- Historical Note**  
New reserved Section recodified from R4-29-105 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).
- R3-8-106. Reserved**
- Historical Note**  
New reserved Section recodified from R4-29-106 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).
- R3-8-107. Licensing Time-frames**
- A.** Overall time-frame. The PMD shall issue or deny a license within the overall time-frames listed in Table 1. The overall time-frame, which is the total number of days provided for both the administrative completeness and substantive review time-frames, begins when the PMD receives an application.
- B.** Administrative completeness review time-frame.
1. During the administrative completeness review time-frame, the PMD shall notify the applicant in writing whether the application is complete or incomplete. If the application is incomplete, the PMD shall specify in the notice what information is missing. If the PMD does not provide notice to the applicant within the administrative completeness review time-frame, the PMD shall deem the application complete.
  2. An applicant with an incomplete license application shall supply the missing information within the completion request period listed in Table 1. The administrative completeness review and overall time-frames are suspended from the postmark date of the notice of missing information until the date the PMD receives the information.
  3. If an applicant fails to submit the missing information before expiration of the completion request period, the

### 3-3618. Fees

A. The director shall establish by rule and collect application and renewal fees for the following:

1. A business license.
2. A branch office registration.
3. A branch supervisor registration.
4. A qualifying party registration.
5. A temporary qualifying party registration.
6. A temporary qualifying party renewal registration.
7. An applicator certification.
8. A qualified applicator certification.
9. An applicator registration.
10. A duplicate license.

B. The director may charge and collect late fees in addition to the fees listed in subsection A of this section.

C. The director may establish tiered fees for business licenses.

D. The director may charge and collect additional fees for goods and services that the director considers to be appropriate to carry out the intent and purpose of this chapter. These additional fees shall not exceed the costs of providing the goods or rendering the services.

**DEPARTMENT OF AGRICULTURE (F-19-0101)**

Title 3, Chapter 3, Article 1, General Provisions; Article 2, Permits, Licenses, and Certifications; Article 3, Pesticide Use, Sales, and Equipment; Article 4, Recordkeeping and Reporting; Article 5, Nonexclusive Lists of Serious, Nonserious, and De Minimis Violations

# GOVERNOR'S REGULATORY REVIEW COUNCIL

## STAFF MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** February 5, 2019

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

**FROM:** Council Staff

**DATE:** January 22, 2019

**SUBJECT: DEPARTMENT OF AGRICULTURE (F-19-0101)**

Title 3, Chapter 3, Article 1, General Provisions; Article 2, Permits, Licenses, and Certifications; Article 3, Pesticide Use, Sales, and Equipment; Article 4, Recordkeeping and Reporting; Article 5, Nonexclusive Lists of Serious, Nonserious, and De Minimis Violations

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This five-year review report relates to the Department of Agriculture's Environmental Services Division (Department) and covers 35 rules, one table, and one appendix in A.A.C. Title 3, Chapter 3, Articles 1-5.

- Article 1, related to definitions and licensing time-frames, contains two rules and one table.
- Article 2, containing 12 rules and one appendix, relates to regulated grower permits; core examinations; seller permits; agricultural aircraft pilot licenses; custom applicator licenses; tags; agricultural pest control advisor licenses; applicator certifications; license and fee exemptions; additional grounds for revocation, suspension, or denial of a license, permit, or certification; continuing education unit (CEU) course approval; experimental use permits; and testing categories.
- Article 3, containing 10 rules, relates to Form 1080; experimental use; pesticide management areas; pesticide sales; receipt of restricted use pesticides by noncertified persons; aircraft and agricultural aircraft pilots; pesticide containers and pesticides; returnable, reusable, recyclable, and reconditionable pesticide containers; and fumigation use.
- Article 4, containing five rules, relates to pesticide seller records; private applicator records; bulk release reports; Form 1080; and disposal records.
- Article 5, containing six rules, relates to serious violations; nonserious violations; de minimis violations; mitigation; unlisted violations; and the penalty and fine point system.

In the previous five-year review report, the Department proposed to amend Sections 101, 203, 204, 205, 208, 210, 212, 301, 303, 304, 305, 401, 503 and Table 1. As detailed in the report,

most of the actions proposed in that report did not occur due to a lack of priority. In order to update references from the Structural Pest Control Commission to the Office of Pest Management, a number of the rules were amended, via the exempt rulemaking process, in September 2013.

### **Proposed Action**

The Department plans to submit a rulemaking, within twelve months of approval of this report, for the following rules:

- Section 101 - *Definitions*:
  - The Department proposes to remove "licensed" and "certified" from the definitions of agricultural aircraft pilot, commercial applicator, private applicator, and pest control advisor since the rules separately require those persons to be licensed.
  - The Department proposes to clarify the definitions for certified applicator, custom applicator, LD<sub>50</sub>, restricted use pesticide, and service container.
  - The Department proposes to add an abbreviation for the Federal Aviation Administration and remove the unused abbreviation for the Federal Food, Drug and Cosmetic Act.
  - The Department proposes to add additional definitions as needed to be consistent with recently adopted federal regulations, such as immediate family and use and terms used under the revised R3-3-212 Experimental Use Permit.
  - The Department proposes to add periods to the end of several definitions where they are missing.
- Table 1 - *Time-frames (Calendar Days)*:
  - The Department proposes to eliminate the time frame for private fumigation certification because it is simply a form of private applicator certification, which already has a time-frame.
  - The Department proposes to add a new time-frame for a permit for non-commercial salvage of native plants that is identical to the time-frame for all other native plant permits.
  - The Department proposes to update several references in the table to include rule numbers.
- Section 201 - *Regulated Grower Permit; Fee*:
  - The Department proposes to add the commonly used acronym for this pesticide grower permit to the rule: PGP.
  - The Department proposes to change the requirement to provide a social security or employer's identification number to just social security numbers for individuals.
- Section 203 - *Seller Permit; Responsible Individual*:
  - The Department proposes to add the commonly used acronym for this pesticide seller permit to the rule: PSP.

- The Department proposes to change the phrase “pesticide for an agricultural purpose” to “other type of pesticide intended to be used for an agricultural purpose.”
- Section 205 - *Custom Applicator License; Examination; Fee; Renewal*:
  - The Department proposes to add to the application requirements a contact person for the business.
  - The Department proposes to remove the taxpayer identification number and instead require a social security number only if the applicant is an individual.
  - The Department proposes to make consistent with Article 8 the number of opportunities to retake the exam to two times in a six-month period. This increases the number of times a person can take the exam to six times in a year versus four.
  - The Department proposes some general rephrasing throughout the rule, including adding a reference to 14 CFR 137 to subsection (C)(3).
- Section 207 - *Agricultural Pest Control Advisor License; Examination; Fee; Renewal; Exemption*: The Department proposes to make consistent with Article 8 the number of opportunities to retake the exam to two times in a six-month period. This increases the number of times a person can take the exam to six times in a year versus four.
- Section 208 - *Applicator Certification; Examination; Fee; Renewal*:
  - The Department proposes to give this rule considerable revision for alignment (in categories, competency standards, descriptions) with recent changes in the Code of Federal Regulations.
  - The Department proposes to make consistent with Article 8 the number of opportunities to retake the exam to two times in a six-month period. This increases the number of times a person can take the exam to six times in a year versus four.
- Section 209 - *License and Fee Exemptions*: The Department proposes to clarify that government entity employees are exempt from fee.
- Section 210 - *Additional Grounds for Revocation, Suspension, or Denial of a License, Permit, or Certification*: The Department proposes to replace the phrase “has the authority to” with “may,” insert the phrase “opportunity for an” before “administrative hearing,” remove the phrase “in engaging,” and add as grounds for denial or disciplinary action the failure to pay fines, penalties and fees.
- Section 211 - *CEU Course Approval; Subject Approval*: The Department proposes to change the reference in subsection (B)(1) from Section 208(F)(1) to Appendix A.
- Section 212 - *Experimental Use Permit*: The Department proposes to revamp this rule in conjunction with Section 303, related to experimental pesticide use. The Department proposes to have this rule set out the requirements to obtain an Arizona experimental use permit and Section 303 describe the duties applicable to persons who are using an experimental use permit.
- Section 301 - *General*:
  - The Department proposes to change the word “field” to “area” in subsection (F).
  - The Department proposes to revise subsection (C) to allow a person to use a pesticide without Environmental Protection Agency (EPA) registration of the pesticide:

- (1) Under a state-issued experimental use permit outside of a college or company-owned research facility, and
  - (2) Under experiments at a college or company-owned research facility without an experimental use permit.
- Section 303 - *Experimental Use*: The Department proposes to revamp this rule in conjunction with Section 212, related to experimental pesticide use. The Department proposes to have Section 212 set out the requirements to obtain an Arizona experimental use permit and this rule describe the duties applicable to persons who are using an experimental use permit.
- Section 304 - *Pesticide Management Areas; Criteria for Designation*: The Department proposes to remove the unnecessary phrase “complained about under subsection (B)(4).”
- Section 307 - *Aircraft and Agricultural Aircraft Pilots*: The Department proposes to change “Federal Aviation Administration” to “FAA” and to replace “and a valid commercial applicator certification” with “issued under R3-3-204.”
- Section 312: For consistency with federal regulations, the Department plans to add a new rule, titled “Requirements for Direct Supervision of Non-Certified Applicators by Certified Applicators.”
- Section 401 - *Pesticide Seller Records*: The Department proposes to combine subsections (A) and (B), move the last sentence of current subsection (A) to its own subsection, and rephrase “sold for an agricultural purpose” to “intended to be used for an agricultural purpose.”
- Section 502 - *Nonserious Violations*: The Department proposes to:
  - (1) Eliminate the opening paragraph of subsection (A),
  - (2) Clarify in subsection (A)(7) that a pesticide needs to be EPA-registered, be covered by an experimental use permit or be exempt from an experimental use permit,
  - (3) Add a violation for using a restricted use pesticide without certification or under the supervision of a certified person,
  - (4) Add a violation for using a fumigant without fumigation certification or under the supervision of a certified person,
  - (5) Clarify that subsection (B)(2) only pertains to restricted use and agricultural use pesticides,
  - (6) Clarify that subsection (B)(8) only pertains to agricultural use pesticides and restricted use pesticides,
  - (7) Clarify subsection (E)(3) so that it refers to having a person certified by the Department make or supervise applications,
  - (8) Change subsection (F)(1) so that it only applies to agricultural use pesticides,
  - (9) Clarify subsection (F)(2) so that it refers to a regulated grower using a certified applicator, and
  - (10) Add to subsection (G)(3) that a certified applicator shall not use or supervise the use of a restricted use pesticide without certification in the applicable category.

- Section 503 - *De minimis Violations*:
  - The Department proposes to change the reference in subsection (A)(2) from “seller’s representatives” to “any salesperson or PCA that the seller employs for the purpose of selling pesticides in the state.”
  - The Department proposes to drop the phrase “from among those listed in subsections (A) through (E)” in subsection (F).
- Section 506 - *Penalty and Fine Point System*: The Department proposes to amend subsection (A) to accurately reflect when points are assessed and to amend subsection (C) to clarify the definitions “knowing” and “willfully.”

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

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

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

The Environmental Services Division of the Department protects public health, agriculture workers, consumers, and the environment. Stakeholders include the Department, sellers of pesticides for agricultural purposes, applicators, PCAs (Agricultural Pest Control Advisors), regulated growers, and consumers. The five-year review report indicates that the economic impacts of these rules had not differed significantly from those projected in the economic impact statements.

**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 indicates that these rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

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

No. The Department indicates that it has not received any written criticism of these rules in the last five years.

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

Yes. The Department has identified a number of issues with clarity, consistency, and effectiveness and proposes amendments, described above, to address those issues.

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

Yes. The Department indicates that it does not enforce the following rules as written:

- Table 1: The Table lacks a time-frame for a permit for non-commercial salvage of native plants. All other native plant permits have identical time-frames, so the Department applies those time-frames to the non-commercial salvage permit.
- Section 210: A.R.S. § 41-1092.11(B) only requires an opportunity for a hearing before suspending or revoking a license, whereas this rule suggests that the Department only has authority to suspended or revoke a license after a hearing. The Department follows the statute in providing an opportunity for a hearing before suspending or revoking a license, which the rule itself does not actually prohibit.
- Section 301: The requirement in subsection (B) for EPA registration of a pesticide and the exception under subsection (C)(3) for experimental use permits are not enforced as written. The Department enforces this rule in accordance with the accurate federal experimental use exemptions and plans to correct the language of the rule to accurately reflect the experimental use exemptions to registration. Accordingly, although these subsections are currently written in a fashion that would require federal registration even when federal law does not require federal registration, the Department enforces this rule in a way that is not more stringent than federal law.
- Section 502: Subsection (A)(7) refers to pesticides not registered with EPA. Pesticides covered by an experimental use permit do not have to be registered with EPA, and it is not a violation to use an experimental use permit that is not EPA registered. Subsection (B)(2) refers to not providing pesticides to a regulated grower without a permit, but this is only enforced with respect to restricted use pesticides and pesticides intended to be used for an agricultural purpose. Subsection (F)(1) suffers from the same issue as subsection (B)(2) and is enforced in the same way.
- Section 506: The opening paragraph of subsection (A) refers to a judge assessing points or the Associate Director assessing points when entering a settlement after an informal settlement conference, but fails to speak about assessing points before a hearing is requested. In practice, when the Department finds a violation, the Associate Director assesses points and notifies the respondent of the opportunity to contest the matter. If the respondent requests a hearing, then the judge affirms, modifies or rejects the points assessed by the Associate Director.

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. As noted above, certain provisions in Section 301 are more stringent than federal law, but the Department enforces that rule in a way that is not more stringent than 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 that the licenses and permits issued pursuant to these rules are in compliance with A.R.S. § 41-1037.

**9. Conclusion**

As noted above, the Department plans to submit a rulemaking within twelve months of approval of this report. This report complies with A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval of this report.



# Arizona Department of Agriculture

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

October 29, 2018

Chairperson  
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 3, Articles 1-5.

Dear Chairperson:

Enclosed please find the Arizona Department of Agriculture's five-year review report for A.A. C. Title 3, Chapter 3, Articles 1-5.

The Office reviewed all the rules in the articles. 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 Jack Peterson at 602-542-3575 or [jpeterson@azda.gov](mailto:jpeterson@azda.gov) with any questions about this report.

Sincerely,

Mark Killian  
Director

ARIZONA DEPARTMENT OF AGRICULTURE  
ENVIRONMENTAL SERVICES DIVISION

**2018 FIVE YEAR REVIEW REPORT**

A.A.C. Title 3, Chapter 3

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**ARTICLE 1**  
**GENERAL PROVISIONS**

*INFORMATION THAT IS IDENTICAL*

1. **Statutory authority**

General: A.R.S. § 3-107(A)(1).

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

The rules in this Article are effective in achieving the stated objective.

4. **Consistency**

The rules in this Article are consistent with statutes and other rules.

5. **Agency enforcement policy**

The Department enforces rules 101 and 102 as written.

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

Rules 101 and Table 1 are mostly clear, concise and understandable.

7. **Written criticisms**

The Department has not received any written criticisms of these rules within the last 5 years.

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

The economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.

The rules in this article were effective and last revised on the following dates:

<u>Rule</u>	<u>Effective Date</u>	<u>Last Revision</u>
R3-3-101	November 20, 1987	September 16, 2013 <sup>1</sup>
R3-3-102	October 8, 1998	--
Table 1	October 8, 1998	September 16, 2013

<sup>1</sup> The September 16, 2013 amendments were accomplished by a Notice of Exempt Rulemaking, which did not require an economic impact statement. See 19 A.A.R. 3130, October 11, 2013. The last amendment accompanied by an economic impact statement dates back to March 6, 2004.

9. **Analysis submitted by another person**

None.

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

The Department believes these rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

**12. Determination that rule is not more stringent than corresponding federal law**

The rules in this Article do not have a corresponding federal law.

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

Rule 101 and Table 1 were amended after July 29, 2010, but neither requires a permit. Rule 102 was not adopted or amended after July 29, 2010, so A.R.S. § 41-1037 does not apply.

***INFORMATION THAT IS NOT IDENTICAL***

**R3-3-101. Definitions**

**1. Statutory authority**

Specific: A.R.S. §§ 3-343 & 3-363; Laws 2013, ch. 64; Laws 2013, ch. 125, § 37.

**2. Objective**

This rule sets forth the definitions of particular terms used within Articles 1-5.

**4. Consistency**

List of statutes or rules used in determining consistency:

A.R.S. § 3-341 et seq.

A.R.S. § 3-361 et seq.

3 A.A.C. 3, Articles 1-5

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

The definitions of agricultural aircraft pilot, commercial applicator, private applicator, and pest control advisor unnecessarily contain the word “licensed” or “certified” since the rules separately require those persons to be licensed. See A.A.C. R3-3-204, R3-3-207 and R3-3-208. The definitions for certified applicator, custom applicator, restricted use pesticide, and service container also could use minor, technical corrections.

Additionally, it would be useful to add an abbreviation for the Federal Aviation Administration, and remove the unused abbreviation for the Federal Food, Drug and Cosmetic Act. Finally, periods should be added to the end of several definitions.

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

The Department proposed to clarify the definitions of child care facility, LD<sub>50</sub>, school, and service container, update the references to the Structural Pest Control Commission to the Office of Pest Management, and remove the reference to FFDCA. These changes did not occur due to a lack of priority with this being small changes and a lack of any public concerns raised relating to the current format and language. The Department was able to update the references to the Structural Pest Control Commission to the Office of Pest Management under the authority of Laws 2013, ch. 64 and Laws 2013, ch. 125, which moved regulation of pesticide use on golf courses from the Office of Pest Management to the Department and allowed the Department to conduct exempt rulemaking to implement that change.

**14. Proposed course of action**

The Department proposes to remove "licensed" and "certified" from the definitions of agricultural aircraft pilot, commercial applicator, private applicator, and pest control advisor since the rules separately require those persons to be licensed. See A.R.S. §§ 3-204 and 3-208. The Department also proposes to clarify the definitions for certified applicator, custom applicator, LD<sub>50</sub>, restricted use pesticide, and service container. The Department proposes to add an abbreviation for the Federal Aviation Administration and remove the unused abbreviation for the Federal Food, Drug and Cosmetic Act. The department plans to add additional definitions as needed to be consistent with recently adopted federal regulations, such as immediate family and use and terms used under the revised R3-3-212 Experimental Use Permit. Finally, the Department proposes to add periods to the end of several definitions where they are missing. The Department plans to complete the proposed action with the adoption of revised rules within twelve months.

**R3-3-102.      Licensing Time-frames**

**1. Statutory authority**

Specific: A.R.S. § 41-1073.

**2. Objective**

This rule sets forth the general provisions for administrative completeness and substantive reviews of license or permit applications related to pesticides, commercial feed, fertilizers, agricultural safety, and native plants.

4. **Consistency**

List of statutes or rules used in determining consistency: A.R.S. § 41-1072 et seq.

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

This rule is clear, concise and understandable.

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

The Department did not propose any changes during the previous review.

14. **Proposed course of action**

The Department proposes to maintain the rule as is.

**Table 1. Time-frames (Calendar Days)**

1. **Statutory authority**

Specific: A.R.S. § 41-1073; Laws 2013, ch. 64; Laws 2013, ch. 125, § 37.

2. **Objective**

This rule prescribes specific time-frames for processing applications for licenses and permits issued under this chapter.

4. **Consistency**

List of statutes or rules used in determining consistency: A.R.S. § 41-1072 et seq.

5. **Agency enforcement policy**

The Department mostly enforces this Table as written. The Table lacks a time-frame for a permit for non-commercial salvage of native plants. All other native plant permits have identical time-frames, so the Department applies those time-frames to the non-commercial salvage permit.

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

The Table would be clearer if it referred to the rule numbers for each license type. Also, the time frame for private fumigation certification is unnecessary because it is simply a form of private applicator certification, which already has a time-frame.

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

The Department proposed to add a time-frame for non-commercial salvage of native plants. These changes did not occur due to a lack of priority with this being small changes and a lack of any public concerns raised relating to the current format and language.

**14. Proposed course of action**

The Department proposes to eliminate the time frame for private fumigation certification because it is simply a form of private applicator certification, which already has a time-frame. The Department also proposes to add a new time-frame for a permit for non-commercial salvage of native plants that is identical to the time-frame for all other native plant permits. Finally, the Department is updating the several references in the time-frame table to include rule numbers. The Department plans to complete the proposed action with the adoption of revised rules within twelve months.

**ARTICLE 2**  
**PERMITS, LICENSES, AND CERTIFICATION**

*INFORMATION THAT IS IDENTICAL*

**1. Statutory authority**

General: A.R.S. § 3-107(A)(1). Specific: A.R.S. § 3-363.

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

With the exception of rule 212, the rules in this Article are effective in achieving the stated objective.

**4. Consistency**

The rules in this Article are consistent with statutes and other rules.

List of statutes or rules used in determining consistency: A.R.S. § 3-361 et seq.

**5. Agency enforcement policy**

The Department enforces rules 201-209, 212 and Appendix A in this Article as written.

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

Rules 201, 207, 208, 209, and 212 and Appendix A are clear, concise and understandable. Rules 203, 204, 205, 206, 210, and 211 are mostly clear, concise and understandable.

**7. Written criticisms**

The Department has not received any written criticisms of these rules within the last 5 years.

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

The economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.

The rules in this article were effective and last revised on the following dates:

<u>Rule</u>	<u>Effective Date</u>	<u>Last Revision</u>
R3-3-201	November 20, 1987	September 16, 2013 <sup>2</sup>
R3-3-202	March 6, 2004	September 16, 2013
R3-3-203	November 20, 1987	March 6, 2004
R3-3-204	November 20, 1987	March 6, 2004
R3-3-205	November 20, 1987	March 6, 2004
R3-3-206	November 20, 1987	March 6, 2004
R3-3-207	November 20, 1987	January 4, 2014
R3-3-208	November 20, 1987	September 16, 2013
R3-3-209	November 20, 1987	March 6, 2004
R3-3-210	November 20, 1987	March 6, 2004
R3-3-211	November 20, 1987	March 6, 2004
R3-3-212	March 6, 2004	--

<sup>2</sup> The September 16, 2013 amendments were accomplished by a Notice of Exempt Rulemaking, which did not require an economic impact statement. See 19 A.A.R. 3130, October 11, 2013. The last amendment accompanied by an economic impact statement dates back to March 6, 2004.

**9. Analysis submitted by another person**

None.

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

For rules 201, 202, 206, 207, 209, and 211, the Department did not propose any changes during the prior review.

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

The Department believes these rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

**12. Determination that rule is not more stringent than corresponding federal law**

Except for rules 202, 208, 212 and Appendix A, these rules do not have a corresponding federal law.

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

Rules 203-206, 209-212, and Appendix A were not adopted or amended after July 29, 2010, so A.R.S. § 41-1037 does not apply.

**14. Proposed course of action**

The Department proposes to maintain rules 207 and 209 as is.

***INFORMATION THAT IS NOT IDENTICAL***

**R3-3-201. Regulated Grower Permit; Fee**

**1. Statutory authority**

Specific: Laws 2013, ch. 64; Laws 2013, ch. 125, § 37.

**2. Objective**

This rule prescribes the requirements for obtaining a regulated grower permit, as well as application requirements, fees, and terms of validity.

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

Rules 201 uses a general permit in compliance with A.R.S. § 41-1037.

#### **14. Proposed course of action**

The Department proposes to add the commonly used acronym for this permit to the rule: PGP. PGP is short for pesticide grower permit. The Department also proposes to change the requirement to provide a social security or employer's identification number to just social security numbers for individuals. See A.R.S. § 25-320(P). The Department plans to complete the proposed action with the adoption of revised rules within twelve months.

#### **R3-3-202. Core Examination**

##### **1. Statutory authority**

Specific: Laws 2013, ch. 64; Laws 2013, ch. 125, § 37.

##### **2. Objective**

This rule sets forth the requirements for taking and passing the core examination, as well as subjects covered in the examination.

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

The rule is partially clear, concise and understandable. It is confusing to list agricultural aircraft pilot as a category requiring a core exam because a commercial applicator's certification is required to obtain an agricultural aircraft pilot's license and the core exam is taken as part of the commercial applicator certification. There is not a separate core exam that pilots take in addition to the core exam for commercial applicator certification. The rule also does not make clear that the core exam for custom applicators is different from the core exam for pest control advisors, which is different from the core exam for certified applicators.

##### **12. Determination that rule is not more stringent than corresponding federal law**

Certification of applicators who use restricted use pesticides, which rule 202 relates to in part, is subject to 40 CFR 171, particularly 40 CFR 171.101 through 171.107. A State may certify applicators of restricted use pesticides by obtaining approval from EPA of a State plan for that purpose. See 40 CFR 171.301 & 171.309. The standards of certification in the State plan must "conform and be at least equal to those prescribed". For commercial applicators, that means passing a written core examination and written category and subcategory specific examinations; rule 202 requires the core examination. For private applicators, that means demonstrating competency in the certification

standards by a method adopted by the State, which could be by written exam, oral exam, or another approved method. Arizona's approved State plan calls for demonstrating competency by written exam, and that is what rule 202 requires. Accordingly, rule 202 is not more stringent than a corresponding federal law.

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

Rule 202 was amended in September 2013, but it does not require a permit.

**14. Proposed course of action**

The Department continues to propose to make minor grammatical and wording changes, to remove repetitive subsection (A)(1), and to remove the expired fee decrease in subsection (D). The Department plans to complete the proposed action within twelve months of the end of rulemaking moratoriums.

The Department proposes to substantially amend rule 202 for consistency with federal regulations. The Department proposes to remove agricultural aircraft pilot as a category requiring a core exam because a commercial applicator's certification is required to obtain an agricultural aircraft pilot's license, a core exam is taken as part of the commercial applicator certification, and there is not a separate core exam that pilots take in addition to the core exam for commercial applicator certification. The Department also proposes to make the rule clearly set out that there are three different core exams, each with different subjects tested, and to list the subjects that pertain to each exam. The Department also proposes to make consistent with Article 8 the number of opportunities to retake the exam to two times in a 6 month period. This actually increases the number of times a person can take the exam to 6 times in a year versus four. The Department proposes to put into the rule a Department policy that grants reciprocity for exams which individuals have passed a similar certification exam administered by a governmental entity that has an EPA approved certification plan. The Department plans to complete the proposed action with the adoption of revised rules within twelve months.

**R3-3-203. Seller Permit; Responsible Individual**

**2. Objective**

This rule sets forth the requirement to obtain a seller permit, the information needed on the application and the application fee, the permit term, and the need to designate a responsible individual for each location where restricted use pesticides are sold.

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

The phrase "pesticide for an agricultural purpose" does not match the language used in the definition of seller, which refers to "other type of pesticide intended to be used for an agricultural purpose."

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

The Department proposed to change the phrase “pesticide for an agricultural purpose” to “other type of pesticide intended to be used for an agricultural purpose.” These changes did not occur due to a lack of priority with this being small changes and a lack of any public concerns raised relating to the current format and language.

**14. Proposed course of action**

The Department proposes to add the acronym for a seller’s permit to the rule: PSP. The Department also proposes to change the phrase “pesticide for an agricultural purpose” to “other type of pesticide intended to be used for an agricultural purpose.” The Department plans to complete the proposed action with the adoption of revised rules within twelve months.

**R3-3-204. Agricultural Aircraft Pilot License; Examination; Fee; Renewal**

**2. Objective**

This rule sets forth the qualifications for obtaining an agricultural aircraft pilot license, the application and examination requirements, the license fee, the terms of validity, and the renewal requirements.

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

The phrase commercial pilot’s certificate is not defined.

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

The Department proposed to rephrase the reference to the commercial pilot certificate to commercial agricultural aircraft operator’s certificate and to add a reference to the federal regulation pertaining to that certificate. These changes did not occur because they would not be correct. A commercial agricultural aircraft operator’s certificate under federal regulations (see 14 CFR 137) is a license held by a business, whereas this rule’s agricultural aircraft pilot license is a license held by an individual.

**14. Proposed course of action**

The Department proposes to add the acronym for an agricultural aircraft pilot license to the rule: AAP. The Department proposes to remove the redundancy in the language

appearing in both subsections A and B requiring a licensee to have commercial applicator certification. The Department also proposes to make consistent with Article 8 the number of opportunities to retake the exam to two times in a 6 month period. This actually increases the number of times a person can take the exam to 6 times in a year versus four. The Department also proposes some general rephrasing throughout the rule and to remove the reference to the core examination, consistent with the proposed changes to rule 202. The Department plans to complete the proposed action with the adoption of revised rules within twelve months.

**R3-3-205. Custom Applicator License; Examination; Fee; Renewal**

**2. Objective**

This rule sets forth the conditions for obtaining a custom applicator license, the application requirements, the license fee, the term of the license, the examination requirements, and the renewal requirements.

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

Subsections (B)(3) and (B)(7) do not need a cross reference to subsection (C) because the cross reference adds nothing useful and the rule is more concise without it.

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

The Department proposed to reorder some language in subsection (C)(3) and add a reference to 14 CFR 137.19. These changes did not occur due to a lack of priority with this being small changes and a lack of any public concerns raised relating to the current format and language.

**14. Proposed course of action**

The Department proposes to add to the application requirements a contact person for the business. The Department proposes to remove the taxpayer identification number and instead require a social security number only if the applicant is an individual. The Department also proposes to make consistent with Article 8 the number of opportunities to retake the exam to two times in a 6 month period. This actually increases the number of times a person can take the exam to 6 times in a year versus four. The Department also proposes some general rephrasing throughout the rule, including adding a reference to 14 CFR 137 to subsection (C)(3). The Department plans to complete the proposed action with the adoption of revised rules within twelve months.

**R3-3-206. Tag; Fee**

**2. Objective**

This rule sets forth when an equipment tag is needed, how to display the tag, the tag application requirements, the fee, the term, and the requirements related to transferring a tag.

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

The Department believes the rule could more clearly indicate that it applies to custom application equipment only.

**14. Proposed course of action**

The Department proposes to change the name of the rule to Custom Application Equipment Tag; Fee. The Department proposes to clarify throughout that the rule that the rule only applies to the equipment of custom applicators. The Department proposes to require a contact person on the application. In subsection (F), the Department proposes to replace the references to “licensed piece of equipment” with “equipment with a valid tag.” Finally, the Department proposes to add that a temporary loan of equipment does not require the custom applicator to notify the Department if the custom applicator keeps a written record of the transfer. The Department plans to complete the proposed action with the adoption of revised rules within twelve months.

**R3-3-207. Agricultural Pest Control Advisor License; Examination; Fee; Renewal; Exemption**

**2. Objective**

This rule sets forth the requirement to obtain a PCA license, the application requirements, the testing requirements, the educational prerequisites, the fee, the term of the license, the renewal requirements, and the exemptions from licensure.

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

The rule requires PCAs to be licensed. A general permit (i.e. license) is not used because the issuance of a general permit would result in additional regulatory requirements being placed on the applicant. Every person who desires PCA licensure must pass a core exam and a category specific exam, such as weed control or nematode control. There are seven categories of licensure. Under a general permit, an applicant would have to pass the core exam and all seven category specific tests whereas now a PCA license can be issued by passing one category specific exam.

**14. Proposed course of action**

The Department proposes to make consistent with Article 8 the number of opportunities to retake the exam to two times in a 6 month period. This actually increases the number of times a person can take the exam to 6 times in a year versus four. Revisions to this rule became effective on January 4, 2014. *See* 19 A.A.R. 3855, November 29, 2013.

**R3-3-208. Applicator Certification; Examination; Fee; Renewal**

**1. Statutory authority**

Specific: Laws 2013, ch. 64; Laws 2013, ch. 125, § 37.

**2. Objective**

This rule sets forth when certification is required, how to apply for certification, the special requirements for fumigation certification, the fee, the term of the certification, the examination requirements, certification categories, and renewal requirements.

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

The Department substantially revised this rule in 2012, including moving a revised subsection (C)(4)(b) to subsection (F)(3)(c) and revising (G)(1)(a). The Department proposed minor additions to subsections (C)(4)(b) and (G)(1)(a) for extra clarity. These changes did not occur due to a lack of priority with this being small changes and a lack of any public concerns raised relating to the current format and language.

**12. Determination that rule is not more stringent than corresponding federal law**

Certification of applicators who use restricted use pesticides, which rule 208 relates to in part, is subject to 40 CFR 171, particularly 40 CFR 171.101 and 171.107. A State may certify applicators of restricted use pesticides by obtaining approval from EPA of a State plan for that purpose. *See* 40 CFR 171.301 and 171.309. The standards of certification in the State plan must “conform and be at least equal to those prescribed”. For commercial applicators, that means passing a written core examination and written category and subcategory specific examinations; this is what rule 208 requires. For private applicators, that means demonstrating competency in the certification standards by a method adopted by the State, which could be by written exam, oral exam, or another approved method. Arizona’s approved State plan calls for demonstrating competency by written exam, and that is what rule 208 requires.

The Department currently administers two written exams for private applicators: a general exam for all private applicators and a separate fumigation exam only for applicators who wish to use fumigants. Both exams test the applicant’s knowledge in the same five areas identified in A.A.C. R3-3-202, with the difference between the

exams being that the general exam covers pesticides other than fumigants and the fumigation exam is specific to fumigants. Thus, the knowledge required by the private applicator exams conforms to federal law.

State plans must also include “provisions to ensure that certified applicators continue to meet the requirements of changing technology and to assure a continuing level of competency and ability to use pesticides safely and properly.” 40 CFR 171.107. The continuing education requirements in rule 208 serve this purpose. See also A.R.S. § 3-363(5) (specifically authorizing the Department to adopt continuing education requirements).

Accordingly, rule 208 is not more stringent than a corresponding federal law.

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

This rule does not use a general permit. The rule contains the requirement for pesticide applicators to obtain certification. A general permit (i.e. certification) is not used because the issuance of a general permit would result in additional regulatory requirements being placed on the applicant. Every person who desires applicator certification must pass a core exam. A person who desires commercial applicator certification must additionally pass a category specific exam, such as agricultural pest control or seed treatment. “For example, practical knowledge of drift problems should be required of agricultural applicators but not of seed treatment applicators. The latter, however, should be particularly knowledgeable of the hazards of the misuse of treated seed and the necessary precautionary techniques.” 40 CFR 171.103(d). There are eight categories of commercial certification plus a separate exam for private fumigation certification. Under a general permit, an applicant would have to pass the core exam, the fumigation exam, and all ten category specific tests (see 40 CFR 171.103(d) requiring category specific exams), whereas now private applicator certification does not require passing any category specific test or the fumigation exam and commercial applicator certification can be issued by passing one category specific exam.

**14. Proposed course of action**

This section will receive considerable revision to align our rules (categories, competency standards, descriptions) with recent changes in the Code of Federal Regulations. The Department also proposes to make consistent with Article 8 the number of opportunities to retake the exam to two times in a 6 month period. This actually increases the number of times a person can take the exam to 6 times in a year versus four. The Department plans to complete the proposed action with the adoption of revised rules within twelve months.

**R3-3-209. License and Fee Exemptions**

**2. Objective**

This rule sets forth exemptions from the requirement to have an Article 2 license, permit, or certification from the Department and, in the case of government employees who act as PCAs and apply restricted use pesticides, exemption from the fee for a PCA license or commercial applicator certification.

**14. Proposed course of action**

The Department proposes to clarify that government entity employees are exempt from fee and since the Department now has the Pest Management Division we will clarify that the exemption applies to this chapter and not the entire Department.

**R3-3-210. Additional Grounds for Revocation, Suspension, or Denial of a License, Permit, or Certification**

**2. Objective**

This rule sets forth grounds for suspending or revoking a license, permit or certification issued under Article 2 and notes the applicable hearing rights.

**5. Agency enforcement policy**

A.R.S. § 41-1092.11(B) only requires an opportunity for a hearing before suspending or revoking a license, whereas this rule suggests that the Department only has authority to suspended or revoke a license after a hearing. The Department follows the statute in providing an opportunity for a hearing before suspending or revoking a license, which the rule itself does not actually prohibit.

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

The rule would be more concise by replacing the phrase “has the authority to” with “may” and removing the phrase “in engaging.”

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

The Department proposed removing the phrase “in engaging.” These changes did not occur due to a lack of priority with this being small changes and a lack of any public concerns raised relating to the current format and language.

**14. Proposed course of action**

The Department proposes to replace the phrase “has the authority to” with “may,” insert the phrase “opportunity for an” before “administrative hearing,” remove the phrase “in engaging,” and add as grounds for denial or disciplinary action the failure to pay fines,

penalties and fees. The Department plans to complete the proposed action with the adoption of revised rules within twelve months.

### **R3-3-211. CEU Course Approval; Subject Approval**

#### **2. Objective**

This rule sets forth the submission requirements to have a course approved for CEU credit, allows the Department to adjust the allowable CEU credits if the course varies significantly from that approved by the Department, sets out the approved topics of instruction, and provides that 1 hour of credit results from 50 minutes of instruction.

#### **5. Agency enforcement policy**

The Department mostly enforces this rule as written. Rule 208(F)(1) was amended in 2012, so the cross-reference to that rule is no longer valid. The Department enforces that part of this rule as though former rule 208(F)(1) were still in effect.

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

Subsection (B)(1) points to rule 208(F)(1), but rule 208(F)(1) has since been amended so that this cross-reference no longer makes sense. The clearest and most concise approach would be to cite directly to Appendix A, subsection (A), which is what former rule 208(F)(1) did.

#### **14. Proposed course of action**

The Department proposes to change the reference in subsection (B)(1) from rule 208(F)(1) to Appendix A, subsection (A). Former rule 208(F)(1) also pointed to Appendix A, subsection (A). The Department plans to complete the proposed action with the adoption of revised rules within twelve months.

### **R3-3-212. Experimental Use Permit**

#### **2. Objective**

The objective of this rule is to identify who needs an experimental use permit and what a person needs to do to obtain one.

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

This rule is only partially effective in achieving its objective. The rule specifically addresses what a person needs to do if the person is exempt from the need to obtain a federal experimental use permit. This rule does not address, however, what a person

needs to do who is not exempt from having a federal experimental use permit. Instead, those requirements are encapsulated in rule 303 only, which creates some confusion since a state- issued experimental use permit is still needed and that is what this rule is supposed to cover.

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

The Department proposed only to drop the word “pesticide” out of “small scale pesticide testing.” These changes did not occur due to a lack of priority with this being small changes and a lack of any public concerns raised relating to the current format and language.

#### **12. Determination that rule is not more stringent than corresponding federal law**

This rule corresponds to 7 USC 136c and 40 CFR 172. This rule is not more stringent than the corresponding federal law.

#### **14. Proposed course of action**

The Department proposes to revamp this rule in conjunction with rule 303 related to experimental pesticide use. The Department proposes to have this rule set out the requirements to obtain an Arizona experimental use permit (see A.R.S. § 3-350.01) and rule 303 describe the duties applicable to persons who are using an experimental use permit. Thus, the Department proposes that rule 212 clarify who needs to obtain a state experimental use permit and what information needs to be provided. The Department proposes to take much of that information from rule 303, subsection (A). The revised rule may look something like the draft language that follows. The Department plans to complete the proposed action with the adoption of revised rules within twelve months.

#### **R3-3-212. Experimental Use Permit**

~~A. Small scale pesticide testing. For a person exempted by Section 5 of FIFRA or 40 CFR 172.3 from the requirement of a federal experimental use permit the following apply:~~

- ~~1. The person shall, in addition to meeting the requirements in R3-3-303, provide to the Associate Director a statement of purpose and an affidavit verifying that the pesticide will be applied to an application site that does not exceed the total area described in 40 CFR 172.3(e); and~~
- ~~2. If testing on the grounds of a college or university agricultural center or campus, or company-owned research facility, the testing is exempt from subsection (A)(1) and the reporting requirements in R3-3-303.~~

~~B. A person engaged in a small scale test, except a person exempt under subsection (A)(2), shall comply with the requirements prescribed in R3-3-302, if applicable.~~

#### Definitions

"For the purpose of experimentation" means for research or testing purposes, including research or testing performed in order to accumulate information necessary to register under Section 3 of FIFRA and the regulations thereunder a pesticide not currently registered or a registered pesticide for a use not previously approved in the registration of the pesticide.

"Research agency" means any organization engaged in research pertaining to the use of pesticides, including for the purpose of experimentation.

"Structural pest management application" means a pesticide application covered by A.R.S. Title 3, Chapter 8.

**A.** A research agency or educational institution may use a pesticide that is not federally registered or use a federally registered pesticide for a use not previously approved in the registration of the pesticide for the purpose of experimentation under a valid experimental use permit issued by the Department, except that a permit is not required if the testing will only occur on the grounds of a college or university agricultural center or campus or a research agency owned research facility.

**B.** An applicant for an experimental use permit shall provide the following information to the Department:

1. A copy of the EPA-approved experimental use permit issued pursuant to Section 5 of FIFRA or, for applicants exempt from the requirement of a federal experimental use permit under 40 CFR 172.3, a statement of which federal exemption applies and an affidavit certifying that the experimental use will be in compliance with the applicable exemption;
2. Name, address, e-mail address, and daytime telephone number of the person supervising the experimental use application;
3. Name, address, e-mail address, and daytime telephone number of the regulated grower and PCA, or the qualifying party if it is a structural pest management application, that are involved in the application of the experimental use pesticide;
4. County, section, township, range, and field description, if needed, of the intended application site, or the street address if it is a structural pest management application;
5. The crop and acreage to be treated, or the number of structures if it is a structural pest management application;
6. Total amount of active ingredient to be applied in this state;
7. Application rate of formulation per acre;
8. Method of application;
9. Name, address, e-mail address, and telephone number of the applicator applying the pesticide;
10. Time period during which the application will be made; and
11. Any special experimental use permit conditions imposed by the EPA.

## **Appendix A. Testing Categories**

**2. Objective**

This rule details the type of knowledge required for applicator certification, including category specific knowledge for commercial applicator certification.

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

The Department did not propose any changes during the previous review.

**12. Determination that rule is not more stringent than corresponding federal law**

The testing categories in this rule correspond to 40 CFR 171.101, 40 CFR 171.103 and 40 CFR 171.105. This rule is not more stringent than the federal law.

**14. Proposed course of action**

The Department proposes a major revision of Appendix A to match the category and competency standards now found in 40 CFR 171.101, 40 CFR 171.103 and 40 CFR 171.105. The Department plans to complete the proposed action with the adoption of revised rules within twelve months.

**ARTICLE 3**  
**PESTICIDE USE, SALES, AND EQUIPMENT**

*INFORMATION THAT IS IDENTICAL*

**1. Statutory authority**

General: A.R.S. § 3-107(A)(1). Specific: A.R.S. § 3-363.

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

The rules in this Article are effective in achieving the stated objective.

**4. Consistency**

The rules in this Article are consistent with statutes and other rules.

List of statutes or rules used in determining consistency: A.R.S. § 3-361 et seq.

**5. Agency enforcement policy**

With the exception of rules 301 and 305, the Department enforces the rules in this Article as written.

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

Rules 302, 303, 306, 308, 309, and 310 are clear, concise and understandable. Rules 301, 304, 305, and 307 are mostly clear, concise and understandable.

**7. Written criticisms**

The Department has not received any written criticisms of these rules within the last 5 years.

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

The economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.

The rules in this article were effective and last revised on the following dates:

<u>Rule</u>	<u>Effective Date</u>	<u>Last Revision</u>
R3-3-301	November 20, 1987	March 6, 2004
R3-3-302	November 20, 1987	March 6, 2004
R3-3-303	November 20, 1987	March 6, 2004
R3-3-304	November 20, 1987	March 6, 2004
R3-3-305	November 20, 1987	September 16, 2013 <sup>3</sup>
R3-3-306	November 20, 1987	March 6, 2004
R3-3-307	November 20, 1987	March 6, 2004
R3-3-308	January 17, 1989	March 6, 2004
R3-3-309	January 17, 1989	March 6, 2004
R3-3-310	March 6, 2004	--

<sup>3</sup> The September 16, 2013 amendments were accomplished by a Notice of Exempt Rulemaking, which did not require an economic impact statement. See 19 A.A.R. 3130, October 11, 2013. The last amendment accompanied by an economic impact statement dates back to March 6, 2004.

**9. Analysis submitted by another person**

None.

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

The Department did not propose any changes during the prior review to rules 302, 306, 307, 308, 309 and 310.

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

The Department believes these rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

**12. Determination that rule is not more stringent than corresponding federal law**

Rules 304-306 and 310 have no corresponding federal law and are therefore not more stringent than a corresponding federal law. Rules 308 and 309 have no corresponding federal law, as far as the Department has been able to determine after a search, and are therefore not more stringent than a corresponding federal law.

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

With the exception of rule 305, the rules in this Article were not adopted or amended after July 29, 2010, so A.R.S. § 41-1037 does not apply. Rule 305 does not require a permit.

**14. Proposed course of action**

The Department proposes to maintain rules 302, 306, 308, 309 and 310 as is.

***INFORMATION THAT IS NOT IDENTICAL***

**R3-3-301. General**

**2. Objective**

The purposes of this rule are to (i) require people to follow the pesticide labeling in using a pesticide while allowing certain actions not prohibited by the labeling, (ii) require pesticides to be registered with limited exceptions, (iii) prohibit direct releases and drift that causes any unreasonable effect, (iv) impose duties on regulated growers to keep people and livestock outside of the application area during the application and not harvest or allow livestock to graze in the field until permitted by the labeling, (v) limit people involved in government sponsored emergency pest control to apply the pesticide to the application site, (vi) instruct pilots to fly crosswind and at the downwind side of the field, (vii) limit application of highly toxic pesticides, and (viii) allow application to buffer zones.

**5. Agency enforcement policy**

The Department mostly enforces the rules as written. The exception listed in subsection

(C)(3) does not accurately reflect experimental use exemptions; it is too narrow. A person may use a pesticide under a state-issued experimental use permit without EPA registration outside of a college or company-owned research facility. Also, experiments at a college or company-owned research facility are exempt from the experimental use permit and registration requirements. See R3-3-212. A person may also use a pesticide without EPA registration if the person has a federal experimental use permit or if the use is exempt from the need to have a federal experimental use permit. See 40 CFR 172.3. The Department enforces subsection (C)(3) as described here, which is in accordance with state and federal law.

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

Subsection F refers twice to “field,” but some regulated growers don’t have fields, such as nurseries and greenhouses. Accordingly, the rule would be more clear by replacing the word “field” with “area.”

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

The Department proposed to change the word “field” to “area” in subsection (F) and to change the word “permitted” to “prescribed” in subsection (J). These changes did not occur due to a lack of priority with this being small changes and a lack of any public concerns raised relating to the current format and language. The Department also believes the earlier proposed change to subsection (J) would not have any meaningful difference and is not necessary.

**12. Determination that rule is not more stringent than corresponding federal law**

Subsection (A) of this rule corresponds to 7 USC 136j(a)(2)(G) and 7 USC 136(ee). Subsection (A) is not more stringent than the corresponding federal law.

The requirement in subsection (B) for EPA registration of a pesticide and the exception under subsection (C)(3) for experimental use permits correspond to 7 USC 136c and 40 CFR 172. As described in item #5 above, the exception in subsection (C)(3) does not accurately reflect experimental use exemptions; it is too narrow because there are some instances that a person can lawfully use an experimental use pesticide without an experimental use permit and without federal registration. See 40 CFR 172.3. The Department already enforces this rule in accordance with the accurate federal experimental use exemptions and plans to correct the language of the rule to accurately reflect the experimental use exemptions to registration. Accordingly, although these subsections are currently written in a fashion that would require federal registration even when federal law does not require federal registration, the Department enforces this rule

in a way that is not more stringent than federal law.

The Department is unaware of any federal laws that correspond to the remaining subsections of this rule.

#### **14. Proposed course of action**

The Department proposes to change the word “field” to “area” in subsection (F). The Department also plans to revise subsection (C) to allow a person to use a pesticide without EPA registration of the pesticide (i) under a state-issued experimental use permit outside of a college or company-owned research facility and (ii) under experiments at a college or company-owned research facility without an experimental use permit. The Department plans to complete the proposed action with the adoption of revised rules within twelve months.

#### **R3-3-302. Form 1080; Requirement for Written Recommendation**

##### **2. Objective**

The purposes of this rule are to set forth the requirements for preparing a Form 1080 before pesticide applications by a custom applicator, the requirement to follow the directions in the Form 1080 unless it conflicts with the pesticide label, the requirement to notify a regulated grower of the application date, and the requirement to verifying the Form 1080 after a pesticide application.

#### **12. Determination that rule is not more stringent than corresponding federal law**

Recordkeeping by certified applicators who use restricted use pesticides, which rule 302 relates to in part, is subject to 40 CFR 171.303(7)(vi). This federal rule requires State plans, which must be approved by the EPA, to include provisions requiring certified commercial applicators to keep and maintain records related to pesticide use. Arizona’s State Plan has been approved by EPA and now with new federal regulations will need to be reapproved. Accordingly, this part of rule 302 is not more stringent than a corresponding federal law. In addition, there is no corresponding federal law for the remaining portions of rule 302.

#### **R3-3-303. Experimental Use**

##### **2. Objective**

The purpose of this rule is to describe information that a person must provide to the Department before using an experimental use pesticide and to require that the pesticide be used as approved by the Department.

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

The Department proposed to rephrase “an experimental use pesticide” in subsection (D) to “a pesticide applied under an experimental use permit.” These changes did not occur due to a lack of priority with this being small changes and a lack of any public concerns raised relating to the current format and language.

## **12. Determination that rule is not more stringent than corresponding federal law**

This rule corresponds to 7 USC 136c and 40 CFR 172. This rule is not more stringent than the corresponding federal law.

## **14. Proposed course of action**

The Department proposes to revamp this rule in conjunction with rule 212 related to experimental use permits. The Department proposes to have rule 212 set out the requirements to obtain an Arizona experimental use permit and this rule describe the duties applicable to persons who are going to use an experimental use pesticide. As part of these changes, the Department proposes to move the substance of rule 212(B) the end of this rule. The revised rule may look something like the draft language that follows. The Department plans to complete the proposed action with the adoption of revised rules within twelve months.

### **R3-3-303. Experimental Use**

~~A. A person supervising application of a pesticide under a federal experimental use permit shall provide the Department with the following information in writing at least five days before application of the experimental use pesticide:~~

- ~~1. A copy of the EPA approved experimental use permit, as required by Section 5 of FIFRA;~~
- ~~2. Name, address, e-mail address, if applicable, and daytime telephone number of the supervising technical individual for the experimental use;~~
- ~~3. Application site to be treated, the location of the application site, the quantity of the commodity or the area of land to be treated, and the number of structures, if any;~~
- ~~4. Total amount of active ingredient to be applied in this state;~~
- ~~5. Rate of formulation applied per unit of measure;~~
- ~~6. Method of application;~~
- ~~7. Time period during which the application will be made; and~~
- ~~8. Any special experimental use permit condition as determined by the Department or by the EPA.~~

~~B. If any information provided under subsection (A) changes, the person supervising the pesticide~~

~~application under a federal experimental use permit shall notify the Department at least 24 hours before the application of the experimental use pesticide. If the notification of change is given verbally, the person supervising the pesticide application under a federal experimental use permit shall provide the Department with written confirmation within 15 days after the date of the change.~~

~~C.A.~~ At least 24 hours before the application of an experimental use pesticide, the person supervising ~~technical individual~~ the application shall provide the Department with the following information:

1. Name, address, e-mail address, if applicable, and daytime telephone number of the regulated grower and PCA, or the qualifying party if it is a structural pest control application, that are involved in the application of the experimental use pesticide;
2. County, section, township, range, and field description, if needed, of the intended application site, or the street address if it relates to pest management near structures as defined in A.R.S. § 3-3601(21);
3. Name, address, e-mail address, if applicable, and telephone number of the applicator applying the pesticide;

~~and~~

4. ~~Date and time of the intended application.~~ Exact time, date and location of the intended application by calling and leaving a message on the pesticide hotline answering machine:

1-800-423-8876; and

5. A change in any information provided under R3-3-212(C).

**B.** If the information in subsection (A) is given verbally, the person supervising the pesticide application shall provide the Department with written confirmation within 15 days.

**C.** The person supervising the application shall notify the Department within 24 hours if a federal experimental use permit is amended or extended and provide written confirmation of the amendment or extension within 5 days.

**D.** An applicator shall not apply a pesticide for an experimental use pesticide in a manner purpose other than that specified by the experimental use permit or other Department-approved labeling that is provided to the applicator. The applicator shall ensure that the labeling is at the application site when the application occurs.

**E.** A person involved in an experimental use pesticide application shall comply with R3-3-302 as applicable.

**F.** This section does not apply to experimental use pesticide applications exempted from the permit requirement under R3-3-212(B).

### **R3-3-304. Pesticide Management Areas; Criteria for Designation**

#### **1. Statutory authority**

Specific: A.R.S. § 3-366(A)

**2. Objective**

The purpose of this rule is to set out the criteria for designating a pesticide management area.

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

The phrase “complained about under subsection (B)(4)” within subsection (B)(3) is unnecessary because the cross reference adds nothing useful and the rule is more concise without it.

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

The Department proposed to move subsection (B)(3) to after subsection (B)(4). These changes did not occur due to a lack of priority with this being small changes and a lack of any public concerns raised relating to the current format and language.

**14. Proposed course of action**

The Department proposes to leave subsection (B)(3) where it is at and remove the unnecessary phrased “complained about under subsection (B)(4).” The Department plans to complete the proposed action with the adoption of revised rules within twelve months.

**R3-3-305. Pesticide Sales**

**1. Statutory authority**

Specific: Laws 2013, ch. 64; Laws 2013, ch. 125, § 37.

**2. Objective**

The purpose of this rule is to ensure that restricted use pesticides and pesticides being used for an agricultural purpose are only sold to someone authorized to use the pesticide.

**5. Agency enforcement policy**

The Department mostly enforces this rule as written. The Department notes that the rule inadvertently fails to allow for sales to other licensed sellers. This was not the intent of the rule,

and the Department allows sellers to sell to other licensed sellers.

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

The Department believes the rule would be slightly clearer with some rephrasing as described under item 14.

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

The Department proposed to rephrase “pesticide for an agricultural purpose” to “pesticide intended to be used for an agricultural purpose,” to update the references to the Structural Pest Control Commission to the Office of Pest Management, and to rephrase “employed” in subsection (C) to “that a seller employs.” The Department was able to update the references to the Structural Pest Control Commission to the Office of Pest Management under the authority of Laws 2013, ch. 64 and Laws 2013, ch. 125, which moved regulation of pesticide use on golf courses from the Office of Pest Management to the Department and allowed the Department to conduct exempt rulemaking to implement that change. These changes did not occur due to a lack of priority with this being small changes and a lack of any public concerns raised relating to the current format and language.

**14. Proposed course of action**

The Department proposes to (i) rephrase “A seller shall not” to “A seller shall only”; (ii) rephrase “pesticide for an agricultural purpose” to “pesticide intended to be used for an agricultural purpose”; (iii) remove the phrase “without determining that the pesticide will be used by”; (iv) reorganize subsections (A)(1) and (A)(2) so that (A)(1) focuses on applicators and (A)(2) focuses on regulated growers; (v) add that the pesticides may be sold to another permitted seller; and (vi) rephrase “employed” in subsection (C) to “that a seller employs”. The Office of Pest Management is now the Pest Management Division so this will be updated. The Department plans to complete the proposed action with the adoption of revised rules within twelve months.

**R3-3-306. Receipt of Restricted Use Pesticides by Noncertified Persons**

**2. Objective**

The purpose of this rule is to ensure that any person purchasing restricted use pesticides without applicator certification has proof that the restricted use pesticide will be applied by a certified applicator or under the supervision of a certified applicator.

**R3-3-307. Aircraft and Agricultural Aircraft Pilots**

**2. Objective**

The purpose of this rule is to set out, in regards to the use of aircraft to apply pesticides, the licensing requirements for the aircraft and for the pilot.

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

Federal Aviation Administration can be shortened to FAA. Also, a person must have a valid commercial applicator certification to have a valid agricultural aircraft pilot license, so the listing of both in subsection (B) is unnecessary.

**12. Determination that rule is not more stringent than corresponding federal law**

This rule corresponds with 40 CFR 171.103 (commercial certification requirement) and 14 CFR 137.19 (aerial pest control). This rule is not more stringent than the corresponding federal laws.

**14. Proposed course of action**

The Department proposes to change “Federal Aviation Administration” to “FAA” and to replace “and a valid commercial applicator certification” with “issued under R3-3-204.” The Department plans to complete the proposed action with the adoption of revised rules within twelve months.

**R3-3-308. Pesticide Containers and Pesticides; Storage and Disposal**

**2. Objective**

The purpose of this rule is to ensure that pesticides are stored in a secure location, that pesticides are not discharged into the environment contrary to label directions and the law, that pesticide containers are not confused with food containers; that pesticide service containers are labeled with key information about the pesticide; and that pesticides in containers do not become a hazard to people, animals, or property.

**R3-3-309. Returnable, Reusable, Recyclable, and Reconditionable Pesticide Containers**

**2. Objective**

The purpose of this rule is to allow pesticide containers whose label allows for recycling or reconditioning to be sent for recycling or reconditioning provided that the container is kept in a secure, inaccessible for use, location until shipping for recycling or reconditioning.

**R3-3-310. Fumigation Use**

**2. Objective**

The purpose of this rule is to require that a fumigant be used by a certified person or under the person’s immediate supervision and to provide for warning signs during

fumigation use where the fumigant label does not specify warning requirements.

### **R3-3-312. Repealed**

This section will be retitled. **Requirements for Direct Supervision of Non-Certified Applicators by Certified Applicators.** We will be adding language to make it consistent with 40 CFR 171.201. The language will be close to what follows:

- A. Any certified applicator who allows or relies on a noncertified applicator to use a restricted use pesticide under the \_\_\_\_\_ certified applicator's direct supervision must:
1. Have a practical knowledge of applicable Federal, State and Tribal supervisory requirements, including any requirements on the product label and labeling, regarding the use of restricted use pesticides by noncertified applicators.
  2. Be certified in each category as set forth in §§ 171.101 and 171.105(a) through (f) applicable to the supervised pesticide use.
  3. Ensure that each noncertified applicator using a restricted use pesticide under his or her direct supervision meets all of the following requirements before using a restricted use pesticide:
    - a. The noncertified applicator has satisfied the qualification requirements under paragraph (c) of this section.
    - b. The noncertified applicator has been instructed within the last 12 months in the safe operation of any \_\_\_\_\_ equipment he or she will use for mixing, loading, transferring, or applying pesticides.
    - c. The noncertified applicator has met the minimum age required to use restricted use pesticides under the supervision of a certified applicator. A noncertified applicator must be at least 18 years old, except that a noncertified applicator must be at least 16 years old if all of the following requirements are met:
      - i. The noncertified applicator is using the restricted use pesticide under the direct supervision of a private applicator who is an immediate family member.
      - ii. The restricted use pesticide is not a fumigant, sodium cyanide, or sodium fluoroacetate.
      - iii. The noncertified applicator is not applying the restricted use pesticide aerially.
  4. Ensure use-specific conditions are met and that all of the following use-specific requirements are met before allowing a noncertified applicator to use a restricted use pesticide under his or her direct supervision:
    - a. The certified applicator must ensure that the noncertified applicator has access to the applicable product labeling at all times during its use.
    - b. Where the labeling of a pesticide product requires that personal protective equipment be worn for mixing, loading, application, or any other use activities, the certified applicator must ensure that any noncertified applicator has clean, labeling-required personal protective equipment in proper operating condition and that the personal protective equipment is worn and used correctly for its intended purpose.
    - c. The certified applicator must provide to each noncertified applicator before use of a restricted use pesticide instructions specific to the site and pesticide used. These instructions must include labeling directions, precautions, and requirements applicable to the specific use and site, and how the characteristics of the use site (e.g., surface and ground water, endangered species, local population) and the conditions of application (e.g., equipment, method of application, formulation) might increase or decrease the risk of adverse effects. The certified applicator must provide this information in a manner that the noncertified applicator can understand.
    - d. The certified applicator must ensure that before each day of use equipment used for mixing, loading, transferring, or applying pesticides is in proper operating condition as intended by the manufacturer, and can be used without risk of reasonably foreseeable adverse effects to the noncertified applicator, other persons, or the environment.
    - e. The certified applicator must ensure that a means to immediately communicate with the certified applicator is available to each noncertified applicator using restricted use pesticides under his or her



**7. Written criticisms**

The Department has not received any written criticisms of these rules within the last 5 years.

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

The economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.

The rules in this article were effective and last revised on the following dates:

<u>Rule</u>	<u>Effective Date</u>	<u>Last Revision</u>
R3-3-401	November 20, 1987	September 16, 2013 <sup>4</sup>
R3-3-402	November 20, 1987	September 16, 2013
R3-3-403	November 20, 1987	March 6, 2004
R3-3-404	March 6, 2004	--
R3-3-405	March 6, 2004	--

<sup>4</sup> The latest revision was by exempt rulemaking, which did not require an economic impact statement. *See* 19

A.A.R. 3130, October 11, 2013. The last revision requiring an economic impact statement occurred in March 2004

**9. Analysis submitted by another person**

None.

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

With the exception of rule 401, the Department did not propose any changes during the prior review.

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

The Department believes these rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

**12. Determination that rule is not more stringent than corresponding federal law**

Rules 401 and 403 have no corresponding federal law and are therefore not more stringent than a corresponding federal law. Rule 405 has no corresponding federal law, as far as the Department has been able to determine after a search, and is therefore not

more stringent than a corresponding federal law.

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

Rules 403, 404 and 405 were not adopted or amended after July 29, 2010, so A.R.S. § 41-1037 does not apply. Rules 401 and 402 do not require a permit.

**14. Proposed course of action**

With the exception of rule 401, the Department proposes to maintain the rules as they are.

*INFORMATION THAT IS NOT IDENTICAL*

**R3-3-401. Pesticide Seller Records**

**1. Statutory authority**

Specific: Laws 2013, ch. 64; Laws 2013, ch. 125, § 37.

**2. Objective**

The objective of this rule is to require sellers to keep records of agricultural use and restricted use pesticide sales, including information about the purchaser, the applicable permit numbers, and the date and quantity sold.

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

This rule is mostly clear, concise and understandable. The rule would be more concise by combining subsections (A) and (B), with would also allow for the removal of the first sentence of subsection (B). The rule would also be slightly more clear by rephrasing “sold for an agricultural purpose” to “intended to be used for an agricultural purpose” to use language consistent with the definition of seller.

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

The Department proposed to rephrase “sold for an agricultural purpose” to “intended to be used for an agricultural purpose” and to update references from the Structural Pest Control Commission to the Office of Pest Management. The Department was able to update the references to the Structural Pest Control Commission to the Office of Pest Management under the authority of Laws 2013, ch. 64 and Laws 2013, ch. 125, which moved regulation of pesticide use on golf courses from the Office of Pest Management

to the Department and allowed the Department to conduct exempt rulemaking to implement that change. These changes did not occur due to a lack of priority with this being small changes and a lack of any public concerns raised relating to the current format and language.

#### **14. Proposed course of action**

The Department proposes to combine subsections (A) and (B), move the last sentence of current subsection (A) to its own subsection, and rephrase “sold for an agricultural purpose” to “intended to be used for an agricultural purpose.” The Department plans to complete the proposed action with the adoption of revised rules within twelve months.

#### **R3-3-402. Private Applicator Records; Restricted Use Pesticide**

##### **1. Statutory authority**

Specific: Laws 2013, ch. 64; Laws 2013, ch. 125, § 37.

##### **2. Objective**

The objective of this rule is to require private pesticide applicators and golf pesticide applicators to keep records of their use of restricted use pesticides, emergency use pesticides, and experimental use pesticides.

#### **12. Determination that rule is not more stringent than corresponding federal law**

Recordkeeping by private applicators under this rule corresponds to 7 CFR 110.3.

Under 7

CFR 110.3(h), States can place recordkeeping requirements on private applicators that are

comparable to the State’s recordkeeping requirements for commercial applicators. Rule 402 falls into this category. Compare R3-3-302 & R3-3-404(A). Accordingly, rule 402 is not more stringent than federal law.

#### **R3-3-403. Bulk Release Report**

##### **2. Objective**

The objective of this rule is to require applicators to immediately notify the Department of Agriculture, and as applicable the Department of Public Safety, of any bulk release of pesticides and to provide a written report to the Department of Agriculture of the details of the release and clean up.

#### **R3-3-404. Form 1080; Reports to the Department**

##### **2. Objective**

The objective of this rule is to require custom pesticide applicators and regulated growers to provide reports of their pesticide use to the Department on a form called a 1080, to set when the 1080s are due, and to set a retention period of custom applicators to keep copies of the 1080s.

**4. Consistency**

List of additional rules used in determining consistency: A.A.C. R18-6-101(8) & R18-6-303.

**12. Determination that rule is not more stringent than corresponding federal law**

Reporting and recordkeeping retention by certified applicators who use restricted use pesticides, which rule 404 relates to in part, is subject to 40 CFR 171.303(7)(vi). This federal rule requires State plans, which must be approved by the EPA, to include provisions requiring certified commercial applicators to keep and maintain records related to pesticide use for at least two years and to make those records available to State officials. Arizona's State plan has been approved by EPA and will need to be approved again. Accordingly, this part of rule 404 is not more stringent than a corresponding federal law. In addition, there is no corresponding federal law for the remaining portions of rule 404.

**R3-3-405. Disposal Records; Agricultural Pesticide Concentrate**

**2. Objective**

The objective of this rule is to require applicators to report to the Department the amount of agricultural use pesticide concentrate disposed of and the date, method and location of the disposal.

**ARTICLE 5**  
**NONEXCLUSIVE LISTS OF SERIOUS, NONSERIOUS, AND DE MINIMIS**  
**VIOLATIONS**

***INFORMATION THAT IS IDENTICAL***

**1. Statutory authority**

General: A.R.S. § 3-107(A)(1). Specific: A.R.S. § 3-363.

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

With the exception of rule 502, the rules are effective in achieving their objectives.

**4. Consistency**

The rules in this Article are consistent with statutes and other rules.

List of statutes or rules used in determining consistency: A.R.S. § 3-361 et seq.

**5. Agency enforcement policy**

The Department enforces rules 501 and 503-505 as written.

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

Rules 501, 504 and 505 are clear, concise and understandable. Rules 503 and 506 are mostly clear, concise and understandable. Rules 502 is partially clear, concise and understandable.

**7. Written criticisms**

The Department has not received any written criticisms of these rules within the last 5 years.

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

The economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.

The rules in this article were effective and last revised on the following dates:

<u>Rule</u>	<u>Effective Date</u>	<u>Last Revision</u>
R3-3-501	November 20, 1987	March 6, 2004
R3-3-502	November 20, 1987	September 16, 2013 <sup>5</sup>
R3-3-503	November 20, 1987	March 6, 2004
R3-3-504	November 20, 1987	March 6, 2004
R3-3-505	November 20, 1987	March 6, 2004
R3-3-506	September 13, 1989	March 6, 2004

<sup>5</sup> The latest revision was by exempt rulemaking, which did not require an economic impact statement. See 19

A.A.R. 3130, October 11, 2013. The last revision requiring an economic impact statement occurred in March 2004.

**9. Analysis submitted by another person**

None.

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

With the exception of rule 503, the Department did not propose any changes to the rules during the prior review.

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

The Department believes these rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

**12. Determination that rule is not more stringent than corresponding federal law**

These rules do not have a corresponding federal law.

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

With the exception of rule 502, these rules were not adopted or amended after July 29, 2010, so A.R.S. § 41-1037 does not apply. Rule 502 does not require a permit.

**14. Proposed course of action**

The Department proposes to maintain rules 501, 504 and 505 as is.

***INFORMATION THAT IS NOT IDENTICAL***

**R3-3-501. Serious Violations**

**2. Objective**

The objective of this rule is to list examples of pesticide violations considered serious violations as defined by A.R.S. § 3-361(9).

**R3-3-502. Nonserious Violations**

**1. Statutory authority**

Specific: Laws 2013, ch. 64; Laws 2013, ch. 125, § 37.

**2. Objective**

The objective of this rule is to list examples of pesticide violations considered nonserious violations as defined by A.R.S. § 3-361(4).

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

The rule is mostly effective in achieving its objective. The Department believes the rule would be more effective with the addition of a few violations. The Department believes it would be useful to list as a nonserious violation using a restricted use pesticide without being certified or acting under the direct supervision of a certified person and using a fumigant without being fumigation certified or acting under the supervision of a person with fumigation certification. Subsection (G)(3) should be expanded to cover the supervision of restricted use pesticides as well.

#### **5. Agency enforcement policy**

This rule is mostly enforced as written. Subsection (A)(7) refers to pesticides not registered with EPA. Pesticides covered by an experimental use permit do not have to be registered with EPA, and it is not a violation to use an experimental use permit that is not EPA registered. Subsection (B)(2) refers to not providing pesticides to a regulated grower without a permit, but this is only enforced with respect to restricted use pesticides and pesticides intended to be used for an agricultural purpose. See R3-3-201(A) & R3-3-305(A). Subsection (F)(1) suffers from the same issue as subsection (B)(2) and is enforced in the same way.

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

This rule is partially clear, concise and understandable. The opening paragraph of subsection (A) merely repeats the definition of nonserious violation found at A.R.S. § 3-361(4) and its presence in subsection (A) makes it appear that it only pertains to subsection (A) instead of the entire rule. Subsection (B)(8) refers to providing pesticides to an unauthorized person, but that can only happen with respect to restricted use pesticides and pesticides intended to be used for an agricultural purpose, so the rule would be clearer if it said that. Subsection (E)(3) refers to a custom applicator (which is a business) needing valid commercial applicator certification, when it's a person who needs the commercial applicator certification not the business. The intent of subsection (E)(3) is to say a custom applicator (business) needs to have a person who has commercial applicator certification. Subsection (F)(2) is similarly unclear – it refers to a regulated grower (business) being a certified applicator, when it would be clearer to say a regulated grower needs to use a certified applicator.

#### **14. Proposed course of action**

The Department proposes several amendments to this rule. The Department proposes to (i) eliminate the opening paragraph of subsection (A), (ii) clarify in subsection (A)(7) that a pesticide needs to be EPA-registered, be covered by an experimental use permit or be exempt from an experimental use permit, (iii) add a violation for using a restricted use pesticide without certification or under the supervision of a certified person, (iv) add a violation for using a fumigant without fumigation certification or under the supervision of a certified person, (v) clarify that subsection (B)(2) only pertains to restricted use and agricultural use pesticides, (vi) clarify that subsection (B)(8) only

pertains to agricultural use pesticides and restricted use pesticides, (vii) clarify subsection (E)(3) so that it refers to having a person certified by the Department make or supervise applications, (viii) change subsection (F)(1) so that it only applies to agricultural use pesticides, (ix) clarify subsection (F)(2) so that it refers to a regulated grower using a certified applicator, and (x) add to subsection (G)(3) that a certified applicator shall not use or supervise the use of a restricted use pesticide without certification in the applicable category The Department plans to complete the proposed action with the adoption of revised rules within twelve months.

### **R3-3-503. De minimis Violations**

#### **2. Objective**

The objective of this rule is to list examples of pesticide violations considered de minimis violations as defined by A.R.S. § 3-361(2).

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

In subsection (A)(2), the term seller’s representative is not defined. In subsection (F), the phrase “from among those listed in subsections (A) through (E)” is not necessary.

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

The Department proposed to change the reference in subsection (A)(2) from “the seller’s representatives” to “any salespeople or PCA that the seller employs for the purpose of selling pesticides in the state.” These changes did not occur due to a lack of priority with this being small changes and a lack of any public concerns raised relating to the current format and language.

#### **14. Proposed course of action**

The Department proposes to change the reference in subsection (A)(2) from “seller’s representatives” to “any salesperson or PCA that the seller employs for the purpose of selling pesticides in the state.” The Department also plans to drop the phrase “from among those listed in subsections (A) through (E)” in subsection (F). The Department plans to complete the proposed action with the adoption of revised rules within twelve months.

### **R3-3-504. Mitigation**

#### **2. Objective**

The objective of this rule is to set out circumstances under which a serious violation will be treated as a nonserious violation and a nonserious violation will be treated as a de

minimis violation.

**R3-3-505. Unlisted Violations**

**2. Objective**

The objective of this rule is to explain how a violation level will be determined for violations of law that are not specifically listed in rules 501, 502 and 503.

**R3-3-506. Penalty and Fine Point System**

**2. Objective**

The objective of this rule is to explain how civil penalties will be calculated for pesticide violations.

**5. Agency enforcement policy**

This rule is mostly enforced as written. The opening paragraph of subsection (A) refers to a judge assessing points or the Associate Director assessing points when entering a settlement after an informal settlement conference, but fails to speak about assessing points before a hearing is requested. In practice, when the Department finds a violation, the Associate Director assesses points and notifies the respondent of the opportunity to contest the matter. If the respondent requests a hearing, then the judge affirms, modifies or rejects the points assessed by the Associate Director.

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

The distinction in subsection (A)(3) between “Knowing” and “Willfully” is unclear because both refer to knowledge of the prohibitions or restrictions when all licensed people are supposed to have knowledge of the prohibitions and restrictions. It would be more

clear if Knowing referred knowledge of the safety, health or property damage risk (if there is no direct relationship to safety, health or property damage, then it is a de minimis violation and no points are assessed) and Willfully referred to knowledge or belief that the conduct would violate a law but the person did the conduct anyway.

**14. Proposed course of action**

The Department proposes to amend subsection (A) to accurately reflect when points are assessed and to amend subsection (C) to clarify the definitions Knowing and Willfully. The Department plans to complete the proposed action with the adoption of revised rules within twelve months.



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

**TITLE 3. Agriculture**

**Chapter 3. Department of Agriculture - Environmental Services Division**

Sections, Parts, Exhibits, Tables or Appendices modified  
R3-3-702

REMOVE Supp. 16-1  
Pages: 1 - 51

REPLACE with Supp. 17-2  
Pages: 1 - 51

*The agency's contact person who can answer questions about rules in this Chapter:*

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*Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.*

**PUBLISHER**  
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**Office of the Secretary of State, Administrative Rules Division**

## PREFACE

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

Scott Cancelosi, Director  
ADMINISTRATIVE RULES DIVISION  
June 30, 2017

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### **RULES**

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

### **THE ADMINISTRATIVE CODE**

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

### **ADMINISTRATIVE CODE SUPPLEMENTS**

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

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

For example, the first supplement for the first quarter of 2017 is cited as Supp. 17-1.

### **HOW TO USE THE CODE**

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

### **ARTICLES AND SECTIONS**

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

### **HISTORICAL NOTES AND EFFECTIVE DATES**

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

### **ARIZONA REVISED STATUTE REFERENCES**

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

### **SESSION LAW REFERENCES**

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### **EXEMPTIONS FROM THE APA**

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

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

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

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

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

### **EXEMPTIONS AND PAPER COLOR**

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

### **PERSONAL USE/COMMERCIAL USE**

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

TITLE 3. AGRICULTURE

CHAPTER 3. DEPARTMENT OF AGRICULTURE - ENVIRONMENTAL SERVICES DIVISION

Authority: A.R.S. §§ 3-341 et seq. and 3-3101 et seq.

Title 3, Chapter 3, Article 1, Section R3-3-101 renumbered from Title 3, Chapter 10, Article 1, Section R3-10-101; Title 3, Chapter 3, Article 2, Sections R3-3-201 through R3-3-212 renumbered from Title 3, Chapter 10, Article 2, Sections R3-10-201 through R3-10-212; Title 3, Chapter 3, Article 3, Sections R3-3-301 through R3-3-314 renumbered from Title 3, Chapter 10, Article 2, Sections R3-10-301 through R3-10-314; Title 3, Chapter 3, Article 4, Sections R3-3-401 through R3-3-404 renumbered from Title 3, Chapter 10, Article 4, Sections R3-10-401 through R3-10-404; Title 3, Chapter 3, Article 5, Sections R3-3-501 through R3-3-506 renumbered from Title 3, Chapter 10, Article 5, Sections R3-10-501 through R3-10-506; Title 3, Chapter 3, Article 6, Sections R3-3-601 through R3-3-617 renumbered from Title 3, Chapter 10, Article 6, Sections R3-10-601 through R3-10-617; Title 3, Chapter 3, Article 7, Sections R3-3-701 through R3-3-712 renumbered from Title 3, Chapter 3, Article 1, Sections R3-3-01 through R3-3-12; Title 3, Chapter 3, Article 8, Sections R3-3-801 through R3-3-812 renumbered from Title 3, Chapter 3, Article 2, Sections R3-3-21 through R3-3-32; Title 3, Chapter 3, Article 9, Sections R3-3-901 through R3-3-916 renumbered to Title 3, Chapter 3, Article 3, Sections R3-3-41 through R3-3-56 (Supp. 91-4).

New Sections R3-10-101, R3-10-201 through R3-10-212, R3-10-301 through R3-10-306, R3-10-308 through R3-10-312, R3-10-401 through R3-10-403, R3-10-501 through R3-10-505, and R3-10-601 through R3-10-617 adopted effective November 20, 1987.

Former Sections R3-10-01, R3-10-03, R3-10-20 through R3-10-25, R3-10-40 through R3-10-42, R3-10-42.01, R3-10-43 through R3-10-62, R3-10-64 through R3-10-66, R3-10-70, R3-10-71, R3-10-73 through R3-10-75, R3-10-77 through R3-10-87, R3-10-89, and R3-10-91 repealed effective November 20, 1987.

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(Authority: A.R.S. § 3-3101 et seq.)

*Title 3, Chapter 8, Article 2, Sections R3-8-201 through R3-8-208 renumbered to Title 3, Chapter 3, Article 10, Sections R3-3-1001 through R3-3-1008 (Supp. 91-4).*

*New Article 7 adopted effective July 13, 1989. (Supp. 89-3).*

*Article 2, consisting of Sections R3-2-201 through R3-8-208, transferred from the Industrial Commission, Title 4, Chapter 13, Article 7, Sections R4-13-701 through R4-13-708, pursuant to Laws 1990, Ch. 374, § 445 (Supp. 91-3).*

*Laws 1981, Ch. 149, effective January 1, 1982, provided for the transfer of the Office of Fire Marshal from the Industrial Commission to the Department of Emergency and Military Affairs, Division of Emergency Services (Supp. 82-2).*

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**ARTICLE 1. GENERAL PROVISIONS****R3-3-101. Definitions**

In addition to the definitions in A.R.S. §§ 3-341 and 3-361, the following terms apply to Articles 1 through 5 of this Chapter:

“Acute toxicity” means adverse physiological effects that result from a single dose or single exposure to a chemical; or any poisonous effect produced by a single dose or single exposure to a chemical within a short period of time, usually less than 96 hours.

“Adulterate” means to change a pesticide so that:

- Its strength or purity falls below the standard of quality stated on the labeling under which it is sold,
- Any substance has been substituted wholly or in part for the pesticide, or
- Any constituent of the pesticide has been wholly or in part abstracted.

“Agricultural aircraft pilot” means any individual licensed by the Department who pilots an agricultural aircraft to apply a pesticide.

“Agricultural commodity” means any plant, animal, plant product, or animal product produced for commercial or research purposes.

“Agricultural establishment” means any farm, forest, nursery, or greenhouse.

“Agricultural purpose” means use of a pesticide on an agricultural commodity. It excludes the sale or use of pesticides, in properly labeled packages or containers, for either of the following:

- Home use, or
- Use in swimming pools or spas.

“Aircraft” means any mechanism used in flight, excluding a remote-controlled mechanism.

“ALJ” means an individual or the Director who sits as an administrative law judge, who conducts administrative hearings in a contested case or an appealable agency action, and who makes decisions regarding the contested case or appealable agency action. A.R.S. § 41-1092(1)

“Animal” means all vertebrate and invertebrate species, including, but not limited to, humans and other mammals, birds, fish and shellfish. A.R.S. § 3-341(3)

“Application site” means the specific location, crop, object, or field to which a pesticide is or is intended to be applied.

“Applicator” means any individual who applies, or causes to have applied, any pesticide on an agricultural establishment or golf course.

“Authorized activities” means, for compliance with A.R.S. § 3-365(D), any organized activities scheduled at a school or child care facility that use the school or child care facility or the school or child care grounds and for which the sponsors or organizers of the activity have received the written approval of a responsible administrative official of the school or child care facility.

“Buffer zone” means an area of land that allows pesticide deposition and residues to decline to a level that poses a reasonable certainty of no harm to a defined area.

“Bulk release” means the release of any pesticide or mixture of pesticides that poses a potential risk to property, human health, or the environment in volumes greater than those prescribed by the pesticide label for the application site. A pesticide dripping from a spray nozzle or minor splashing during mixing is not a bulk release.

“Certified applicator” means any individual who is certified by the Department to use or supervise the use of any restricted use pesticide or to use any pesticide on a golf course.

“CEU” means continuing education unit.

“Child care facility” means any facility in which child care is regularly provided for compensation for five or more children not related to the proprietor and is licensed as a child care facility by the Arizona Department of Health Services. A.R.S. § 36-881(3). Child care facilities are commonly known as day care centers.

“Commercial applicator” means a certified applicator (whether or not the applicator is a private applicator with respect to some uses) who uses or supervises the use of a restricted use pesticide for any purpose or on any property other than property owned or controlled by:

- The applicator;
- The applicator’s employer; or
- Another person, if the application is performed without compensation, other than trading of personal services between producers of agricultural commodities.

“Contamination” means a concentration of pesticide sufficient to violate state or federal water, soil, food, feed, or air contamination standards, except if legally applied.

“Continued pesticide application” means the continuance of an interrupted application of the same pesticide to the same application site within the same section, township, and range within the same reporting period.

“Custom application equipment” means aircraft, remote-controlled equipment, and ground equipment used for pesticide application by a custom applicator.

“Custom applicator” means any person, except a person regulated by the OPM, who applies pesticides for hire or by aircraft.

“Defoliation” means killing or artificially accelerating the drying of plant tissue with or without causing abscission.

“Device” means any instrument or contrivance that is intended to be used for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life, other than a human being and a bacterium, virus, or other microorganism on or in a living human being or other living animal. Device does not include firearms, mechanical traps, or equipment used for the application of pesticides if the application equipment is sold separately.

“Diluent” means any substance added to a pesticide before application to reduce the concentration of the active ingredient in the mixture.

“Direct release” means to apply a pesticide outside the boundaries of an application site, at the time of application, while the valve controlling the normal flow of pesticide from the application device is in the open position and the application device is not within the confines of the application site. Direct release does not mean the drift or discharge of a pesticide caused by a mechanical malfunction of the application device that is beyond the control of the operator. Direct release does not mean a release caused by accident, or done to avoid an accident that would have resulted in greater harm than that caused by the pesticide release.

“Disposal” means discarding a pesticide or pesticide container that results in the deposit, dumping, burning, or placing of the container or unused pesticide on land or into the air or water.

“Drift” means the physical movement of pesticide through the air at the time of a pesticide application from the application

site to any area outside the boundaries of the application site. Drift does not include movement of a pesticide or associated degradation compounds to any area outside the boundaries of an application site if the movement is caused by erosion, run off, migration, volatility, or windblown soil particles that occur after application, unless specifically addressed on the pesticide label with respect to drift control requirements.

“EPA” means the United States Environmental Protection Agency.

“Experimental use permit” means a permit issued by the EPA, or the Department pursuant to A.R.S. § 3-350.01, to a person for the purpose of experimentation, which includes the accumulation of information necessary for the registration of a pesticide.

“Exposure” means the inhalation or ingestion of a pesticide, or eye or skin contact with a pesticide.

“Family member” means spouse, child, sibling, parent, grandparent, grandchild, stepparent, or stepchild.

“FFDCA” means the Federal Food, Drug and Cosmetic Act, as amended.

“FIFRA” means the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136 et seq.

“Fumigant” means a substance or mixture of substances that produces gas vapor or smoke intended to control a pest in stored agricultural commodities or to control burrowing rodents.

“Golf applicator” means a certified applicator who uses a pesticide for the maintenance of a golf course that is owned or controlled by the applicator or the applicator’s employer.

“Health care institution” means any institution that provides medical services, nursing services, health screening services, and other health-related services, and is licensed by the Arizona Department of Health Services.

“Highly toxic pesticide” means a pesticide with an acute oral LD<sub>50</sub> of 50 milligrams per kilogram of body weight or less, dermal LD<sub>50</sub> of 200 milligrams per kilogram of body weight or less, or inhalation LD<sub>50</sub> of 0.2 milligrams per liter of air or less, and the label bears the signal words “danger” and “poison” and shows a skull and crossbones.

“Individual” means a human being.

“*Insect*” means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class *insecta*, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, and flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes and wood lice. A.R.S. § 3-341(14)

“Integrated Pest Management” or “IPM” means a sustainable approach to managing pests that uses any combination of biological, chemical, cultural, genetic, manual, or mechanical tools or techniques in a way that minimizes health, environmental, and economic risks.

“*Label*” means the written, printed or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if there is any, of the pesticide or device. A.R.S. § 3-341(15)

“*Labeling*” means all labels and other written, printed or graphic matter:

Upon the pesticide or device or any of its containers or wrappers.

Accompanying the pesticide or device at any time.

*To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, non-misleading reference is made to current official publications of the United States departments of agriculture or interior; the United States public health service, state experiment stations, state agricultural colleges or other similar federal institutions or official agencies of the state or other states authorized by law to conduct research in the field of pesticides.* A.R.S. § 3-341(16).

“LD<sub>50</sub>” means a single dose of pesticide that will kill at least 50 percent of laboratory test animals as determined by an EPA- approved procedure.

“Livestock” means clovenhoofed animals, horses, mules, or asses.

“OPM” means the Office of Pest Management.

“PCA” or “agricultural pest control advisor” means any individual licensed by the Department who, as a requirement of, or incidental to, the individual’s employment or occupation:

Offers a written recommendation to a regulated grower or to any public or private agency concerning the control of any agricultural pest,

Claims to be an authority or general advisor on any agricultural pest or pest condition, or

Claims to be an authority or general advisor to a regulated grower on any agricultural pest.

“*Person*” means any individual, partnership, association, corporation or organized group of persons whether incorporated or not. A.R.S. § 3-341(19)

“*Pest*” means:

*Any weed, insect, vertebrate pest, nematode, fungus, virus, bacteria or other pathogenic organisms.*

*Any other form of terrestrial or aquatic plant or animal life, except virus, bacteria or other microorganism on or in living humans or other living animals, which the director declares to be a pest for the purpose of enforcement of this Article.* A.R.S. § 3-341(20)

“*Pesticide*” means any substance or mixture of substances intended to be used for defoliating plants or for preventing, destroying, repelling or mitigating insects, fungi, bacteria, weeds, rodents, predatory animals or any form of plant or animal life which is, or which the director may declare to be, a pest which may infest or be detrimental to vegetation, humans, animals or households or which may be present in any environment. A.R.S. § 3-361(6)

“Pesticide container” means any container with an interior surface that is in direct contact with a pesticide.

“*Pesticide use*” means the sale, processing, storing, transporting, handling or applying of a pesticide and disposal of pesticide containers. A.R.S. § 3-361(7)

“Private applicator” means a certified applicator who uses or supervises the use of a restricted use pesticide for producing an agricultural commodity on property owned or controlled by:

The applicator;

The applicator’s employer; or

Another person, if the pesticide is applied without compensation, other than trading of personal services between producers of agricultural commodities.

“Property boundary” means the legal boundary of the land on which a child care facility, health care institution, residence, or school sits, unless another boundary is established by a written agreement with the owner of the child care facility, health care institution, residence, or school. Under a written agreement,

the parties shall not establish a boundary that is less than ten feet from the child care facility, health care institution, residence, or school.

“Ready-to-use” means a registered pesticide, in the manufacturer’s original container, that does not require dilution by the end user.

“Regulated grower” means a person who acquires or purchases pesticides or contracts for the application of pesticides to agricultural commodities, onto an agricultural establishment, or onto a golf course as a part of the person’s normal course of employment or activity as an owner, lessee, sublessee, sharecropper, or manager of the land to which the pesticide is applied.

“Reporting period” means no later than the Thursday following the calendar week in which an application is completed.

“Residence” means a dwelling place where one or more individuals are living.

“Responsible individual” means an individual at a seller’s location who has passed the core examination prescribed in R3-3-202 and is designated by the seller under R3-3-203.

“Restricted use pesticide” means a pesticide classified as such by the EPA. A.R.S. § 3-361(8).

“School” means a public institution established for the purposes of offering instruction to pupils in programs for preschool children with disabilities, kindergarten programs or any combination of grades one through twelve. A.R.S. § 15-101(19). School includes a private institution with membership in the North Central Association of Colleges and Schools serving students in kindergarten programs or any combination of grades one through twelve.

“Seller” means any person selling or offering for sale a restricted use pesticide or other type of pesticide intended to be used for an agricultural purpose.

“Service container” means a container used to temporarily hold, store, or transport a pesticide concentrate or a registered, ready-to-use pesticide other than the original labeled container, measuring device, or application device.

“Small scale test” means a test using a pesticide on land or water acreage as described at 40 CFR 172.3(c)(1) or (2).

“Spot application” means a treatment in an area other than a greenhouse or nursery operation that is restricted to an area of a field that is less than the entire field.

“Tag” means a custom application equipment license issued by the Department to a custom applicator licensee.

“Triple rinse” means to flush out a container at least three times, each time using a volume of water, or other diluent as specified on the label, equal to a minimum of 10 percent of the container’s capacity or a procedure allowed by the label that produces equivalent or better results.

“Unreasonable adverse effect” means any unreasonable risk to a human being or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or a human dietary risk from residues that result from a use of a pesticide in or on any food as documented by the Department through its investigation.

“Weed” means any plant which grows where not wanted. A.R.S. § 3-341(24)

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-101 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013 (Supp. 13-3).

**R3-3-102. Licensing Time-frames**

- A. Overall time-frame. The Department shall issue or deny a license within the overall time-frames listed in Table 1 after receipt of the complete application. The overall time-frame is the total of the number of days provided for the administrative completeness review and the substantive review.
- B. Administrative completeness review.
  - 1. The administrative completeness review time-frame established in Table 1 begins on the date the Department receives the application. The Department shall notify the applicant in writing within the administrative completeness review time-frame whether the application or request is incomplete. The notice shall specify what information is missing. If the Department does not provide notice to the applicant within the administrative completeness review time-frame, the Department considers the application complete.
  - 2. An applicant with an incomplete license application shall supply the missing information within the completion request period established in Table 1. The administrative completeness review time-frame is suspended from the date the Department mails the notice of missing information to the applicant until the date the Department receives the information.
  - 3. If the applicant fails to submit the missing information before the expiration of the completion request period, the Department shall close the file, unless the applicant requests an extension. An applicant whose file has been closed may obtain a license by submitting a new application.
- C. Substantive review. The substantive review time-frame established in Table 1 shall begin after the application is administratively complete.
  - 1. If the Department makes a comprehensive written request for additional information, the applicant shall submit the additional information identified by the request within the additional information period provided in Table 1. The substantive review time-frame is suspended from the date of the Department request until the information is received by the Department. If the applicant fails to provide the information identified in the written request within the additional information period, the Department shall deny the license.
  - 2. The Department shall issue a written notice granting or denying a license within the substantive review time-frame. If the application is denied, the Department shall send the applicant written notice explaining the reason for the denial with citations to supporting statutes or rules, the applicant’s right to seek a fair hearing, and the time period in which the applicant may appeal the denial.

**Historical Note**

Adopted effective October 8, 1998 (Supp. 98-4).

**Table 1. Time-frames (Calendar Days)**

License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame

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Regulated Grower Permit	A.R.S. § 3-363	14	14	56	14	70
Seller Permit	A.R.S. § 3-363	14	14	56	14	70
Agricultural Aircraft Pilot License	A.R.S. § 3-363	14	14	56	14	70
Custom Applicator License	A.R.S. § 3-363	14	14	63	14	77
Application Equipment Tag	A.R.S. § 3-363	14	14	56	14	70
Agricultural Pest Control Advisor (PCA) License	A.R.S. § 3-363	14	14	63	14	77
Commercial Applicator Certification (PUC)	A.R.S. § 3-363	14	14	63	14	77
Private Applicator Certification (PUP)	A.R.S. § 3-363	14	14	63	14	77
Private Fumigation Certification	A.R.S. § 3-363	14	14	63	14	77
Golf Applicator Certification (PUG)	A.R.S. § 3-363	14	14	63	14	77
Experimental Use Permit	A.R.S. § 3-350.01	14	14	28	14	42
Pesticide Registration	A.R.S. § 3-351	14	14	91	14	105
License to Manufacture or Distribute Commercial Feed	A.R.S. § 3-2609	14	14	42	14	56
Commercial Fertilizer License Specialty Fertilizer Registration	A.R.S. § 3-272	14 14	14 14	42 56	14 14	56 70
Agricultural Safety Trainer Certification	A.R.S. § 3-3125	28	14	28	14	56
<b>ARIZONA NATIVE PLANTS</b>						
Notice of Intent Confirmation Notice of Intent	A.R.S. § 3-904	14	14	14	14	28
• Salvage Assessed Native Plant Permits	A.R.S. § 3-906	14	14	14	14	28
• Salvage Restricted Native Plant Permits		14	14	14	14	28
• Scientific Permits		14	14	14	14	28
Movement Permits	A.R.S. § 3-906	14	14	14	14	28
Annual Permits for Harvest-Restricted Native Plants	A.R.S. § 3-907	14	14	14	14	28

**Historical Note**

Adopted effective October 8, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 2663, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013 (Supp. 13-3).

**ARTICLE 2. PERMITS, LICENSES, AND CERTIFICATION****R3-3-201. Regulated Grower Permit; Fee**

- A.** A regulated grower shall not order, purchase, take delivery of, use, or recommend the use of any pesticide for an agricultural purpose or golf course without a valid regulated grower permit, issued by the Department.
- B.** A person applying for a regulated grower permit, initial or renewal, shall provide the following information on a form obtained from the Department:
1. Name, signature, and social security or employer's identification number of the applicant;
  2. Date of the permit application;
  3. Name, address, e-mail address, if applicable, and daytime telephone number of the company or farm where the applicant may be reached;
  4. Permit renewal period; and
  5. Sections, townships, ranges, and acres of the land where pesticides may be applied.
- C.** The applicant shall submit the completed application to the Department accompanied by a \$20 fee for each year or portion of the year during which the permit is valid.
- D.** A regulated grower permit is not transferable, expires on December 31, and is valid for one or two years depending on the renewal period selected by the applicant.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
Amended by final rulemaking at 10 A.A.R. 276, effective  
March 6, 2004 (Supp. 04-1). Amended by exempt  
rulemaking at 19 A.A.R. 3130, effective September 16,  
2013 (Supp. 13-3).

**R3-3-202. Core Examination**

- A.** In addition to other requirements prescribed by this Article, an individual seeking any of the following shall obtain a score of at least 75 percent on a written core examination administered by the Department:
1. Designation as a responsible individual;
  2. An initial license as:
    - a. An agricultural aircraft pilot;
    - b. A custom applicator;
    - c. An agricultural pest control advisor; or
  3. An initial certification as:
    - a. A private applicator;
    - b. A commercial applicator; or
    - c. A golf applicator.
- B.** The Department shall administer examinations by appointment at every Environmental Services Division office. The Department shall ensure that the examination tests the knowledge and understanding of the following subjects that are described in more detail at Appendix A, subsections (A) and (C):
1. Pesticide use, safety, and toxicity;
  2. Pesticide labels and labeling;
  3. Pesticide terminology;
  4. Common causes of accidents;
  5. Necessity for protective equipment;
  6. Poisoning symptoms;
  7. Practical first aid; and
  8. Statutes and rules relating to the sale, application, and use of pesticides.
- C.** An individual who fails the examination may retake the examination no more than three times in a 12-month period and shall not retake an examination until at least seven days have elapsed from the date of the last examination.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-201 (Supp. 91-4). Former Section R3-3-202 renumbered to R3-3-203; new R3-3-202 made by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013 (Supp. 13-3).

**R3-3-203. Seller Permit; Fee; Responsible Individual**

- A.** A person shall not act as a seller without a valid seller permit, issued by the Department.
- B.** A seller shall obtain a seller permit for each physical location where the seller sells or offers for sale any restricted use pesticide or pesticide for an agricultural purpose within the state.
- C.** A person applying for a seller permit, initial or renewal, shall provide the following information on a form obtained from the Department:
1. Name and signature of the responsible individual, and license number, if applicable;
  2. Date of the permit application;
  3. Name, physical address, mailing address, e-mail address, if applicable, and daytime telephone number of the location selling a restricted use pesticide or a pesticide for an agricultural purpose;
  4. Permit renewal period;

5. Name, e-mail address, and daytime telephone number of the Arizona contact for each out-of-state seller, if applicable;
  6. Address where records required to be maintained under R3-3-401 will be kept;
  7. Whether the applicant has had a similar license, permit, or certification revoked, suspended, or denied in this or any other jurisdiction during the three years before the date of application; and
  8. If applicable, the number of the license or certificate of the responsible individual, and current seller permit number.
- D.** The applicant shall submit the completed application to the Department accompanied by a \$100 fee for each year or portion of the year during which the permit is valid.
- E.** A seller permit is not transferable, expires on December 31, and is valid for one or two years, depending on the permit renewal period selected by the applicant. The Department shall not renew a seller permit unless the seller is in compliance with the provisions established in subsection (F), if applicable.
- F.** A seller shall designate a different responsible individual for each physical location in this state that sells or offers for sale any restricted use pesticide.
1. If a responsible individual terminates employment at an assigned location, the seller shall designate another responsible individual within 30 calendar days and notify the Department of the replacement.
  2. For a responsible individual who is not a commercial applicator or a PCA:
    - a. The core examination expires December 31, unless the initial examination is passed in the last quarter of a calendar year, in which case the expiration is December 31 of the following year; and
    - b. The responsible individual shall retake and pass the core examination every year, unless the responsible individual completes three CEUs annually before the renewal date.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-203 (Supp. 91-4). Former Section R3-3-203 renumbered to R3-3-204; new R3-3-203 renumbered from R3-3-202 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-204. Agricultural Aircraft Pilot License; Examination; Fee; Renewal**

- A.** An individual shall not act as an agricultural aircraft pilot without:
1. A valid agricultural aircraft pilot license issued under this Section, and
  2. A valid commercial applicator certification issued under R3-3-208.
- B.** The Department shall not issue or renew an agricultural aircraft pilot license, and an existing agricultural aircraft pilot license is invalid unless the applicant or license holder has a valid commercial pilot's certificate issued by the Federal Aviation Administration and a valid commercial applicator certification.
- C.** An individual applying for an agricultural aircraft pilot license, initial or renewal, shall provide the following information on a form obtained from the Department:
1. Name, social security number, and signature of the applicant;
  2. Date of application;

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3. Address, e-mail address, if applicable, and daytime telephone number of the applicant;
  4. License renewal period;
  5. Name, physical address, mailing address, e-mail address, if applicable, and daytime telephone number of the applicant's employer, if applicable;
  6. Copy of the applicant's commercial pilot certificate issued by the Federal Aviation Administration, if not previously filed with the Department;
  7. Applicant's commercial applicator certification number; and
  8. Whether the applicant has had a similar certification or license revoked, suspended, or denied in this or any other jurisdiction during the three years before the date of application and the nature of the violation.
- D.** The applicant shall submit the completed application to the Department, accompanied by a \$50 fee for each year or portion of the year during which the license is valid.
- E.** An agricultural aircraft pilot license is not transferable, expires on December 31, and is valid for one or two years depending on the renewal period selected by the applicant.
- F.** Examinations.
1. The Department shall administer examinations by appointment at every Environmental Services Division office. In addition to the core examination required in R3-3-202, an applicant shall demonstrate knowledge and understanding of the following by scoring at least 75 percent on the written examination administered by the Department:
    - a. Safe flight and application procedures, including steps to be taken before starting a pesticide application, such as survey of the area to be treated, and considering the possible hazards to public health;
    - b. Calibration of aerial application equipment; and
    - c. Operation and application in the vicinity of schools, child care facilities, health care institutions, and residences.
  2. An individual who fails the examination may retake it no more than three times in a 12-month period and shall not retake an examination until at least seven days have elapsed from the date of the last examination.
- G.** Renewal; expired license.
1. An applicant may renew an expired license without retaking the written examinations in subsection (F) under the following conditions:
    - a. The applicant submits the completed application and fee within 30 days after the expiration date, and
    - b. The applicant does not provide any pesticide-related service after the date the license expired until the date the renewal is effective.
  2. All other applicants for renewal shall retake the written examinations prescribed in subsection (F).
- Historical Note**
- Adopted effective November 20, 1987 (Supp. 87-4).  
 Renumbered from R3-10-204 (Supp. 91-4). Former Section R3-3-204 renumbered to R3-3-205; new R3-3-204 renumbered from R3-3-203 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).
- R3-3-205. Custom Applicator License; Examination; Fee; Renewal**
- A.** A person shall not act as a custom applicator without a valid custom applicator license issued by the Department.
- B.** A person applying for a custom applicator license, initial or renewal, shall provide the following information on a form obtained from the Department:
1. Name and signature of the applicant;
  2. Date of the license application;
  3. Name, physical address, mailing address, e-mail address, if applicable, and daytime telephone number of the business under subsection (C);
  4. Tax identification number of the business;
  5. License renewal period;
  6. Whether the application is for ground or air custom application, or both;
  7. Names and current certification numbers of the commercial applicators employed by the business, as prescribed in subsection (C)(1);
  8. Evidence of insurance coverage, showing the name of the insurance carrier, policy number, policy term, policy limits, and any applicable exclusions; and
  9. Whether the applicant has had a similar license revoked, suspended, or denied in this or any other jurisdiction during the last three years, and the nature of the violation.
- C.** The Department shall not issue or renew a custom applicator license and an existing custom applicator license is invalid unless the applicant or license holder:
1. Is a commercial applicator or employs at least one individual who is certified as a commercial applicator under R3-3-208;
  2. Maintains or the business that employs the applicator or license holder maintains public liability, drift, and property damage insurance coverage with an aggregate amount of at least \$300,000 during the licensing period. The applicant or license holder shall provide evidence of insurance coverage to the Department upon initial application, for each renewal, or upon request of the Department; and
  3. Files with the Department a copy of the commercial applicator's valid Federal Aviation Administration commercial agricultural aircraft operator's certificate, if using aircraft. If not already on file with the Department, an applicant or license holder shall submit a copy of the certificate with the completed application form.
- D.** A custom applicator license holder may:
1. Temporarily relinquish a custom applicator license if the custom applicator:
    - a. Advises the Department of termination of the insurance prescribed in subsection (C)(2), and the effective date of termination; and
    - b. Ceases to act as a custom applicator on the termination date.
  2. Reinstate the custom applicator license within the same licensing time period, without again paying the fee as prescribed in subsection (E), if the custom applicator:
    - a. Purchases insurance as prescribed in subsection (C)(2), and
    - b. Notifies the Department of the effective date of the insurance.
- E.** The applicant shall submit the completed application to the Department, accompanied by a \$100 fee for each year, or portion of the year during which the license is valid.
- F.** A custom applicator license is not transferable, expires on December 31, and is valid for one or two years, depending on the renewal period selected by the applicant.
- G.** Examinations.
1. The Department shall administer examinations by appointment at every Environmental Services Division office. In addition to the core examination required in R3-3-202, an applicant shall demonstrate knowledge and understanding of the following by scoring at least 75 per-

cent on the written examination administered by the Department:

- a. Calibration of application equipment;
  - b. Aerial application procedures, if applicable; and
  - c. Ground application procedures, if applicable.
2. An individual who fails the examination may retake it no more than three times in a 12-month period and shall not retake an examination until at least seven days have elapsed from the date of the last examination.

**H. Renewal; expired license.**

1. An applicant may renew an expired license without retaking the written examinations in subsection (G) under the following conditions:
  - a. The applicant submits the completed application and fee within 30 days after the expiration date, and
  - b. The applicant does not provide any pesticide-related service after the date the license expired until the date the renewal is effective.
2. All other applicants for renewal shall retake the written examinations prescribed in subsection (G).

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-205 (Supp. 91-4). Former Section R3-3-205 renumbered to R3-3-206; new R3-3-205 renumbered from R3-3-204 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-206. Tag; Fee**

- A. A custom applicator shall not use custom application equipment unless the equipment has a valid tag. The custom applicator licensee shall place and maintain a valid tag so that it is prominently displayed on the pesticide application equipment.
- B. A person applying for a tag shall provide the following information on a form obtained from the Department:
  1. Name and signature of the applicant;
  2. Date of the application;
  3. Address, e-mail address, if applicable, and daytime telephone number of the applicant;
  4. Name, physical address, mailing address, e-mail address, if applicable, and daytime telephone number of the business, if applicable; and
  5. Manufacturer, make, model and serial number, and if an aircraft, the aircraft registration number (“N” number) of the application equipment.
- C. The Department shall not issue or renew a tag and an existing tag is invalid if the custom applicator license is invalid.
- D. An applicant shall submit the completed application to the Department, accompanied by a \$25 fee for each piece of equipment, for each year or portion of the year during which the tag is valid.
- E. A tag expires on December 31, and is valid for the same time period as the custom applicator license.
- F. A custom applicator licensee shall not transfer a tag except as follows:
  1. If a licensed piece of equipment is destroyed, rendered unusable, or transferred out of the state, the custom applicator licensee may transfer the tag to another piece of equipment.
  2. If a licensed piece of equipment is leased, sold, or traded, the custom applicator licensee shall transfer the tag with the equipment to the lessee or new owner.
  3. Before transferring a tag, the custom applicator licensee shall notify the Department that the tag is being transferred and identify the person to whom the tag is being

transferred or identify the piece of equipment to which the tag is being transferred, or the tag is invalid.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-206 (Supp. 91-4). Former Section R3-3-206 renumbered to R3-3-207; new R3-3-206 renumbered from R3-3-205 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-207. Agricultural Pest Control Advisor License; Examination; Fee; Renewal; Exemption**

- A. An individual shall not act as a PCA without a valid PCA license issued by the Department. To advise in any of the categories listed in subsection (I), a PCA shall pass the specific examination associated with the category.
- B. An individual applying for a PCA license shall provide the following information on a form obtained from the Department:
  1. The applicant's name, address, e-mail address, daytime telephone number, social security number, and signature;
  2. Date of the application;
  3. License renewal period;
  4. Name, physical address, mailing address, e-mail address, and daytime telephone number of the applicant's employer, if applicable;
  5. Examinations that the applicant has passed by category; and
  6. Whether the applicant has had a similar license revoked, suspended, or denied in this or any other jurisdiction during the last three years, and the nature of the violation resulting in the revocation, suspension, or denial.
- C. An individual applying for a PCA license, except an individual who holds or has held a PCA license in this state within the previous five years shall meet one of the following five sets of qualifications:
  1. College degree.
    - a. Possess a bachelor's degree (B.A. or B.S.), master's degree or doctorate degree in any subject; and
    - b. Have completed 42 semester hours (63 quarter units) of college-level curricula as specified in subsection (D).
  2. Master's degree in a biological science.
    - a. Possess a master's degree in a biological science;
    - b. Have 12 months of work experience related to a core area listed in subsection (D); and
    - c. Have a letter from the institution, a faculty member, or a supervisor where the individual obtained the work experience certifying the time spent and describing the type of experience obtained by the individual.
  3. Doctorate degree in a biological science.
    - a. Possess a doctorate degree in a biological science; and either
    - b. Meet the qualifications in subsection (C)(2)(b) and (C)(2)(c); or
    - c. Have a letter of recommendation from the faculty member that supervised the dissertation or the division head of the discipline.
  4. Other education with unlicensed experience.
    - a. Have completed 42 semester hours (63 quarter units) of college-level curricula as specified in subsection (D);
    - b. Have 24 months of work experience related to a core area listed in subsection (D); and
    - c. Have a letter from the institution, a faculty member, or a supervisor where the individual obtained the

work experience certifying the time spent and describing the type of experience obtained by the individual.

- 5. Other education with licensed experience.
  - a. Be currently licensed as a pest control advisor (PCA) or equivalent in another state; and
  - b. Have completed 42 semester hours (63 quarter units) of college-level curricula as specified in subsection (D), except that each year of verifiable licensed experience under subsection (C)(5)(a) within the previous 5 years qualifies for two semester hours up to 10 hours. The semester hours based on licensed experience do not reduce the minimum hours required from each individual core area.
  - c. The applicant shall provide proof of the equivalency of a license from another state.

D. The 42 semester hours (63 quarter units) of college-level curricula specified in subsection (C) shall come from the core areas shown in the following table, with at least the minimum indicated hours (or units) coming from each individual core area. A single course shall not count toward the minimum hours of more than one core area. At least one course from the pest management systems and methods core area shall emphasize integrated pest management principles.

Core Area	Examples of Subjects	Sem. Hours	Qtr. Units
Physical, biological, and earth sciences, and mathematics	Inorganic chemistry; organic chemistry; biochemistry; plant biology or botany; general ecology; biology; genetics; plant physiology; zoology; post-algebra mathematics	12	18
Crop health	Soils and irrigation; vegetation management or weed science; plant pathology; entomology; plant nutrition or fertility; nematology; vertebrate management	6	9
Pest management systems and methods	Applied courses in entomology, plant pathology, vegetation management or weed science, and other pest management disciplines; pesticides or use of pesticides; pest control equipment systems; alternative cropping systems; sustainable or organic agricultural systems; biological control	3	4.5

Production systems	Horticulture; viticulture; forestry; agronomy; crop, vegetable, fruit or animal sciences; other production systems (e.g., wildlife production, cattle production)	3	4.5
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- E. Alternative curricula credits.
  - 1. A current crop advisor certificate issued by the American Society of Agronomy qualifies for three semester hours in one of the following core areas: physical, biological and earth sciences and mathematics; crop health; or production systems.
  - 2. Non-traditional courses such as a senior project, an internship, cooperative work experience, independent study, a dissertation or a thesis qualify for three semester hours in one of the core areas of crop health, pest management systems and methods, or production systems, as applicable.
  - 3. For applicants with a bachelor's, master's, or doctorate degree, at least one year of full-time related work experience qualifies for three semester hours in one of the core areas of pest management systems and methods or production systems, as applicable.
- F. In addition to the information required by subsection (B), an applicant shall submit to the Department:
  - 1. An official transcript verifying the courses completed and the degrees granted to the applicant.
  - 2. Documentation verifying alternative curricula relied on under subsection (E). Documentation of subsection (E)(2) and (E)(3) shall include a letter certifying completion and describing the activity from the institution, a faculty member or supervisor.
  - 3. If applicable, the letter required for licensure under subsection (C).
  - 4. A \$50 fee.
- G. A PCA license is not transferable, expires on December 31, and is:
  - 1. Issued for up to one year as an initial license;
  - 2. Renewed every one or two years, depending on the renewal period selected by the applicant; and
  - 3. Renewed for all categories of license under subsection (I) for the same renewal period.
- H. Renewal.
  - 1. The continuing education requirement in subsection (H)(5) is not applicable to an individual who passes the examination prescribed in subsection (I) and who applies for a PCA license between October 1 and December 31 of the test year.
  - 2. Upon renewal, a PCA license is valid for one or two years, depending on the renewal period selected by the applicant, provided the applicant meets the criteria prescribed under subsection (H).
  - 3. An applicant shall submit the completed application, accompanied by a \$50 fee for each licensing year or portion of the year during which the license is valid.
  - 4. Renewal; expired license.
    - a. An applicant may renew an expired license without retaking the written examinations under subsection (I) provided the applicant:
      - i. Complies with the CEU requirements in subsection (H)(5),
      - ii. Submits a completed application and fee within 30 days after the expiration date, and

- iii. Does not provide any pest control-related service from the date the license expired until the date the renewal is effective.
    - b. All other applicants for renewal shall retake the applicable written examinations prescribed in subsection (I).
  - 5. The Department shall not renew a PCA license unless, before the expiration of the current license, the licensee completes 15 CEUs for each year of the renewal period or passes any applicable examination prescribed in subsection (I). The licensee shall complete CEU credit during the calendar years the current license is in effect. CEUs earned that are in excess of the requirements do not carry forward for use with future renewals.
  - 6. To obtain credit, the applicant shall provide the Department with documentation of completion of the CEU course.
- I. Examinations.**
- 1. The Department shall administer examinations by appointment at every Environmental Services Division office. In addition to the core examination required in R3-3-202, an applicant shall demonstrate knowledge and understanding of integrated pest management in any of the following categories by scoring at least 75 percent on a written examination:
    - a. Weed control,
    - b. Invertebrate control,
    - c. Nematode control,
    - d. Plant pathogen control,
    - e. Vertebrate pest control,
    - f. Plant growth regulators, or
    - g. Defoliation.
  - 2. An individual who fails the examination may retake it no more than two times in a 12-month period and shall not retake an examination until at least seven days have elapsed from the date of the last examination.
- J. Exemption.** An individual operating in an official capacity for a college or university, providing recommendations in a not-for-profit capacity, or merely furnishing information concerning general and labeling usage of a registered pesticide is not considered an authority or general advisor for the purposes of this Chapter.
- Historical Note**
- Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-207 (Supp. 91-4). Former Section R3-3-207 repealed; new R3-3-207 renumbered from R3-3-206 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 3855, effective January 28, 2014 (Supp. 13-4).
- R3-3-208. Applicator Certification; Examination; Fee; Renewal**
- A.** An individual shall not act as a private applicator, golf applicator, or commercial applicator unless the individual is certified by the Department.
  - B.** Application. An individual applying for either commercial, golf, or private applicator certification shall pay the applicable fee and submit a completed application to the Department containing the following information on a form obtained from the Department:
    - 1. The applicant's name, address, e-mail address if applicable, daytime telephone number, Social Security number, and signature;
    - 2. Date of the application;
    - 3. Name, physical address, mailing address, e-mail address, if applicable, and daytime telephone number of the applicant's employer, if applicable;
    - 4. Whether the application is for a commercial, golf, or private applicator certification;
    - 5. If applicable, an indication the applicant seeks private applicator fumigation certification;
    - 6. If applicable, an indication the applicant seeks golf applicator aquatic certification;
    - 7. For commercial certification, the categories in which the applicant seeks to be certified;
    - 8. Whether the applicant has had a similar certification revoked, suspended, or denied in this or any other jurisdiction during the last three years, and the nature of the violation; and
    - 9. Certification renewal period.
  - C.** Private applicator fumigation certification.
    - 1. Fumigation certification requires certification as a private applicator, a golf applicator, or a commercial applicator.
    - 2. Fumigation certification allows a private applicator or a commercial applicator acting as a private applicator to use, apply, or supervise the use or application of a fumigant to an on-farm raw agricultural commodity or on-farm burrowing rodent problem.
    - 3. Fumigation certification allows a golf applicator to use and apply a fumigant to a golf course burrowing rodent problem.
  - D.** Golf applicator aquatic certification allows a golf applicator to use or apply an aquatic pesticide to a body of water on a golf course to control an aquatic pest problem.
  - E.** Golf restricted use pesticide certification allows a golf applicator to use or apply restricted use pesticides to an ornamental and turf area of a golf course.
  - F.** Examinations. The Department shall administer examinations by appointment at every Environmental Services Division office. An applicant shall achieve a passing score of 75 percent in the applicable subject area in order to receive initial certification.
    - 1. Commercial applicator certification (PUC). In addition to the core examination required by R3-3-202, an applicant shall demonstrate knowledge and understanding of the subjects listed in Appendix A, subsection (B) for each commercial certification category sought.
    - 2. Commercial certification categories. An individual may apply for commercial applicator certification in any of the following categories:
      - a. Agricultural pest control;
      - b. Forest pest control;
      - c. Seed-treatment;
      - d. Aquatic pest control;
      - e. Right-of-way pest control;
      - f. Public health pest control;
      - g. Regulatory pest control: M-44 or rodent, if a government employee; or
      - h. Demonstration and research pest control.
    - 3. Private applicator (PUP) and golf applicator (PUG) certification. An applicant shall demonstrate knowledge and understanding of the core examination subjects listed in R3-3-202.
    - 4. Fumigation certification. An applicant seeking private applicator fumigation certification shall also pass a separate fumigation examination.
    - 5. Aquatic certification. An applicant seeking aquatic certification shall also pass a separate aquatics examination.
    - 6. An individual who fails an examination may retake it no more than three times in a 12-month period, and shall not

retake an examination until at least seven days have elapsed from the date of the last examination.

**G. Fee.**

1. An applicant for private or commercial certification shall pay a \$50 fee per year of certification.
2. An applicant for golf certification shall pay a \$100 fee per year of certification.

**H. Applicator certification is not transferable, expires on December 31, and is:**

1. Issued for the remainder of the calendar year as an initial certification;
2. Renewed for one or two years, depending on the renewal period selected by the applicant; and
3. Renewed for all categories of certification for the same renewal period.

**I. Renewal.**

1. An applicant for renewal of an applicator certification shall select a one or two-year renewal period.
2. An applicant shall submit the completed application accompanied by the applicable fee for a one-year renewal or double the fee for a two-year renewal.
3. CEU requirements.
  - a. The Department shall not renew a private applicator or golf applicator certification unless, prior to the expiration of the current certification, the applicator completes three CEUs for each year of the renewal period.
  - b. The Department shall not renew a commercial applicator certification unless, prior to expiration of the current certification, the applicator completes six CEUs for each year of the renewal period.
  - c. The Department shall not renew a fumigation certification unless, prior to the expiration of the current certification, the applicant qualifies to renew the applicant's private, golf, or commercial applicator certification under this subsection and completes three additional CEUs per year of the renewal period.
  - d. The Department shall not renew an aquatic certification unless, prior to the expiration of the current certification, the applicant qualifies to renew the applicant's golf applicator certification under this subsection and completes three additional CEUs per year of the renewal period. The three additional CEUs per year may also be used to simultaneously satisfy the three additional CEUs per year requirement in subsection (H)(3)(c).
  - e. An applicator shall complete CEU credit while the current certification period is in effect. CEU credits earned in excess of the requirements do not carry forward for use in subsequent renewals.
  - f. To obtain credit, the applicant shall provide the Department with documentation of completion of the CEU course.
  - g. The CEU requirements are not applicable to an individual renewing an initial certification issued between October 1 and December 31.
4. Examination exception. An applicator who fails to complete the CEUs required for renewal may renew a certification, prior to expiration, for one year by submitting the completed application accompanied by the applicable fee and retaking and passing the applicable certification examination prescribed in this Section.

**J. Renewal; expired certification.**

1. An applicant may renew an expired certification without retaking the written examinations provided the applicant:
  - a. Has satisfied the CEU requirements,

- b. Submits a completed application and fee within 30 days after the expiration date, and
  - c. Does not provide any pesticide-related service from the date the certification expired until the date the renewal is effective.
2. All other applicants for renewal shall complete the requirements for initial certification, including retaking and passing the written examinations prescribed in this Section.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-208 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 18 A.A.R. 2481, effective November 10, 2012 (Supp. 12-3). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013 (Supp. 13-3). Amended by final rulemaking at 22 A.A.R. 367, effective April 5, 2016 (Supp. 16-1).

**R3-3-209. License and Fee Exemptions**

- A. A person who applies pesticides in buildings or for structural pest control purposes is not required to apply for or possess any license or certification from the Department.
- B. A person who sells, offers for sale, delivers, or offers for delivery a general use pesticide, to be used for private, noncommercial use in or around the home or a person who sells general use pesticides for swimming pool or spa maintenance is not required to apply for or possess a seller's permit from the Department.
- C. A state, federal, or other governmental employee who makes pest control recommendations or applies or supervises the use of restricted use pesticides while engaged in the performance of official duties shall meet the requirements of this Article, but is not required to pay a fee for either a PCA license or a commercial applicator certification.
- D. A person who only furnishes information concerning label requirements governing a registered pesticide is not required to apply for or possess a PCA license from the Department.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-209 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-210. Additional Grounds for Revocation, Suspension, or Denial of a License, Permit, or Certification**

- A. The Director has the authority to deny, or after an administrative hearing, suspend or revoke a license, permit, or certification of any person who:
  1. Fails to demonstrate sufficient reliability, expertise, integrity, and competence in engaging in pesticide use;
  2. Submits an inaccurate application for a license, permit, or certification; or
  3. Has had a similar license, permit, or certification revoked, suspended, or denied in this or any other jurisdiction during the three years before the date of application.
- B. Upon notice of a denial, the applicant may request, in writing, that the Director provide an administrative hearing under A.R.S. Title 41, Chapter 6, Article 10 to appeal the denial of the license, permit, or certification.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-210 (Supp. 91-4). Former Section R3-3-210 repealed; new R3-3-210 renumbered from

R3-3-211 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-211. CEU Course Approval; Subject Approval**

- A.** CEU course approval.
1. A person who wishes to have the Department determine whether a course qualifies for CEU credit shall submit the following information to the Department:
    - a. Name, address, e-mail address, if applicable, and telephone number of the course's sponsor;
    - b. Signature of the sponsor or the sponsor's representative;
    - c. Course outline, listing the subjects and indicating the amount of time allocated for each subject;
    - d. Brief description of the information covered within each subject;
    - e. Brief biography of the presenter, demonstrating the presenter's qualifications;
    - f. Fees charged for attending the course;
    - g. Date and location of each session; and
    - h. Whether the course is open to the public.
  2. A person who requires prior notification of the number of CEUs that can be earned by completing an approved course before it is held shall submit the information required in subsection (A)(1) to the Department at least 14 business days before the course is held.
  3. The Department may modify the number of CEUs earned for a CEU course if the CEU course varies significantly in content or length from the approved curriculum. If the Department modifies the number of CEUs earned, the Department shall send a letter of modification to the course organizer, who shall be requested to inform all individuals who attended the course.
- B.** Subject approval. The Department shall grant one hour of CEU credit for every 50 minutes of actual instruction in an approved program relating to agricultural pest control or any of the following subjects:
1. Those listed in R3-3-208(F)(1),
  2. IPM, or
  3. Any other pesticide or pesticide use subject approved by the Associate Director.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-211 (Supp. 91-4). Former Section R3-3-211 renumbered to R3-3-210; new R3-3-211 renumbered from R3-3-212 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-212. Experimental Use Permit**

- A.** Small scale pesticide testing. For a person exempted by Section 5 of FIFRA or 40 CFR 172.3 from the requirement of a federal experimental use permit the following apply:
1. The person shall, in addition to meeting the requirements in R3-3-303, provide to the Associate Director a statement of purpose and an affidavit verifying that the pesticide will be applied to an application site that does not exceed the total area described in 40 CFR 172.3(c); and
  2. If testing on the grounds of a college or university agricultural center or campus, or company-owned research facility, the testing is exempt from subsection (A)(1) and the reporting requirements in R3-3-303.
- B.** A person engaged in a small scale test, except a person exempt under subsection (A)(2), shall comply with the requirements prescribed in R3-3-302, if applicable.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-212 (Supp. 91-4). Former Section R3-3-212 renumbered to R3-3-211; new R3-3-212 made by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**Appendix A. - Testing Categories**

**TESTING CATEGORIES**

- A.** Commercial Applicator Certification, 40 CFR 171.4(b)(i)-(viii).
1. Label & labeling comprehension.
    - a. The general format and terminology of pesticide labels and labeling;
    - b. The understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels;
    - c. Classification of the product, general or restricted; and
    - d. Necessity for use consistent with the label.
  2. Safety. Factors including:
    - a. Pesticide toxicity and hazard to man and common exposure routes;
    - b. Common types and causes of pesticide accidents;
    - c. Precautions necessary to guard against injury to applicators and other individuals in or near treated areas;
    - d. Need for and use of protective clothing and equipment;
    - e. Symptoms of pesticide poisoning;
    - f. First aid and other procedures to be followed in case of a pesticide accident; and
    - g. Proper identification, storage, transport, handling, mixing procedures and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers.
  3. Environment. The potential environmental consequences of the use and misuse of pesticides as may be influenced by such factors as:
    - a. Weather and other climatic conditions;
    - b. Types of terrain, soil or other substrate;
    - c. Presence of fish, wildlife and other non-target organisms; and
    - d. Drainage patterns.
  4. Pests. Factors such as:
    - a. Common features of pest organisms and characteristics of damage needed for pest recognition;
    - b. Recognition of relevant pests; and
    - c. Pest development and biology as it may be relevant to problem identification and control.
  5. Pesticides. Factors such as:
    - a. Types of pesticides;
    - b. Types of formulations;
    - c. Compatibility, synergism, persistence and animal and plant toxicity of the formulations;
    - d. Hazards and residues associated with use;
    - e. Factors which influence effectiveness or lead to such problems as resistance to pesticides; and
    - f. Dilution procedures.
  6. Equipment. Factors including:
    - a. Types of equipment and advantages and limitations of each type; and
    - b. Uses, maintenance and calibration.
  7. Application techniques. Factors including:
    - a. Methods of procedure used to apply various formulations of pesticides, solutions, and gases, together

- with a knowledge of which technique of application to use in a given situation;
- b. Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and
  - c. Prevention of drift and pesticide loss into the environment.
8. Laws and regulations. Applicable State and Federal laws and regulations.
- B. Commercial Certification Categories, 40 CFR 171.4(c)(1) through (6) and (8) through (10).**
1. Agricultural pest control.
    - a. Plant. Applicators must demonstrate practical knowledge of crops grown and the specific pests of those crops on which they may be using restricted use pesticides. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems, pre-harvest intervals, re-entry intervals, phytotoxicity, and potential for environmental contamination, non-target injury and community problems resulting from the use of restricted use pesticides in agricultural areas.
    - b. Animal. Applicators applying pesticides directly to animals must demonstrate practical knowledge of such animals and their associated pests. A practical knowledge is also required concerning specific pesticide toxicity and residue potential, since host animals will frequently be used for food. Further, the applicator must know the relative hazards associated with such factors as formulation, application techniques, age of animals, stress and extent of treatment.
  2. Forest pest control. Applicators shall demonstrate practical knowledge of types of forests, forest nurseries, and seed production in this state and the pests involved. They shall possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. A practical knowledge is required of the relative biotic agents and their vulnerability to the pesticides to be applied. Because forest stands may be large and frequently include natural aquatic habitats and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator must therefore demonstrate practical knowledge of control methods which will minimize the possibility of secondary problems such as unintended effects on wildlife. Proper use of specialized equipment must be demonstrated, especially as it may relate to meteorological factors and adjacent land use.
  3. Seed-treatment. Applicators shall demonstrate practical knowledge of types of seeds that require chemical protection against pests and factors such as seed coloration, carriers, and surface active agents which influence pesticide binding and may affect germination. They must demonstrate practical knowledge of hazards associated with handling, sorting and mixing, and misuse of treated seed such as introduction of treated seed into food and feed channels, as well as proper disposal of unused treated seeds.
  4. Aquatic pest control. Applicators shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of restricted use pesticides used in this category. They shall demonstrate practical knowledge of various water use situations and the potential of downstream effects. Further, they must have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects and other organisms which may be present in aquatic environments. These applicators shall demonstrate practical knowledge of the principles of limited area application.
5. Right-of-way pest control. Applicators shall demonstrate practical knowledge of a wide variety of environments, since rights-of-way can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of problems on runoff, drift, and excessive foliage destruction and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides and the need for containment of these pesticides within the right-of-way area, and the impact of their application activities in the adjacent areas and communities.
  6. Public health pest control. Applicators shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests is involved, and it is essential that they be known and recognized, and appropriate life cycles and habitats be understood as a basis for control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They shall also have practical knowledge of the importance and employment of such non-chemical control methods as sanitation, waste disposal, and drainage.
  7. Regulatory pest control. Applicators shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of restricted use pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties, since their services are frequently required in other areas of the country where emergency measures are invoked to control regulated pests and where individual judgments must be made in new situations.
  8. Demonstration and research pest control. Persons demonstrating the safe and effective use of pesticides to other applicators and the public will be expected to meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many different pest problems situations will be encountered in the course of activities associated with demonstration, and practical knowledge of problems, pests, and population levels occurring in each demonstration situation is required. Further, they shall demonstrate an understanding of a pesticide-organism interaction and the importance of integrating pesticide use with other control methods. In general, it would be expected that applicators doing demonstration pest control work possess a practical knowledge of all of the standards detailed in (G)(1). In addition, they shall meet the specific standards required for subsections (c)(1) through (7) of this subsection as may be applicable to their particular activity.
- C. Private Certification, 40 CFR 171.5(a)(1) through (5).**
1. Recognize common pests to be controlled and damage caused by them.

2. Read and understand the label and labeling information, including the common name of pesticides the applicator applied; pest(s) to be controlled, timing and methods of application; safety precautions; any pre-harvest or re-entry restrictions; and any specific disposal procedures.
3. Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation.
4. Recognize local environmental situations that must be considered during application to avoid contamination.
5. Recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

#### Historical Note

New Appendix made by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Appendix A subsection (B) CFR citation corrected from 40 CFR.4 to 40 CFR 171.4 at the request of the Department, Office File No. M09-448, filed December 8, 2009 (Supp. 09-4).

### ARTICLE 3. PESTICIDE USE, SALES, AND EQUIPMENT

#### R3-3-301. General

- A. A person shall not use, apply, or instruct another to apply a pesticide in a manner or for a use inconsistent with the pesticide labeling except that:
1. A pesticide may be applied at a dosage, concentration, or frequency less than that specified on the pesticide labeling unless the labeling specifically prohibits deviation from the specified dosage, concentration, or frequency.
  2. A pesticide may be applied against any target pest not specified on the labeling if the application is to an application site specified on the pesticide labeling, unless the labeling specifically prohibits use against the pest.
  3. A pesticide may be applied by any method of application not prohibited by the pesticide labeling unless the labeling specifically states that the pesticide may be applied only by the methods specified on the labeling.
  4. A pesticide may be mixed with a fertilizer if the labeling does not prohibit the mixture.
  5. A pesticide may be used in any manner that is consistent with Sections 5, 18, or 24 of FIFRA.
- B. A person shall not use, apply, or store or instruct another to use, apply, or store a pesticide unless the pesticide is:
1. Registered with the Department and the EPA, or
  2. Previously registered with the Department and the EPA and cancelled or suspended by the EPA with a current end-use provision in effect.
- C. Subsection (B) does not apply to a:
1. Pesticide registrant that temporarily stores pesticides produced for shipment out of the state;
  2. Person who has applied for registration or exemption in this state; or
  3. Person who is acting under an experimental use permit on the grounds of a college or university agricultural center or campus, or a company-owned research facility.
- D. A person shall not allow drift that causes any unreasonable adverse effect.
- E. A person shall not cause the direct release of a pesticide and an individual shall not instruct an applicator in a manner to cause the direct release of a pesticide causing any unreasonable adverse effect.
- F. Regulated grower responsibility.

1. After a pesticide is applied to a field on an agricultural establishment, the regulated grower shall not harvest a crop from the field, or permit livestock to graze in the field in violation of any provision of the pesticide labeling.
  2. Before a pesticide application, a regulated grower shall ensure that all individuals and livestock subject to the regulated grower's control are outside the application site.
- G. Emergency pest control measures. A person acting under a government-sponsored emergency program, shall not apply, cause, or authorize another to apply or cause a pesticide to come into contact with an individual, animal, or property outside the boundaries of the application site.
- H. If possible when applying pesticides by aircraft, a pilot shall fly crosswind, unless an obstacle does not permit it, and shall begin the application at the downwind side of the field so that the pesticide is dispersed on the return swathe.
- I. A person shall not apply a highly toxic pesticide, other than a pesticide registered by the EPA for ultra low volume application, in a volume that is less than one gallon per acre in the final spray form. The content of that gallon shall be at least 50 percent water.
- J. A buffer zone may receive direct application or drift of pesticides as permitted by law.

#### Historical Note

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-301 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

#### R3-3-302. Form 1080; Requirement for Written Recommendation

- A. A PCA or regulated grower shall provide the following information, as applicable, in writing on a Form 1080, sign the form, and provide a copy to the custom applicator before each pesticide application that is to be made by a custom applicator:
1. Name and permit number of the seller;
  2. Date the recommendation is written;
  3. Name and permit number of the regulated grower upon whose application site the pesticide will be applied;
  4. County where the application site is located;
  5. Pest conditions present;
  6. Whether the application site is within a pesticide management area under R3-3-304;
  7. Anticipated date of harvest;
  8. Restricted entry interval;
  9. Label days to harvest;
  10. Date recommended for the pesticide application;
  11. Specific application site being treated;
  12. Township, range, and section of the application site;
  13. Number of acres or application sites in each section being treated;
  14. Additional field description, if any;
  15. Brand name and EPA registration number of the pesticide to be applied or number of the pesticide regulated under Section 18 of FIFRA to be applied;
  16. Rate and unit of measure per acre or dilution per 100 gallons;
  17. Total quantity of pesticide concentrate to be applied;
  18. Total acres to be treated and total volume per acre or total number of application sites to be treated;
  19. Whether the application includes an active ingredient that appears on the Arizona Department of Environmental Quality groundwater protection list and is soil-applied as defined in A.A.C. R18-6-101;

20. Whether a supplemental label is required;
  21. Method of pesticide application;
  22. Label restrictions or special instructions, if any;
  23. Name of the custom applicator making the application;
  24. Anticipated pesticide delivery location; and
  25. Signature and credential number of the regulated grower or PCA making the recommendation.
- B.** A custom applicator shall not apply a pesticide unless the custom applicator has received a signed copy of the recommendation from the PCA or the regulated grower on the Form 1080 before the application. The custom applicator shall apply the pesticide according to the recommendation on the Form 1080 unless the recommendation conflicts with the pesticide label or labeling, in which case the custom applicator shall note these deviations on the Form 1080 and apply the pesticide according to the pesticide label or labeling, or as provided in R3-3-301(A).
- C.** Before the application of a pesticide recommended by a PCA, the PCA shall notify the regulated grower, or the regulated grower's representative, of the scheduled application date. If the application date or time changes from that scheduled with the regulated grower, the custom applicator shall notify the regulated grower of the revised date and time of the application.
- D.** After completing the application, the custom applicator shall sign the pesticide application report portion of Form 1080 to verify that the pesticide was applied according to the recommendation and provide the following information in writing on the form:
1. Date and time of each application;
  2. Date and time of the first and last spot application and a general description of the location, if applicable;
  3. Wind direction and velocity;
  4. Tag number, if applicable;
  5. Name and credential number of the grower or custom applicator business;
  6. Signature and credential number of the applicator; or name of the application equipment operator, and if a restricted use pesticide is applied, the signature and credential number of the certified applicator; and
  7. Any deviation from the recommendation.
- E.** Reporting shall be as prescribed in R3-3-404.

#### Historical Note

Adopted effective November 20, 1987 (Supp. 87-4).  
 Renumbered from R3-10-302 (Supp. 91-4). Section repealed; new Section made by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

#### R3-3-303. Experimental Use

- A.** A person supervising application of a pesticide under a federal experimental use permit shall provide the Department with the following information in writing at least five days before application of the experimental use pesticide:
1. A copy of the EPA-approved experimental use permit, as required by Section 5 of FIFRA;
  2. Name, address, e-mail address, if applicable, and daytime telephone number of the supervising technical individual for the experimental use;
  3. Application site to be treated, the location of the application site, the quantity of the commodity or the area of land to be treated, and the number of structures, if any;
  4. Total amount of active ingredient to be applied in this state;
  5. Rate of formulation applied per unit of measure;
  6. Method of application;
7. Time period during which the application will be made; and
  8. Any special experimental use permit condition as determined by the Department or by the EPA.
- B.** If any information provided under subsection (A) changes, the person supervising the pesticide application under a federal experimental use permit shall notify the Department at least 24 hours before the application of the experimental use pesticide. If the notification of change is given verbally, the person supervising the pesticide application under a federal experimental use permit shall provide the Department with written confirmation within 15 days after the date of the change.
- C.** At least 24 hours before the application, the supervising technical individual shall provide the Department with the following information:
1. Name, address, e-mail address, if applicable, and daytime telephone number of the regulated grower and PCA, or the qualifying party if it is a structural pest control application, that are involved in the application of the experimental use pesticide;
  2. County, section, township, range, and field description, if needed, of the intended application site, or the street address if it is a structural pest control application as defined in A.R.S. § 32-2301(20);
  3. Name, address, e-mail address, if applicable, and telephone number of the applicator applying the pesticide; and
  4. Date and time of the intended application.
- D.** An applicator shall not apply an experimental use pesticide in a manner other than that specified by the experimental use permit or other Department-approved labeling that is provided to the applicator. The applicator shall ensure that the labeling is at the application site when the application occurs.

#### Historical Note

Adopted effective November 20, 1987 (Supp. 87-4).  
 Renumbered from R3-10-303 (Supp. 91-4). Section repealed; new Section renumbered from R3-3-306 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

#### R3-3-304. Pesticide Management Areas; Criteria for Designation

- A.** The Associate Director shall annually publish a list of all locations within the state that are designated as pesticide management areas under A.R.S. § 3-366. The list is available at every Environmental Services Division office.
- B.** The Director shall designate a location as a pesticide management area if all of the following evaluation criteria are met:
1. The distance between the application site and the property boundary of any residence, school, child care facility, or health care institution is less than 1/4 mile;
  2. A pesticide is applied by aircraft;
  3. A pesticide complained about under subsection (B)(4) is highly toxic or odoriferous; and
  4. The Department receives complaints alleging pesticide misuse within a 12-month period from at least five or five percent, whichever is greater, of the residences located less than 1/4 mile from the application site or a complaint from any school, child care facility, or health care institution located less than 1/4 mile from the application site.
- C.** If, upon a written request from a person, or upon the Department's initiative, the Director determines that a pesticide management area no longer meets all of the criteria listed in subsection (B), the Director may remove the pesticide management area from the Department's annual list.

- D. A person may petition the Department at any time to add or delete an area to or from the list of pesticide management areas. The petitioner shall address all of the criteria listed in subsection (B). The Director shall make a decision on each petition no later than 90 days from the date the petition was submitted.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-304 (Supp. 91-4). Section repealed; new Section renumbered from R3-3-308 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-305. Pesticide Sales**

- A. A seller shall not sell, offer for sale, deliver, or offer for delivery any restricted use pesticide or pesticide for an agricultural purpose without determining that the pesticide will be used by a person who:
1. Has a valid certification or regulated grower permit issued by the Department or OPM for use of the pesticide, or
  2. Works under the direct supervision of a person who has a valid certification or regulated grower permit issued by the Department or OPM for the use of the pesticide.
- B. If a pesticide is sold for an agricultural purpose, the seller shall write the permit numbers of the seller and regulated grower on each sale and delivery ticket or invoice, and on each pesticide container or carton. If a pallet is delivered to an individual purchaser, the seller may write the seller and regulated grower numbers on the outside of the shrink-wrapped pallet.
- C. A seller shall register with the Department the name and address of each salesperson and PCA employed for the purpose of selling pesticides in this state.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-305 (Supp. 91-4). Section repealed; new Section renumbered from R3-3-309 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013 (Supp. 13-3).

**R3-3-306. Receipt of Restricted Use Pesticides by Noncertified Persons**

- A. A person shall not sell, offer for sale, deliver, or offer for delivery a restricted use pesticide to a person other than a certified applicator without having first obtained written documentation from a certified applicator or a noncertified recipient that the material is to be applied by or under the supervision of a certified applicator.
- B. The seller shall obtain one of the following types of written documentation to satisfy the requirement in subsection (A):
1. A photocopy or fax of the certificate issued to the certified applicator who will be applying or supervising application of the restricted use pesticide and:
    - a. A statement signed by the certified applicator, authorizing and identifying the noncertified individual to purchase or receive the restricted use pesticide for the certified applicator; or
    - b. A copy of a signed contract or agreement, authorizing and identifying the noncertified person to receive the restricted use pesticide for the certified applicator; or
  2. A form on file with the seller that contains the following information:

- a. Name of any individual authorized to receive the restricted use pesticides for the certified applicator;
- b. Relationship of an authorized individual to the certified applicator (partner, employee, co-worker, or family member);
- c. List of the restricted use pesticides an authorized individual is allowed to receive, specifying the:
  - i. Trade name; and
  - ii. EPA registration number; or
  - iii. State special local need registration number issued by the Department; or
  - iv. Emergency exemption number, issued by the EPA under Section 18 of FIFRA, if applicable;
- d. Signature of the authorized individual and the date signed; and
- e. Certified applicator's signature, work address, work phone number, certification number, and certification categories (private fumigation or commercial and one or more of the following: agricultural pest, seed-treatment, right-of-way, forestry, aquatic, regulatory, or public health).

- C. A seller shall request proof of identification from any noncertified individual accepting restricted use pesticides on behalf of a certified applicator if the individual is unknown to the seller.
- D. A noncertified individual who receives a restricted use pesticide on behalf of a certified applicator shall sign all sale documents for restricted use pesticides.
- E. If, at the time of the sale of the restricted use pesticide, the noncertified individual receiving the pesticide satisfies the requirements of subsection (B) by presenting a signed statement, contract, or agreement, the seller shall maintain on file a copy of the signed statement, contract, or agreement.
- F. The seller shall retain records of all sales or deliveries made and maintain the documents required by this Section for at least two years from the date of sale.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-306 (Supp. 91-4). Former Section R3-3-306 renumbered to R3-3-303; new R3-3-306 renumbered from R3-3-310 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-307. Aircraft and Agricultural Aircraft Pilots**

- A. A person shall not operate an aircraft to apply pesticides in this state unless the aircraft has a valid Federal Aviation Administration airworthiness certificate and a valid tag issued under R3-3-206.
- B. A custom applicator shall not permit an individual who does not hold a valid agricultural aircraft pilot license and a valid commercial applicator certification to apply pesticides by aircraft.

**Historical Note**

Adopted effective January 17, 1989 (Supp. 89-1).  
Renumbered from R3-10-307 (Supp. 91-4). Former Section R3-3-307 repealed; new R3-3-307 renumbered from R3-3-312 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-308. Pesticide Containers and Pesticides; Storage and Disposal**

- A. Each person storing pesticides or non-triple rinsed pesticide containers shall:
1. Provide a secure, well-ventilated storage location;
  2. Verify that the containers are nonleaking and closed if not in use; and

3. Conspicuously post a sign at the entrance to the storage area warning others that pesticides are stored inside.
- B.** A person shall not place misleading wording or markings on a service container that are not related to the pesticide in the container.
- C.** A person using a service container to store or transport a pesticide concentrate or registered ready-to-use pesticide, shall place a durable and legible label or tag on the service container that lists:
1. Name, e-mail address, if applicable, and telephone number of the applicator or custom applicator using the pesticide;
  2. Brand or trade name of the pesticide;
  3. EPA registration number;
  4. Name and percentage of the active ingredient;
  5. Dilution, if any, in the service container;
  6. EPA-assigned signal word (danger, warning, or caution) for the registered label; and
  7. The phrase “KEEP OUT OF REACH OF CHILDREN.”
- D.** A person shall not store or transport any pesticide in a container that has been used for food, feed, beverages, drugs, or cosmetics, or, because of shape, size, or marking is identified with food, feed, beverages, drugs, or cosmetics.
- E.** A person shall not dump, negligently store, or leave unattended any pesticide, service container, or pesticide container or part of a container, at any place or under any condition that will create a hazard to an individual, an animal, or property.
- F.** A person shall not dispose of any pesticide or pesticide container except according to label directions and all applicable laws.
- G.** Before a person disposes of any pesticide container, the person shall ensure that the following steps are taken:
1. After emptying each pesticide container other than a pressurized container, a paper bag, or a container designed for reuse with the same pesticide and described in R3-3-309, the container is triple rinsed and:
    - a. The rinsate is not discharged into the environment unless the discharge is performed according to label directions, and applicable laws;
    - b. The rinsate is placed into a service container or the application equipment for use on an application site, or the rinsate is disposed as allowed by the label;
    - c. Each container is punctured or crushed after it is triple rinsed to render the container incapable of holding any material; and
  2. A pesticide container that is a combustible bag or package is thoroughly emptied and either:
    - a. Folded and tied into bundles or otherwise secured, or
    - b. Enclosed securely in a secondary container that is labeled as containing pesticide residue.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-308 (Supp. 91-4). Former Section R3-3-308 renumbered to R3-3-304; new R3-3-308 renumbered from R3-3-313 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-309. Returnable, Reusable, Recyclable, and Reconditionable Pesticide Containers**

- A.** A pesticide container, as defined in R3-3-101, labeled as a returnable, reusable container, or for which the label contains provisions for recycling or reconditioning, may be shipped according to label directions to a dealer, distributor, formula-

tor, or a reconditioning or recycling facility that is operated in accordance with applicable laws.

- B.** If a pesticide container is being held for shipment under subsection (A), the person holding the container shall, immediately after use, place it in a secure environment, inaccessible for any use other than shipment according to label directions.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-309 (Supp. 91-4). Former Section R3-3-309 renumbered to R3-3-305; new R3-3-309 renumbered from R3-3-314 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-310. Fumigation Use**

- A.** An individual shall not perform a fumigation unless the individual is a certified fumigant applicator or a certified fumigant applicator is physically present in the immediate vicinity supervising the individual performing the fumigation.
- B.** An individual storing, handling, or applying a fumigant shall follow all label requirements. If the label does not specify warning requirements, the individual shall comply with the following provisions:
1. Before the fumigation begins, warning signs shall be posted in visible locations on or in the immediate vicinity of all entrances to and on every side of the space or area being fumigated.
  2. Warning signs shall be printed in red on white background and shall:
    - a. State the English and Spanish words “DANGER/ PELIGRO”;
    - b. Contain a skull and crossbones symbol if shown on the product label;
    - c. State “Area or commodity under fumigation. DO NOT ENTER/NO ENTREE”;
    - d. State the name of the fumigant, the date and time the fumigant was injected, and the name, e-mail address, if applicable, and telephone number of the certified applicator.
- C.** A certified fumigant applicator who engages in or who supervises another in the fumigation process shall ensure that the label requirements are followed, including requirements relating to the use of personal protective equipment and posting required warning signs.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-310 (Supp. 91-4). Former Section R3-3-310 renumbered to R3-3-306; new R3-3-310 made by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-311. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-311 (Supp. 91-4). Section repealed by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-312. Renumbered****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-312 (Supp. 91-4). Section renumbered to R3-3-307 by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-313. Renumbered****Historical Note**

Adopted effective January 17, 1989 (Supp. 89-1). Renumbered from R3-10-313 (Supp. 91-4). Section renumbered to R3-3-308 by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-314. Renumbered****Historical Note**

Adopted effective January 17, 1989 (Supp. 89-1). Renumbered from R3-10-314 (Supp. 91-4). Section renumbered to R3-3-309 by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**ARTICLE 4. RECORDKEEPING AND REPORTING****R3-3-401. Pesticide Seller Records**

- A.** A seller of any restricted use pesticide, device, or any pesticide sold for an agricultural purpose shall maintain all records showing the receipt, sale, delivery, or other disposition of the pesticide or device sold for at least two years from the date of sale. If a seller intends to change the location of the records, the seller shall file a signed statement with the Department before the move stating the new address.
- B.** When any pesticide for agricultural purposes, or a restricted use pesticide regulated by the OPM, is sold, delivered, or otherwise disposed of, a seller shall maintain the following records and information:
1. Bill of lading or other similar record of the receipt of the pesticide at the selling establishment;
  2. Seller's dated sales receipt, delivery receipt, or invoice of the transaction, delivery, or other disposition of the pesticide;
  3. Name and address of the purchaser;
  4. Regulated grower permit number, or the OPM license number of the purchaser, if applicable;
  5. State special local need registration number issued under Section 24 of FIFRA, if applicable;
  6. Emergency exemption permit number granted by the EPA under Section 18 of FIFRA, if applicable;
  7. Experimental use permit number, if applicable;
  8. Pesticide brand name and the EPA registration number; and
  9. Quantity of the pesticide sold to the purchaser.
- C.** In addition to the information required in subsection (B), when a restricted use pesticide is sold, delivered, or otherwise disposed of for use by a certified applicator, a seller shall maintain records that contain the following information:
1. Name and address of the residence or principal place of business of each person to whom the restricted use pesticide is sold, delivered, or otherwise disposed of, and any records required under R3-3-306;
  2. Certified applicator's name, address, certification number, and the expiration date of the applicator's certification; and
  3. Categories in which the applicator is certified, if applicable.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-401 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013 (Supp. 13-3).

**R3-3-402. Private and Golf Applicator Records; Restricted Use Pesticide**

- A.** Following an application to a field on an agricultural establishment of a restricted use pesticide, a pesticide registered under Section 18 of FIFRA, or an experimental use permitted pesticide, a private applicator shall complete an application record on a form approved by the Department, that includes the following:
1. Name of the private applicator and the applicator's certification number;
  2. Name and permit number of the seller;
  3. Name of the pesticide applied and its EPA registration number;
  4. Date and time of application;
  5. Name of regulated grower;
  6. Method of application;
  7. Crop name and the number of acres treated with the pesticide;
  8. Rate per acre of the active ingredient or formulation of the pesticide;
  9. Total volume of pesticide used per acre; and
  10. County, range, township, and section of the field that received the application.
- B.** Following an application to a non-field of a restricted use pesticide, a pesticide registered under Section 18 of FIFRA, or an experimental use permitted pesticide, a private applicator or golf applicator shall complete an application record on a form approved by the Department, that includes the following:
1. The information requested under subsection (A)(1) through (A)(6);
  2. Item treated;
  3. Rate per item treated;
  4. Total volume used in the application; and
  5. Application site location by county, range, township, and section, or by physical address.
- C.** A private applicator and golf applicator shall retain records required by this Section for at least two years from the date of the private application.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-402 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013 (Supp. 13-3).

**R3-3-403. Bulk Release Report**

- A.** An applicator shall notify the Department at the Pesticide Hotline, 1-800-423-8876, as soon as practical after a bulk release, but no later than three hours after the bulk release. If the bulk release is on a public highway or railway, or results in the death of an individual, the applicator shall immediately report the release to the Arizona Department of Public Safety Duty Office.
- B.** Within 30 days after a bulk release, the applicator shall provide a written report to the Department listing all details of the release, including:
1. Location and cause of the release;
  2. Disposition of the pesticide released;
  3. Measures taken to contain the bulk release;
  4. Name and EPA registration number of the pesticide released;
  5. Name, e-mail address, if applicable, and telephone number of the applicator's contact person;
  6. Date and time of the release;
  7. Specific environment into which the release occurred;
  8. Known human exposure to the pesticide, if observed; and

9. Estimated amount of pesticide or pesticide mixture released.

2004 (Supp. 04-1).

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-403 (Supp. 91-4). Amended by  
final rulemaking at 10 A.A.R. 276, effective March 6,  
2004 (Supp. 04-1).

**R3-3-404. Form 1080; Reports to the Department**

- A. A custom applicator shall submit to the Department, by mail or fax, a completed and signed Form 1080, as prescribed in R3-3-302.
- B. A regulated grower shall submit to the Department, by mail or fax, a completed and signed Form 1080, as prescribed in R3-3-302, for application of a pesticide containing an active ingredient that appears on the Arizona Department of Environmental Quality groundwater protection list, and is soil-applied, as defined in A.A.C. R18-6-101.
- C. A custom applicator or regulated grower may report continued pesticide applications and spot applications within the same reporting period on a single Form 1080.
- D. A custom applicator or a regulated grower shall submit the Form 1080 to the Department during the reporting period.
- E. A PCA or custom applicator shall retain a copy of each Form 1080 for at least two years from the date of the application.

**Historical Note**

Adopted effective January 17, 1989 (Supp. 89-1).  
Renumbered from R3-10-404 (Supp. 91-4). Section  
repealed; new Section made by final rulemaking at 10  
A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-405. Disposal Records; Agricultural Pesticide Concentrate**

An applicator shall maintain the following information for two years:

1. EPA registration number, product name, active ingredient, and amount of agricultural pesticide concentrate disposed of;
2. Date of disposal;
3. Method of disposal; and
4. Specific location of the disposal site, or name of licensed disposal contractor.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 276,  
effective March 6, 2004 (Supp. 04-1).

**ARTICLE 5. NONEXCLUSIVE LISTS OF SERIOUS, NONSERIOUS, AND DE MINIMIS VIOLATIONS**

**R3-3-501. Serious Violations**

The following is a nonexclusive list of acts that are serious violations if exposure to the pesticide produces a substantial probability that death or serious physical harm could result, unless the violator did not, and could not with the exercise of reasonable diligence, as documented in the investigative record, know of such safety or human health risk, in which case the violation is nonserious:

1. Storing a pesticide or pesticide container improperly,
2. Dumping or disposing a pesticide or pesticide container in violation of this Chapter,
3. Leaving a pesticide or pesticide container unattended,
4. Spraying or applying a pesticide in a manner inconsistent with labeling instructions, or
5. Adulterating a pesticide.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-501 (Supp. 91-4). Amended by  
final rulemaking at 10 A.A.R. 276, effective March 6,

**R3-3-502. Nonserious Violations**

- A. General violations. The following is a nonexclusive list of acts that are nonserious violations if the violation has a direct or immediate relationship to safety, health, or property damage, but does not constitute a de minimis violation or a serious violation, unless the violator did not, and could not with the exercise of reasonable diligence, know of such safety, health, or property damage risk in which case the violation is de minimis. A person shall not:
1. Improperly store, dump, or leave unattended any pesticide, pesticide container or part of a pesticide container, or service container.
  2. Make a false statement or misrepresentation in an application for a permit, license, or certification, or a permit, license, or certification renewal.
  3. Falsify any records or reports required to be made under Articles 2 through 4 of this Chapter.
  4. Operate an aircraft or ground equipment in a faulty, careless, or negligent manner during the application of a pesticide.
  5. Apply or instruct another to apply a pesticide so that it comes into contact with:
    - a. An individual;
    - b. An animal; or
    - c. Property, other than the application site being treated.
  6. Use, apply, or instruct another to apply a pesticide in a manner or for a use inconsistent with its pesticide label or labeling except as provided by R3-3-301(A).
  7. Use, sell, apply, store, or instruct another to use, sell, apply, or store a pesticide:
    - a. That is not registered with the Department and the EPA, or
    - b. Outside the EPA authorized end-use provision if previously registered with the Department and the EPA and cancelled or suspended by the EPA.
  8. Fail to provide accurate or approved labeling when registering a pesticide.
- B. Seller violations. A seller shall not:
1. Sell pesticides without a valid seller's permit issued by the Department,
  2. Provide a pesticide to a regulated grower who does not have a valid permit,
  3. Fail to maintain records required under Articles 2 through 4 of this Chapter,
  4. Fail to maintain complete sales records of restricted use pesticides required under Articles 3 and 4 of this Chapter,
  5. Adulterate a pesticide,
  6. Make false or misleading claims about a pesticide to any person,
  7. Modify a label or labeling without proper authorization, or
  8. Provide a pesticide to an unauthorized person.
- C. PCA violations. A PCA shall not:
1. Act as a PCA without a valid agricultural pest control advisor license issued by the Department,
  2. Make a false or fraudulent statement in any written recommendation about the use of a pesticide,
  3. Make a recommendation regarding the use of a pesticide in a specific category in which the individual is not licensed, or
  4. Make a written recommendation for the use of a pesticide in a manner inconsistent with its pesticide label or the exceptions as provided in R3-3-301(A).

- D.** Agricultural aircraft pilot violations. A pilot shall not apply a pesticide by aircraft without a valid agricultural aircraft pilot license issued by the Department.
- E.** Custom applicator violations. A custom applicator shall not:
1. Allow application equipment to be operated in a careless or reckless manner during the application of a pesticide,
  2. Make a custom application without a valid custom applicator's license issued by the Department,
  3. Make a custom application of a restricted use pesticide without a valid commercial applicator certification issued by the Department,
  4. Allow an aircraft to be operated during the application of a pesticide by an individual who does not have a valid agricultural aircraft pilot license issued by the Department, or
  5. Apply a pesticide without a written Form 1080 as prescribed in R3-3-302(A).
- F.** Regulated grower violations. A regulated grower shall not:
1. Purchase, apply, or use a pesticide without a valid regulated grower's permit issued by the Department;
  2. Apply a restricted use pesticide without being a commercial applicator, private applicator, or restricted use pesticide certified golf applicator;
  3. Apply any pesticide on a golf course without being a golf applicator; or
  4. Allow a pesticide application on a golf course without having the proper protective equipment required by the label available to the applicator.
- G.** Certified applicator violations. A certified applicator shall not:
1. Allow the unsupervised application of a restricted use pesticide,
  2. Fail to maintain complete records required under Articles 2 through 4 of this Chapter, or
  3. Use a restricted use pesticide without a valid commercial applicator, private applicator, or golf applicator restricted use pesticide certification issued by the Department.
- H.** Exemptions. The following incidents are not pesticide use violations under this Section:
1. Exposure of an individual involved in the application who is wearing proper protective clothing and equipment;
  2. Exposure of an unknown trespassing individual, animal, or property that the applicator, working in a prudent manner, could not anticipate being at the application site; or
  3. Exposure of a person, animal, or property if the application is made according to a government-sponsored emergency program.
3. Fails to maintain complete records as required under Articles 2 through 4 of this Chapter.
- C.** Custom applicator violations. It is a de minimis violation if a custom applicator:
1. Fails to maintain complete records required under Articles 2 through 4 of this Chapter, or
  2. Fails to file reports as required under Articles 3 and 4 of this Chapter.
- D.** Regulated grower violations. It is a de minimis violation if a regulated grower:
1. Fails to maintain complete records as required under Articles 2 through 4 of this Chapter; or
  2. Fails to file reports as required under Article 4 of this Chapter including whether the application includes a pesticide containing an active ingredient that appears on the Arizona Department of Environmental Quality groundwater protection list, and is soil-applied, as defined in A.A.C. R18-6-101.
- E.** Certified applicator violations. A certified applicator shall not fail to file reports as required under Articles 3 and 4 of this Chapter.
- F.** A third de minimis violation of the same or similar type from among those listed in subsections (A) through (E) in a three-year period is a nonserious violation.
- G.** Exemptions. The following incidents are not a violation under this Section:
1. Exposure of an individual involved in the application who is wearing proper protective clothing and equipment;
  2. Exposure of an unknown trespassing individual, animal, or property that the applicator, working in a prudent manner, could not anticipate being at the application site; or
  3. Exposure of a person, animal, or property if the application is made according to a government-sponsored emergency program.

#### Historical Note

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-503 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

#### R3-3-504. Mitigation

- A.** A violation listed in R3-3-501 is a nonserious violation if:
1. The violator did not, and could not with the exercise of reasonable diligence, know of the safety or human health risk involved; or
  2. The release is done to avoid an accident that would have resulted in greater harm than that caused by the pesticide release or is caused by mechanical malfunction beyond the control of the operator.
- B.** A violation listed in R3-3-502 is a de minimis violation if:
1. The violator did not, and could not with the exercise of reasonable diligence, know of the safety, health, or property damage risk involved; or
  2. The release is done to avoid an accident that would have resulted in greater harm than that caused by the pesticide release or is caused by mechanical malfunction beyond the control of the operator.

#### Historical Note

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-504 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

#### R3-3-505. Unlisted Violations

- A.** The Department shall classify a violation of Articles 2 through 4 of this Chapter or of A.R.S. Title 3, Chapter 2, Article 6 that

#### Historical Note

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-502 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013 (Supp. 13-3).

#### R3-3-503. De minimis Violations

- A.** Seller violations. It is a de minimis violation if a seller:
1. Fails to record seller and regulated grower permit numbers on containers, cartons, and delivery tickets;
  2. Fails to register the seller's representatives; or
  3. Fails to maintain complete records as required under Articles 2 through 4 of this Chapter.
- B.** PCA violations. It is a de minimis violation if a PCA:
1. Fails to put recommendations in writing as prescribed at R3-3-302(A),
  2. Fails to provide complete information required on written recommendations under R3-3-302, or

is not listed in R3-3-501, R3-3-502, or R3-3-503 as a serious, nonserious, or de minimis violation depending upon the specific factual circumstances surrounding the violation.

- B. A third de minimis violation of the same or similar type in a three-year period is a nonserious violation.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
 Renumbered from R3-10-505 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-506. Penalty and Fine Point System**

- A. The ALJ shall assess points, as applicable, against a violator for the violation of each pesticide rule or statute, or the Associate Director shall assess points, as applicable, for the violation of each pesticide rule or statute upon entering into a negotiated settlement as a result of an informal settlement conference under A.R.S. § 41-1092.06, in accordance with the following point system. From each of subsections (A)(1) through (6), one choice shall be selected, unless otherwise appropriate, based upon supporting evidence in the record of the proceeding before the ALJ or Associate Director. Points shall be totaled for the violation of each pesticide rule or statute.

1. Health effects.
  - a. No evidence of human exposure to pesticides and no evidence of the substantial probability of human exposure to pesticides. 0
  - b. Substantial probability of human exposure to pesticides but treatment not required by a physician, nurse, paramedic, or physician’s assistant. 5-10
  - c. Evidence of human exposure to pesticides but treatment not required by a physician, nurse, paramedic, or physician’s assistant. 11-20
  - d. Human exposure to pesticides that required treatment by a physician, nurse, paramedic, or physician’s assistant, but which did not result in pesticide poisoning. 21-30
  - e. Human exposure to pesticides that required either hospitalization for less than 12 hours or treatment as an outpatient for five consecutive days or less by a physician, nurse, paramedic, or physician’s assistant for pesticide poisoning. 31-45
  - f. Human exposure to pesticides that required either hospitalization for 12 hours or longer, or treatment as an outpatient for more than five consecutive days by a physician, nurse, paramedic, or physician’s assistant for pesticide poisoning. 46-100
  - g. Human exposure to pesticides resulting in death from pesticide poisoning (serious violation unless otherwise documented in the investigative record). 101-180
2. Environmental consequences and property damage. (Select one or more as evidence indicates.)
  - a. No evidence of substantial probability of environmental or property damage. 0
  - b. Substantial probability of water contamination. 5-10

- c. Evidence of water source contamination. 11-20
- d. Substantial probability of soil contamination causing economic damage. 5-10
- e. Evidence of soil contamination causing economic damage. 11-20
- f. Substantial probability of nontarget bird kills. 5-10
- g. Evidence of nontarget bird kills. 11-20
- h. Substantial probability of nontarget fish kills. 5-10
- i. Evidence of nontarget fish kills. 11-20
- j. Nontarget kills involving game or furbearing animals as defined by A.R.S. § 17-101(B). 10-20
- k. Any property damage (nonserious violation only under A.R.S. § 3-361(4)). 10-20
- l. Air contamination causing official evacuation by federal, state, or local authorities. 10-20
- m. Killing one or more threatened or endangered species. 15-20
- n. Killing one or more domestic animals. 15-20
3. Culpability
  - a. Knowing. Knew or reasonably should have known by reasonable diligence of the prohibitions or restrictions that are the basis of the misconduct cited. 5-10
  - b. Willfully. Actual knowledge of the prohibitions or restrictions but engages in misconduct. 20-50
4. Prior violations or citations. Violations or citations within three years from the date the violation was committed. (Select one or more as evidence indicates.)

Prior violation history	Current violation	
	Non-serious	Serious
None	0	0
One or more De minimis	5	0
One Nonserious	10	5
One Nonserious, same or substantially similar to current violation	20	10
Two Nonserious	30	15
Two Nonserious, same or substantially similar to current violation	40	20
Three Nonserious	60	30
Three Nonserious, same or substantially similar to current violation	70	35
Additional Nonserious: same or substantially similar to current violation, points per each additional violation beyond three	10	5
One Serious	20	10

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One Serious, same or substantially similar to current violation	40	20
Two Serious	60	30
Two Serious, same or substantially similar to current violation	80	40
Three Serious	120	60
Three Serious, same or substantially similar to current violation	140	70
Additional Serious: same or substantially similar to current violation, points per violation	20	10

5. The length of time a violation has been allowed to continue by the violator after notification by the Department.
  - a. Less than one day. 0
  - b. One day but less than one week. 1-10
  - c. One week but less than one month. 11-20
  - d. One month but less than two months. 21-30
  - e. Two months or more. 31-40
6. Wrongfulness of conduct
  - a. Conduct resulting in a violation that does not cause any immediate damage to public health, safety, or property. 4-5
  - b. Conduct resulting in a violation that the evidence establishes may have a substantial probability of an immediate effect upon public health, safety, or property. 6-8
  - c. Conduct resulting in a violation that the evidence establishes had an immediate effect upon public health, safety, or property, but does not fall within subsection (6)(e). 9-10
  - d. Conduct causing the substantial probability of serious physical injury, hospitalization, or sustained medical treatment for an individual, or degrading the pre-existing environmental quality of the air, water, or soil so as to cause a substantial probability of a threat to the public health, safety, or property. 20-35
  - e. Conduct resulting in serious physical injury, hospitalization, or sustained medical treatment for an individual, or degrading the pre-existing environmental quality of the air, water, or soil so as to cause a substantial probability of a threat to the public health, safety, or property. 36-50
- B. The ALJ or Associate Director, after determining points pursuant to subsection (A) shall assess a fine or penalty, or fine and penalty, for each violation in accordance with the following schedules:
  1. Nonserious violation as defined under A.R.S. § 3-361.
    - a. 53 points or less. A fine of \$50 to \$150; a penalty of one to three months' probation, with a condition of violating probation being one to three hours of continuing education.
    - b. 54 to 107 points. A fine of \$151 to \$300; a penalty of four to six months' probation with a condition of

- violating probation being one to 10 days' suspension.
- c. 108 points or more. A fine of \$301 to \$500; a penalty of seven to 12 months' probation with a condition of violating probation being 15 to 30 days' suspension or revocation for a period of up to one year.
2. Serious violation as defined under A.R.S. § 3-361.
  - a. 46 points or less. A fine of \$1,000 to \$2,000; a penalty of one to three months' probation with a condition of violating probation being five to 10 days' suspension for a nonserious violation or 15 to 30 days' suspension for a serious violation.
  - b. 47 to 93 points. A fine of \$2,001 to \$5,000; a penalty of four to six months' probation with a condition of violating probation being 15 to 30 days' suspension for a nonserious violation and 31 to 90 days' suspension for a serious violation.
  - c. 94 points or more. A fine of \$5,001 to \$10,000; a penalty of probation for seven to 12 months with a condition of violating probation being two to four months' suspension for a nonserious violation and four to 12 months' suspension for a serious violation, or revocation for the remainder of the license year and an additional period of one to three years.
3. The first de minimis violation is not considered a violation of probation.

**Historical Note**

Adopted effective September 13, 1989 (Supp. 89-3). Renumbered from R3-10-506 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**ARTICLE 6. REPEALED**

**R3-3-601. Repealed**

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-601 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-602. Repealed**

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-602 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-603. Repealed**

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-603 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-604. Repealed**

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-604 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-605. Repealed**

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-605 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-606. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-606 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-607. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-607 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-608. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-608 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-609. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-609 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-610. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-610 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-611. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-611 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-612. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-612 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-613. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-613 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-614. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-614 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-615. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-615 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-616. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-616 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-617. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-617 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**ARTICLE 7. PESTICIDE****R3-3-701. Definitions**

In addition to the definitions in A.R.S. § 3-341, the following terms apply to this Article:

1. "Discontinuation" means when the registrant is no longer distributing a pesticide into Arizona.
2. "Pest" means, in addition to the pests declared in A.R.S. § 3-341(20), all birds, mammals, reptiles, amphibians, fish, slugs, snails, crayfish, roots, and plant parts.
3. "Official sample" means any sample of pesticide taken by the Associate Director, or the Associate Director's agent, and designated as official.

**Historical Note**

Former rule 1; Former Section R3-3-01 repealed, new Section R3-3-01 adopted effective January 18, 1978 (Supp. 78-1). Amended effective December 29, 1978 (Supp. 78-6). Section R3-3-701 renumbered from R3-3-01 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-702. Pesticide Registration; Fee**

**A.** Registration. Any person registering a pesticide shall provide the following documents and information on a form provided by the Department with a nonrefundable \$100 fee for each pesticide, for each year of the registration:

1. The name, address, telephone number, and signature of the applicant;
2. The name and address of the company appearing on the label;
3. The Social Security number or tax identification number;
4. The date of the application;
5. The brand and name of the pesticide being registered;
6. The EPA registration number of the pesticide if applicable;
7. The analytical methods for any analyses of residues for the active ingredients of the pesticide, if requested by the Department;
8. The toxicological and safety data, if requested by the Department;
9. The name and telephone number of the person providing the toxicological and safety data;
10. Two pesticide labels for any pesticide not previously registered;
11. The material safety data sheet for each pesticide; and
12. The license time-period option.

**B.** A pesticide registration is nontransferable, expires on December 31, and shall, at the option of the applicant, be valid for one or two years.

**C.** If an applicant elects a two-year pesticide registration, any additional pesticide registered during that two-year registration shall have the same registration end-date as any other pesticide currently registered by that applicant with the Department.

**D.** Notwithstanding subsection (A), during fiscal year 2018, a person registering a pesticide or renewing a pesticide registration shall pay a \$110 fee for each pesticide for each year of registration.

**Historical Note**

Former rule II; Former Section R3-3-02 renumbered and amended as Section R3-3-01, former Sections R3-3-11 and R3-3-12 renumbered and amended as Section R3-3-02 effective January 18, 1978 (Supp. 78-1). Amended subsection (C) effective January 1, 1979, subsection (D) effective January 1, 1982 (Supp. 78-6). Editorial corrections, subsection (B), paragraphs (6) through (9) (Supp. 79-6). Amended by deleting subsection (D) effective March 5, 1982 (Supp. 82-2). Section R3-3-702 renumbered from R3-3-02 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2). New Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4). Amended by exempt rulemaking at 16 A.A.R. 1334, effective June 29, 2010 (Supp. 10-2).

Amended by exempt rulemaking at 17 A.A.R. 1759, effective July 20, 2011 (Supp. 11-3). Amended by exempt rulemaking at 20 A.A.R. 2452, effective July 24, 2014 (Supp. 14-3). Amended by final exempt rulemaking at 23 A.A.R. 1940, effective August 9, 2017 (Supp. 17-2).

**R3-3-703. General Provisions**

- A.** Discontinued pesticides. In addition to the requirements for discontinued pesticides established in A.R.S. § 3-351(K), any person holding a pesticide found in the channels of trade following the three-year discontinuation period shall be responsible to register or dispose of the pesticide.
- B.** Sampling.
1. The Associate Director, or the Associate Director's agent, may sample, inspect, and analyze any pesticide distrib-

uted within the state to determine whether the pesticide is in compliance with the provisions of this Article and laws pertaining to this Article, or if a complaint has been filed with the Department.

2. The analytical results of pesticide formulations as listed on a label shall comply with the allowed deviations listed in R3-3-704(B).
  3. The results of an official analyses of any pesticide not in compliance with the allowed deviations listed in R3-3-704(B) shall be sent to the Associate Director, to the registrant, or other responsible person. Upon request, and within 30 days, the Associate Director shall provide the registrant or other responsible person a portion of the noncompliant pesticide sample.
- C.** Prohibited acts. No person shall purchase a pesticide to repack the pesticide for distribution and sale without relabeling the repackaged container and complying with the provisions of the Act.

**Historical Note**

Section R3-3-703 renumbered from R3-3-03 (Supp. 91-4). New Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-704. Labels**

- A.** Within two weeks of a pesticide label revision, a registrant shall provide the Department with two pesticide labels that have been revised since the pesticide was originally registered.
- B.** The Associate Director may request a copy of a pesticide label if the label on file is older than three years.

**ALLOWED DEVIATIONS OF ANALYTICAL RESULTS FROM LABEL CLAIMS FOR ACTIVE INGREDIENTS IN PESTICIDE FORMULATIONS**

Claim %	HCV <sup>(1)</sup> %	HSD <sup>(2)</sup>	Allowed Deviations for “uniform” <sup>(3)</sup> samples		Allowed Deviations for “non-uniform” <sup>(4)</sup> samples	
			Claim - 3HSD	Claim + 6HSD	Claim - 4HSD	Claim + 8HSD
0.001	11.31	0.00011	0.00066	0.00168	0.00055	0.00191
0.005	8.88	0.00044	0.0037	0.0077	0.0032	0.0086
0.008	8.27	0.00066	0.0060	0.0120	0.0054	0.0133
0.01	8.00	0.00080	0.0076	0.0148	0.0068	0.0164
0.03	6.78	0.0020	0.024	0.042	0.022	0.046
0.06	6.11	0.0037	0.049	0.082	0.045	0.089
0.10	5.66	0.0057	0.083	0.13	0.077	0.145
0.40	4.59	0.018	0.34	0.51	0.33	0.55
0.80	4.14	0.033	0.70	1.00	0.67	1.06
1.0	4.00	0.040	0.88	1.24	0.84	1.32
2.0	3.60	0.072	1.78	2.43	1.71	2.58
4.0	3.25	0.13	3.61	4.78	3.48	5.04
6.0	3.05	0.18	5.45	7.10	5.27	7.47
10.0	2.83	0.28	9.15	11.70	8.87	12.26
15.0	2.66	0.40	13.80	17.39	13.40	18.19
20.0	2.55	0.51	18.47	23.06	17.96	24.08
25.0	2.46	0.62	23.15	28.70	22.54	29.93
30.0	2.40	0.72	27.84	34.32	27.12	35.75
35.0	2.34	0.82	32.54	39.92	31.72	41.56
40.0	2.30	0.92	37.25	45.51	36.33	47.35
45.0	2.26	1.01	41.96	51.09	40.94	53.12
50.0	2.22	1.11	46.67	56.66	45.56	58.88
60.0	2.16	1.30	56.11	67.78	54.82	70.37
70.0	2.11	1.48	65.57	78.86	64.09	81.82
80.0	2.07	1.65	75.04	89.93	73.38	93.24
90.0	2.03	1.83	84.51	100.97	82.68	104.63

(1) HCV(%) = Horwitz Coefficients of Variation =  $2 (1 - 0.5 \log (\text{claim } \%/100))$

(2) HSD = Horwitz Standard Deviation =  $(\text{Claim } \%) \text{ HCV } \%/100$

(3) “Uniform” samples are homogeneous products which can be analyzed by established procedures. In most cases, validated analytical methods are available for these samples.

(4) “Non-uniform” samples are non-homogeneous samples or products which are difficult to sample or subsample. These products may not be uniformly mixed or packaged and include some special formulations like natural products. These types of samples include fertilizer containing pesticides, pesticides in pressurized containers, strips, plastic bands, collars, grain and other carriers. Natural product formulations such as rotenone and pyrethrin are also included in this group. When it is necessary to use methods which are not validated for accuracy, precision, and reproducibility in a specific matrix, the “non-uniform” guidelines may be used for allowed deviations. States may use judgment in placing a sample into the “uniform” or “non-uniform” category.

**Historical Note**

Former rule IV; Former Section R3-3-04 renumbered and amended as Section R3-3-01 effective January 18, 1978 (Supp. 78-1). Section R3-3-704 renumbered from R3-3-04 (Supp. 91-4). New Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-705. Renumbered**

**Historical Note**

Former rule V; Repealed effective January 18, 1978 (Supp. 78-1). Section R3-3-705 renumbered from R3-3-05 (Supp. 91-4).

**R3-3-707. Renumbered**

**Historical Note**

Section R3-3-707 renumbered from R3-3-07 (Supp. 91-4).

**R3-3-706. Renumbered**

**Historical Note**

Former rule VI; Repealed effective January 18, 1978 (Supp. 78-1). Section R3-3-706 renumbered from R3-3-06 (Supp. 91-4).

**R3-3-708. Renumbered**

**Historical Note**

Former rule VIII; Repealed effective January 18, 1978 (Supp. 78-1). Section R3-3-708 renumbered from R3-3-08 (Supp. 91-4).

**R3-3-709. Renumbered****Historical Note**

Former Administrative rule 1; Repealed effective January 18, 1978 (Supp. 78-1). Section R3-3-709 renumbered from R3-3-09 (Supp. 91-4).

**R3-3-710. Renumbered****Historical Note**

Section R3-3-710 renumbered from R3-3-10 (Supp. 91-4).

**R3-3-711. Renumbered****Historical Note**

Adopted effective November 30, 1977 (Supp. 77-6). Former Section R3-3-11 renumbered and amended as Section R3-3-02 effective January 18, 1978 (Supp. 78-1). Section R3-3-711 renumbered from R3-3-11 (Supp. 91-4).

**R3-3-712. Renumbered****Historical Note**

Adopted effective November 30, 1977 (Supp. 77-6). Former Section R3-3-12 renumbered and amended as Section R3-3-02 effective January 18, 1978 (Supp. 78-1). Section R3-3-712 renumbered from R3-3-12 (Supp. 91-4).

**ARTICLE 8. FERTILIZER MATERIALS****R3-3-801. Definitions**

In addition to terms and definitions in the Official Publication, which is incorporated by reference, on file with the Secretary of State, and does not include any later amendments, and the definitions in A.R.S. § 3-262, the following term applies to this Article:

“Official Publication” means the Official Publication of the Association of American Plant Food Control Officials, amended 1999. Copies may be purchased from NC Dept. of Agriculture, 4000 Reedy Creek Road, Raleigh, NC 27607-6468.

**Historical Note**

Former rule I; Former Section R3-3-21 repealed, former Section R3-3-24 renumbered and amended as Section R3-3-21 effective January 12, 1978 (Supp. 78-1). Amended effective March 23, 1979 (Supp. 79-2). Section R3-3-801 renumbered from R3-3-21 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-802. Licensure; Specialty Fertilizer Registration; Fees**

**A.** Commercial fertilizer license. Any person applying for a commercial fertilizer license, under A.R.S. § 3-272, to manufacture or distribute commercial fertilizer, shall provide the following information on the license application provided by the Department with a nonrefundable fee of \$125 for each year of the license:

1. The following information on the license application provided by the Department:
2. The name, title, and signature of the applicant;
3. The date of the application;
4. The distributor or manufacturer name, mailing address, telephone, and facsimile number;
5. The Social Security number or tax identification number;
6. The physical location, telephone, and facsimile number of the distributor or manufacturer, if different than subsection (A)(4);

7. The name, address, telephone, and facsimile number of the distributor or manufacturer where inspection fees are paid, if different than subsection (A)(4); and
8. The license time-period option.

**B.** A commercial fertilizer license is nontransferable, expires on June 30, and shall, at the option of the applicant, be valid for one or two years.

**C.** Specialty fertilizer registration.

1. Any manufacturer or distributor whose name appears on a specialty fertilizer label shall provide the following information to the Department with a nonrefundable fee of \$50 per brand and grade of specialty fertilizer for each year of the registration:
  - a. The name, address, telephone number, and signature of the applicant;
  - b. The name and address of the company on the label;
  - c. The date of the application;
  - d. The grade, brand, and name of the specialty fertilizer;
  - e. The current specialty fertilizer label; and
  - f. The registration time-period option.
2. A specialty fertilizer registration is nontransferable, expires on June 30, and shall, at the option of the applicant, be valid for one or two years.
3. If an applicant elects a two-year specialty fertilizer registration, any additional fertilizer registered during that two-year registration shall have the same registration end-date as other fertilizer currently registered by that applicant with the Department.

**D.** During fiscal year 2011, notwithstanding subsection (C)(1), the nonrefundable fee per brand and grade of specialty fertilizer is \$40.

**Historical Note**

Former rule II; Former Section R3-3-22 repealed, former Section R3-3-25 renumbered and amended as Section R3-3-22 effective January 12, 1978 (Supp. 78-1). Section R3-3-802 renumbered from R3-3-22 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4). Amended by exempt rulemaking at 16 A.A.R. 2026, effective September 21, 2010 (Supp. 10-3).

**R3-3-803. Tonnage Reports; Inspection Fee**

**A.** Quarterly tonnage reports and inspection fee.

1. The inspection fee for all commercial fertilizers, including specialty fertilizers, sold or distributed in Arizona is 25¢ per ton. The tonnage shall be rounded to the nearest whole ton.
2. Any applicant applying for and receiving a new license after March 15, June 15, September 15, or December 15 is not required to file a quarterly tonnage report for the quarter in which the license application is issued. Any commercial fertilizer distributed in the final two weeks of the initial application quarter shall be included on the next full quarterly report. Any person who distributed commercial fertilizer without a license as required under A.R.S. § 3-2009 shall pay all past due inspection fees and late penalties before a license is issued.
3. Any licensee not estimating annual tonnage shall file the following information on a quarterly statement provided by the Department no later than the last day of January, April, July, and October of each year for the preceding calendar quarter and pay the inspection fees and any penalties, if applicable:
  - a. If the inspection fee is being passed on to the purchaser:

- i. The assigned number and name of the currently licensed company;
  - ii. The commercial fertilizer by code or grade;
  - iii. The amount of commercial fertilizer in whole tons;
  - iv. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and
  - v. The date of the report.
- b. If the licensee pays tonnage fees for the distribution of a commercial fertilizer:
- i. The grade;
  - ii. The amount of commercial fertilizer distribution by county;
  - iii. If the commercial fertilizer is dry, whether it is a bulk agricultural product, a bagged agricultural product, or a non-agricultural product;
  - iv. If the commercial fertilizer is liquid, whether it is an agricultural or non-agricultural product;
  - v. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and
  - vi. The date of the report.
- B. Estimated tonnage report.** A licensee may estimate the annual fertilizer material tonnage if it is 400 tons or less per year and the licensee does not pass the inspection fee responsibility to the purchaser.
- 1. The licensee shall submit the estimated annual commercial fertilizer tonnage report to the Department with the annual inspection fee no later than July 31 of each year. The tonnage report shall contain:
    - a. The estimated tonnage of commercial fertilizer to be distributed;
    - b. The grade;
    - c. The amount of distribution by county;
    - d. If the commercial fertilizer is dry, whether it is a bulk agricultural product, a bagged agricultural product, or a non-agricultural product;
    - e. If the commercial fertilizer is liquid, whether it is an agricultural or non-agricultural product;
    - f. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and
    - g. The date of the report.
  - 2. The licensee shall pay at least \$8 per year. Adjustments for overestimates or underestimates for a licensee with 400 tons or less of actual tonnage sales shall be made on the next year's estimating form. Adjustments of underestimates of licensees with actual tonnage sales more than 400 tons shall be made no later than July 31 of each year.
  - 3. The licensee shall verify the accuracy of the previous year's tonnage estimates to actual tonnage sales and submit the tonnage verification no later than July 31 of each year.
  - 4. Overestimation of tonnage.
    - a. The Department shall not refund any inspection fee based on an overestimation if the licensee does not re-license in the subsequent year;
    - b. If a licensee applies for a license in the subsequent year, the Department shall apply any overestimation to the subsequent year's tonnage fees.
- C.** During fiscal year 2011, notwithstanding subsection (A)(1), the inspection fee for all commercial fertilizers, including specialty fertilizers, sold or distributed in Arizona is \$0.10 per ton. The tonnage must be rounded to the nearest whole ton.

**Historical Note**

Former rule III; Former Section R3-3-23 repealed, former Section R3-3-32 renumbered as Section R3-3-23 effective January 12, 1978 (Supp. 78-1). Amended effective March 23, 1979 (Supp. 79-2). Section R3-3-803 renumbered from R3-3-23 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2). New Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4). Amended by exempt rulemaking at 16 A.A.R. 2026, effective September 21, 2010 (Supp. 10-3).

**R3-3-804. General Provisions**

- A. Labeling.**
- 1. The grade numbers for primary nutrients that accompany the brand name of a commercial fertilizer shall be listed on the label in the following order: total nitrogen, available phosphate, and soluble potash. Other guaranteed nutrient values shall not be included with the grade numbers unless:
    - a. The guaranteed nutrient value follows the grade number;
    - b. The guaranteed nutrient value is immediately preceded with the name of the claimed nutrient to which it refers in the guaranteed analysis; and
    - c. The name printed on the label is as prominent as the numbers.
  - 2. The materials from which claimed nutrients are derived shall be listed on the label.
  - 3. No grade is required for fertilizer materials that claim no primary plant nutrient (i.e., 0-0-0).
  - 4. All guaranteed nutrients, except phosphate and potash, shall be stated in terms of elements.
  - 5. The label shall include the brand name of a fertilizer. Misleading or confusing numerals shall not be used in the brand name on the label.
  - 6. Fertilizer material not defined in the Official Publication may be used as fertilizer material if a definition or other method of analysis and agronomic data for fertilizer material is approved by the Associate Director.
- B. Claims and misleading statements.**
- 1. Any nutrient claimed as a fertilizer material shall be accompanied by a minimum guarantee for the nutrient. An ingredient shall not be claimed as a nutrient unless a laboratory method of analysis approved by the Associate Director exists for the nutrient.
  - 2. Scientific data supporting the claim of improved efficacy or increased productivity shall be made available for inspection to the Associate Director upon request.
  - 3. If the name of a fertilizer material is used as part of a fertilizer brand name, such as blood, bone or fish, the guaranteed nutrients shall be derived from or supplied entirely by the named fertilizer material.
  - 4. Fertilizer material subject to this Article and applicable laws shall not bear false or misleading statements.
- C. Deficiencies.**
- 1. The value of a nutrient deficiency in a fertilizer material shall take into account total value of all nutrients at the guaranteed level and the price of the fertilizer material at the time of sale.
  - 2. A deficiency in an official sample of mixed fertilizer resulting from non-uniformity is not distinguishable from a deficiency due to actual plant nutrient shortage and is subject to official action.
- D.** All investigational allowances shall be conducted as prescribed in the Official Publication, which is incorporated by reference, on file with the Office of the Secretary of State, and does not include any later amendments or editions.

- E. Leased fertilizer material storage containers shall be clearly labeled with the following:
1. Grade numbers;
  2. Brand name, if applicable; and
  3. The statement, "Leased by (Name and address of lessor) to (Name and address of lessee)."
- C. During fiscal year 2011, notwithstanding subsection (A)(1), the inspection fee for all commercial fertilizers, including specialty fertilizers, sold or distributed in Arizona is \$0.10 per ton. The tonnage must be rounded to the nearest whole ton.

**Historical Note**

Former rule IV; Former Section R3-3-24 renumbered and amended as Section R3-3-21, new Section R3-3-24 adopted effective January 12, 1978 (Supp. 78-1). Section R3-3-804 renumbered from R3-3-24 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2). New Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-805. Repealed****Historical Note**

Former rule V; Former Section R3-3-25 renumbered and amended as Section R3-3-22, new Section R3-3-25 adopted effective January 12, 1978 (Supp. 78-1). Section R3-3-805 renumbered from R3-3-25 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-806. Repealed****Historical Note**

Former rule VI; Former Section R3-3-26 repealed, new Section R3-3-26 adopted effective January 12, 1978 (Supp. 78-1). Section R3-3-806 renumbered from R3-3-26 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-807. Repealed****Historical Note**

Former rule VII; Former Section R3-3-27 repealed, new Section R3-3-27 adopted effective January 12, 1978 (Supp. 78-1). Section R3-3-807 renumbered from R3-3-27 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-808. Repealed****Historical Note**

Former rule VIII; Former Section R3-3-28 repealed effective January 12, 1978 (Supp. 78-1). New Section R3-3-28 adopted effective March 23, 1979 (Supp. 79-2). Section R3-3-808 renumbered from R3-3-28 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-809. Repealed****Historical Note**

Former rule IX; Former Section R3-3-29 repealed effective January 12, 1978 (Supp. 1). New Section R3-3-29 adopted effective March 23, 1979 (Supp. 79-2). Section R3-3-809 renumbered from R3-3-29 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-810. Repealed****Historical Note**

Former rule X; Former Section R3-3-30 repealed effective January 12, 1978 (Supp. 78-1). New Section R3-3-30

adopted effective March 23, 1979 (Supp. 79-2). Section R3-3-810 renumbered from R3-3-30 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-811. Repealed****Historical Note**

Former Administrative rule 1; Amended effective December 14, 1979 (Supp. 79-6). Section R3-3-811 renumbered from R3-3-31 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-812. Renumbered****Historical Note**

Adopted effective August 31, 1977 (Supp. 77-4). Former Section R3-3-32 renumbered as Section R3-3-23 effective January 12, 1978 (Supp. 78-1). Section R3-3-812 renumbered from R3-3-32 (Supp. 91-4).

**ARTICLE 9. COMMERCIAL FEED****R3-3-901. Definitions**

In addition to the feed ingredient definitions and feed terms in the Official Publication, which is incorporated by reference, on file with the Secretary of State, and does not contain any later amendments or editions, and the definitions in A.R.S. § 3-2601, the following terms apply to this Article:

1. "Commercial feed" means all materials, except whole seeds unmixed or physically altered entire unmixed seeds, that are distributed for use as feed or for mixing in feed. Commercial feed includes raw agricultural commodities distributed for use as feed or for mixing in feed when the commodities are adulterated within the meaning of section 3-2611. A.R.S. § 3-2601(2)
2. "Lot" means any distinct, describable, and measurable quantity that contains no more than 100 tons.
3. "Official Publication" means the Official Publication of the Association of American Feed Control Officials, effective January 1, 1999. Copies may be purchased from the Assistant Secretary/Treasurer, P.O. Box 478, Oxford, IN 47971.

**Historical Note**

Former rule I; Former Section R3-3-41 renumbered and amended as Section R3-3-42, new Section R3-3-41 adopted effective January 12, 1978 (Supp. 78-1). Amended effective April 13, 1978 (Supp. 78-2). Amended effective February 3, 1981 (Supp. 81-1). Section R3-3-901 renumbered from R3-3-41 (Supp. 91-4). Amended by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-902. Licensure; Fee; Ammoniation**

- A. Any person applying for a commercial feed license, under A.R.S. § 3-2609, to manufacture or distribute commercial feed shall provide the following information and a nonrefundable fee of \$10 for each year of the license:
1. A copy of the label of each commercial feed product intended for distribution within the state or not already filed by the applicant with the Department; and
  2. The following information on the license application provided by the Department:
    - a. The name, title, and signature of the applicant;
    - b. The distributor or manufacturer name, mailing address, telephone, and facsimile number;
    - c. The social security number or tax identification number;

- d. The date of the application;
  - e. The physical location, telephone, and facsimile number of the distributor or manufacturer, if different than subsection (A)(2)(b);
  - f. The name, address, telephone, and facsimile number of the distributor or manufacturer where inspection fees are paid, if different than subsection (A)(2)(b); and
  - g. The license time-period option.
- B.** A commercial feed license is nontransferable, expires on June 30, and shall, at the option of the applicant, be valid for one or two years.
- C.** Ammoniation. Any person who ammoniates feed or feed material for distribution or sale shall obtain a commercial feed license and is responsible for all testing, labeling, or other requirements pertaining to commercial feed, unless the feed is ammoniated on the premises of the person using the ammoniated feed.

#### Historical Note

Former rule II; Former Section R3-3-42 renumbered and amended as Section R3-3-43, former Section R3-3-41 renumbered and amended as Section R3-3-42 effective January 12, 1978 (Supp. 78-1). Section R3-3-902 renumbered from R3-3-42 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

#### R3-3-903. Tonnage Reports; Inspection Fee

- A.** Quarterly tonnage report and inspection fee.
1. The inspection fee for all commercial feed sold or distributed in Arizona is 20¢ per ton. The tonnage shall be rounded to the nearest whole ton.
  2. Any applicant applying for and receiving a new license after March 15, June 15, September 15, or December 15 is not required to file a quarterly tonnage report for the quarter in which the license application is issued. Any commercial feed distributed in the final two weeks of the initial application quarter shall be included on the next full quarterly report. Any person who distributed commercial feed without a license as required under A.R.S. § 3-2609 shall pay all past due inspection fees and late penalties before a license is issued.
  3. Any licensee not estimating annual tonnage shall file the following information on a quarterly statement provided by the Department no later than the last day of January, April, July, and October of each year for the preceding calendar quarter and pay the inspection fees and any penalties, if applicable:
    - a. If the inspection fee is being passed on to the purchaser:
      - i. The assigned number and name of the currently licensed company;
      - ii. The amount of commercial feed in whole tons and by type, indicating whether the commercial feed is bagged or bulk;
      - iii. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and
      - iv. The date of the report.
    - b. If the licensee pays a tonnage fee for the distribution of a commercial feed:
      - i. The amount of commercial feed in whole tons and by type, indicating whether the commercial feed is bagged or bulk;

- ii. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and
- iii. The date of the report.

- B.** Estimated tonnage report. A licensee may estimate the annual commercial feed tonnage if it is 400 tons or less per year and the licensee does not pass the inspection fee responsibility to the purchaser.
1. The licensee shall submit the estimated annual commercial feed tonnage report to the Department with the annual inspection fee no later than July 31 of each year. The tonnage report shall contain:
    - a. The estimated tonnage of commercial feed to be distributed;
    - b. The amount of commercial feed in whole tons and by type, indicating whether the commercial feed is bagged or bulk;
    - c. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and
    - d. The date of the report.
  2. The licensee shall pay at least \$8 per year. Adjustments for overestimates or underestimates for licensees with 400 tons or less of actual tonnage sales shall be made on the next year's estimating form. Adjustments of underestimates of licensees with actual tonnage sales more than 400 tons shall be made no later than July 31 of each year.
  3. The licensee shall verify the accuracy of the previous year's tonnage estimates to actual tonnage sales and submit the tonnage verification no later than July 31 of each year.
  4. Overestimation of tonnage.
    - a. The Department shall not refund any inspection fee based on an overestimation if the licensee does not re-license in the subsequent year;
    - b. If a licensee applies for a license in the subsequent year, the Department shall apply any overestimation to the subsequent year's tonnage fees.

#### Historical Note

Former rule III; Former Section R3-3-43 renumbered and amended as Section R3-3-44, former Section R3-3-42 renumbered and amended as Section R3-3-43 effective January 12, 1978 (Supp. 78-1). Amended effective February 3, 1981 (Supp. 81-1). Section R3-3-903 renumbered from R3-3-43 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

#### R3-3-904. Milk and Milk Products Decharacterized for Use as Commercial Feed

- A.** A person shall not sell, offer for sale, store, transport, receive, trade or barter, any milk or milk product for commercial feed unless the milk or milk product:
1. Meets Grade A milk standards as specified in A.A.C. R3-2-802;
  2. Is produced as prescribed in A.A.C. R3-2-805; or
  3. Is decharacterized with food coloring approved by the Federal Food, Drug, and Cosmetic Act and the decharacterization:
    - a. Does not affect nutritive value; and
    - b. Matches the color on the Color Requirement card, incorporated by reference and on file with the Office of the Secretary of State. Any person decharacterizing milk and milk products may obtain a Color Requirement card from the Environmental Services

Division Office, Arizona Department of Agriculture, 1688 West Adams, Phoenix, Arizona 85007.

- B. Labeling.** All milk or milk product commercial feed labels shall be approved by the Associate Director before use.
1. The principal display panel of a decharacterized milk or milk product commercial feed container shall prominently state “WARNING - NOT FOR HUMAN CONSUMPTION” in capital letters. The letters shall be at least 1/4 inch on containers of 8 oz. or less and at least 1/2 inch on all other containers.
  2. The container label shall also bear the statement “This product has not been pasteurized and may contain harmful bacteria” in letters at least 1/8 inch in height.
- C. Milk or milk products intended for commercial feed shall not be displayed, sold, or stored at premises where food is sold or prepared for human consumption, unless it meets Grade A standards or is decharacterized and clearly identified “Not for Human Consumption.”**

#### Historical Note

Former rule IV; Former Section R3-3-44 repealed, former Section R3-3-43 renumbered and amended as Section R3-3-44 effective January 12, 1978 (Supp. 78-1). Amended effective February 3, 1981 (Supp. 81-1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-904 renumbered from R3-3-44 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

#### **R3-3-905. Labeling; Precautionary Statements**

- A. Ingredient statement.**
1. Each ingredient or collective term for the grouping of ingredients not defined in the Official Publication shall be a common name.
  2. All labels for commercial feed and customer-formula feed containing cottonseed or a cottonseed product shall separately list the ingredients in the ingredient statement in addition to any collective term listed.
- B. Labeling and expression of guarantees.**
1. All labeling and expression of guarantees shall comply with the commercial feed-labeling guide, medicated commercial feed labeling, and expression of guarantees requirements prescribed in the Official Publication, which is incorporated by reference, on file with the Office of the Secretary of State, and does not include any later amendments or editions.
  2. The label shall include the brand or product name, and shall indicate the intended use of the feed. The label shall not contain any false or misleading statements.
  3. Directions for use and precautionary statements.
    - a. All labeling of whole cottonseed, commercial feed, and customer-formula feed containing any additive (including drugs, special purpose additives, or non-nutritive additives) shall clearly state its safe and effective use. The directions shall not require special knowledge of the purpose and use of the feed.
    - b. Directions for use and precautionary statements shall be provided for feed containing non-protein nitrogen as specified in R3-3-906.
    - c. All whole cottonseed or commercial feed, and customer-formula feed delivered to the consumer shall be accompanied by an accurate label, invoice, weight ticket or other documentation approved by the Department. The documentation shall be left with the consumer and shall contain the following:

- i. “This feed contains 20 or less ppb aflatoxin and may be fed to any animal;” or
  - ii. “WARNING: This feed contains more than 20 ppb but not more than 300 ppb aflatoxin and shall not be fed to lactating animals whose milk is intended for human consumption.”
- d. A distributor of whole cottonseed or cottonseed product intended for further processing, planting seed, or for any other purpose approved by the Director, shall document in writing to the Department that:
- i. The lot of whole cottonseed or cottonseed product will not be used as commercial feed until the lot is tested and compliant with all state laws; and
  - ii. The documentation prescribed in subsection (B)(3)(c) is not required.
- e. The distributor shall maintain the documentation for one year.
- f. The lot of whole cottonseed or cottonseed product shall be labeled as follows: “WARNING: This material has not been tested for aflatoxin and shall not be distributed for feed or fed to any animal until tested and brought into full compliance with all state laws.”

#### Historical Note

Former rule V; Former Section R3-3-45 repealed, new Section R3-3-45 adopted effective January 12, 1978 (Supp. 78-1). Amended effective February 3, 1981 (Supp. 81-1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-905 renumbered from R3-3-45 (Supp. 91-4). Amended by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

#### **R3-3-906. Non-protein Nitrogen**

- A. Urea and other non-protein nitrogen products are acceptable ingredients in commercial feed for ruminant animals as a source of equivalent crude protein.**
1. If commercial feed contains more than 8.75% of equivalent crude protein from all forms of non-protein nitrogen or if the equivalent crude protein from all forms of non-protein nitrogen exceeds 1/3 of the total crude protein, the label shall include directions for the safe use of the feed and the following precautionary statement: “Caution: Use as Directed.”
  2. The directions for use and the precautionary statement shall be printed and placed on the label so that an ordinary person under customary conditions of purchase and use can read and understand the directions.
- B. Non-protein nitrogen products are acceptable ingredients in commercial feeds distributed to non-ruminant animals as a source of nutrients other than equivalent crude protein. The maximum equivalent crude protein from non-protein nitrogen sources in non-ruminant rations shall not exceed 1.25% of the total daily ration.**
- C. A medicated feed label shall contain feeding directions or precautionary statements, or both, with sufficient information to ensure that the feed is properly used.**

#### Historical Note

Former rule VI; Former Section R3-3-46 repealed, new Section R3-3-46 adopted effective January 12, 1978 (Supp. 78-1). Amended effective January 29, 1979 (Supp. 79-1). Amended effective February 3, 1981 (Supp. 81-1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-906 renumbered from R3-3-46 (Supp. 91-4). Amended by final rulemaking at 5 A.A.R. 4419, effective

November 3, 1999 (Supp. 99-4).

**R3-3-907. Repealed**

**Historical Note**

Former rule VII; Former Section R3-3-47 repealed, former Section R3-3-54 renumbered as Section R3-3-47 effective January 12, 1978 (Supp. 78-1). Amended by adding subsection (F) effective July 20, 1984 (Supp. 84-4). Section R3-3-907 renumbered from R3-3-47 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-908. Repealed**

**Historical Note**

Former rule VIII; Former Section R3-3-48 repealed, new Section R3-3-48 adopted effective January 12, 1978 (Supp. 78-1). Amended for spelling correction, subsection (E), effective January 29, 1979 (Supp. 79-1). Amended by adding subsection (J) effective July 20, 1984 (Supp. 84-4). Section R3-3-908 renumbered from R3-3-48 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-909. Repealed**

**Historical Note**

Former rule IX; Former Section R3-3-49 repealed, new Section R3-3-49 adopted effective Jan. 12, 1978 (Supp. 78-1). Amended by adding subsection (D) effective February 3, 1981 (Supp. 81-1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-909 renumbered from R3-3-49 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-910. Drug and Feed Additives**

**A. Drug and feed additive approval.**

1. Before a label is approved by the Associate Director for commercial feed containing additives (including drugs, other special purpose additives, or non-nutritive additives), the distributor may be required to submit evidence demonstrating the safety and efficacy of the commercial feed when used according to the label directions if the material is not recognized as a commercial feed.
2. If a complaint has been filed with the Department, the distributor may be required to submit evidence demonstrating the safety and efficacy of the commercial feed when used according to the label directions.

**B. Evidence of safety and efficacy of a commercial feed may be:**

1. If the commercial feed containing additives conforms to the requirements of "Food Additives Permitted in Feed and Drinking" in the Official Publication, which is incorporated by reference, on file with the Office of the Secretary of State, and does not include any later amendments or editions; or
2. If the commercial feed is a substance generally recognized as safe and is defined in the Official Publication or listed as a "Substances Generally Recognized as Safe in Animal Feeds" in the Official Publication, which is incorporated by reference, on file with the Office of the Secretary of State, and does not include any later amendments or editions.

**Historical Note**

Former rule X; Former Section R3-3-50 repealed, new Section 3-3-50 adopted effective January 12, 1978 (Supp. 78-1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-910 renumbered from R3-3-50 (Supp. 91-4). Amended by final rulemaking at 5 A.A.R. 4419, effective

November 3, 1999 (Supp. 99-4).

**R3-3-911. Repealed**

**Historical Note**

Former rule XI; Former Section R3-3-51 repealed, new Section R3-3-51 adopted effective January 12, 1978 (Supp. 78-1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-911 renumbered from R3-3-51 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

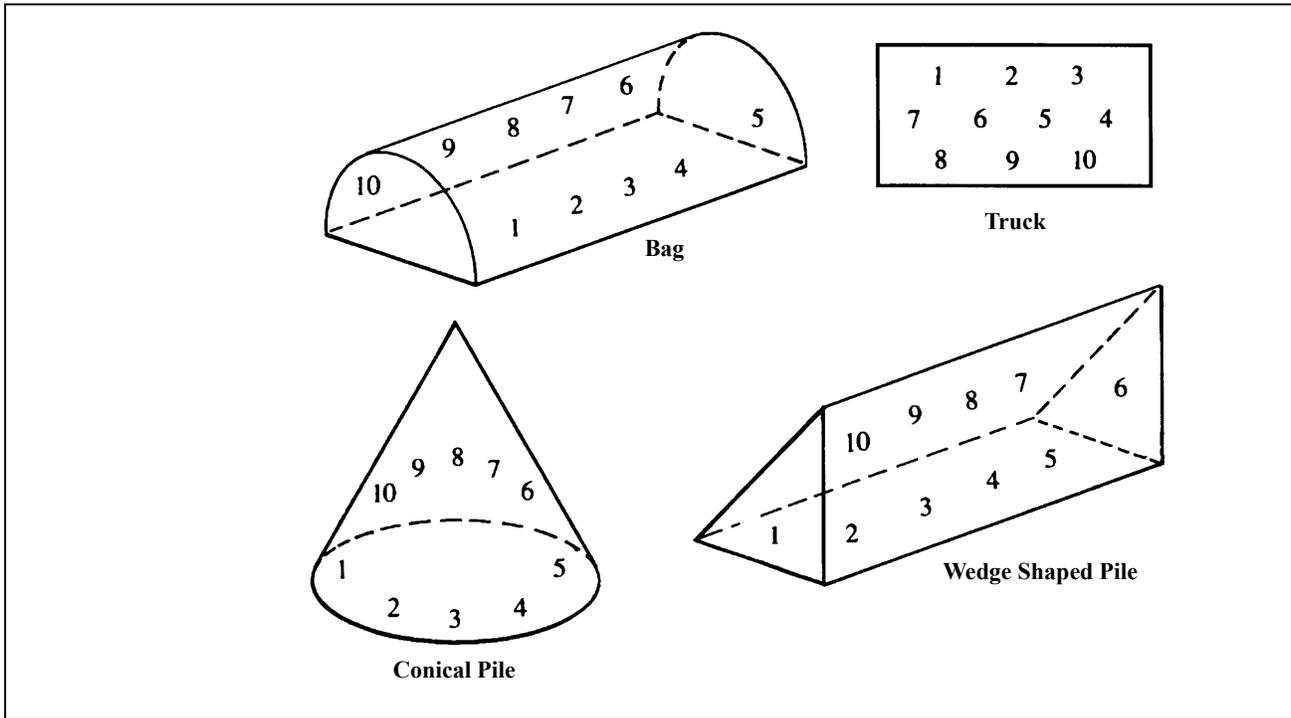
**R3-3-912. Repealed**

**Historical Note**

Former rule XII; Former Section R3-3-52 repealed. New Section R3-3-52 adopted effective January 12, 1978 (Supp. 78-1). Section R3-3-912 renumbered from R3-3-52 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-913. Sampling Methods**

- A. Sampling commercial feed.** The methods of sampling commercial feed shall comply with the procedures established in 4.1.01, Official Method 965.16 Sampling of Animal Feed, in the "Official Methods of Analysis of AOAC International," 16th Edition, 1997, which is incorporated by reference, on file with the Office of the Secretary of State, and does not include any later amendments or editions of the incorporated matter. Copies may be purchased from AOAC International, 481 North Frederick Avenue, Suite 500, Gaithersburg, Maryland 20877-2417.
- B. Sampling whole cottonseed.**
  1. Sample size - A gross sample not less than 30 pounds shall be taken from a lot. The gross sample shall consist of not less than 10 probes evenly spaced or 10 stream sample passes taken following the procedure prescribed in subsection (B)(4)(b).
  2. Sample container - The sample container shall consist of a clean cloth, burlap, or paper or plastic mesh bags. The sample shall be delivered to the laboratory within 48 hours (excluding weekends and holidays), stored in a dry, well-aerated location, and the results of the analysis reported by a certified laboratory within five working days from receipt of sample.
  3. Sampling equipment. Sampling equipment includes:
    - a. Scale, graduated in one-half pound increments, and any of the following:
    - b. Corkscrew trier, approximately 50 inches in length and capable of taking at least a three-pound sample,
    - c. Pneumatic probe sampler such as the "Probe-a-Vac" pneumatic sampler,
    - d. Stream sampler: A container at least 8 inches x 5 inches x 5 1/2 inches attached to a pole that enables the sampler to pass the container through falling streams of cottonseed,
    - e. Automatic stream samplers or other sampling equipment if scientific data documenting its ability to obtain a representative sample is approved by the Associate Director,
    - f. Shop-vac 1.5 hp vacuum system capable of holding 12 gallons, modified to hold a 15 ft. length of vacuum hose attached to a 13 ft. length of 3/4 inch PVC pipe.
  4. Sampling procedure.
    - a. If a corkscrew trier or Probe-a-Vac sampler is used, at least 10 evenly spaced probes shall be taken per lot. The probed samples shall be taken according to the following patterns:



- The probes shall penetrate at least 50 inches, and at least two of the 10 probes per sample shall reach the bottom of the lot being sampled. The probe shall be inserted at an angle perpendicular to the face of the lot.
- b. If a shop-vac system is used, at least 15 evenly spaced probes shall be taken per lot. The sampling patterns specified in subsection (B)(4)(a) shall be modified to allow for the additional samples.
  - c. Stream samples shall be taken while the cottonseed is being discharged, if there is a uniform discharge flow over a set period of time. The sample shall consist of at least 10 evenly timed and spaced passes through the discharge flow, resulting in the sample size specified in subsection (B)(1).
  - d. The gross sample shall be weighed to the nearest 1/2 pound but shall not be reduced in size. If any gross sample does not meet the minimum 30 pound weight, that gross sample shall be discarded and the sampling procedure repeated from the beginning. If the shop-vac gross sample is not at least 10 pounds, the sample shall be discarded and the sampling procedure repeated from the beginning.
  - e. The Associate Director shall approve any modified sampling procedure if scientific data is provided that documents that representative samples will be obtained through the modified sampling procedure.

**Historical Note**

Former Administrative Rule 1. Former Section R3-3-53 repealed effective January 12, 1978 (Supp. 78-1). New Section R3-3-53 adopted as an emergency effective October 10, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Amended as an emergency effective October 11, 1978, pursuant to A. R. S. § 41-1003,

valid for only 90 days (Supp. 78-5). New Section R3-3-53 adopted effective February 3, 1981 (Supp. 81-1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-913 renumbered from R3-3-53 (Supp. 91-4). Patterns omitted in Supp. 98-4 under subsection (C)(4)(a) have been corrected to reflect filed rules (Supp. 99-1). Amended by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-914. Repealed**

**Historical Note**

Adopted effective August 31, 1977 (Supp. 77-4). Former Section R3-3-54 renumbered as Section R3-3-47 effective January 12, 1978 (Supp. 78-1). New Section R3-3-54 adopted as an emergency effective October 10, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). New Section R3-3-54 adopted effective February 3, 1981 (Supp. 81-1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-914 renumbered from R3-3-54 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-915. Repealed**

**Historical Note**

Adopted effective December 14, 1979 (Supp. 79-6). Section R3-3-915 renumbered from R3-3-55 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-916. Repealed**

**Historical Note**

Adopted effective July 20, 1994 (Supp. 84-4). Section R3-3-916 renumbered from R3-3-56 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**ARTICLE 10. AGRICULTURAL SAFETY****R3-3-1001. Definitions**

In addition to the definitions set forth in A.R.S. § 3-3101 the following terms apply to this Article:

1. "Agricultural emergency" means a sudden occurrence or set of circumstances that:
  - a. An agricultural employer could not have anticipated and over which the agricultural employer has no control,
  - b. Requires entry into a treated area during a restricted-entry interval, and
  - c. No alternative practices would prevent or mitigate a substantial economic loss.
2. "Agricultural employer" means any person, including a farm labor contractor, who hires or contracts for the services of workers for any type of compensation, to perform activities related to the production of agricultural plants, or any person who is an owner of, or is responsible for, the management or condition of an agricultural establishment that uses agricultural workers.
3. "Agricultural establishment" means any farm, forest, nursery, or greenhouse using pesticide products that are required by label to be used in accordance with the federal worker protection standards. An establishment is exempt from the requirements of this Article if the establishment uses only products that do not have a federal worker protection statement on the label.
4. "Agricultural plant" means any plant grown or maintained for commercial or research purposes and includes:
  - a. Food, feed, and fiber plants;
  - b. Trees;
  - c. Turfgrass;
  - d. Flowers, shrubs;
  - e. Ornamentals; and
  - f. Seedlings.
5. "Chemigation" means the application of pesticides through irrigation systems.
6. "Consultation" means an on-site visit by, or a response to an inquiry from, the Agricultural Consulting and Training program personnel, pursuant to A.R.S. § 3-109.01, to review agricultural practices and obtain documented non-regulatory advice to help ensure compliance with the issues addressed.
7. "*De minimis violation*" means a condition or practice which, although undesirable, has no direct or immediate relationship to safety or health (A.R.S. § 3-3101(2)).
8. "Early entry" means any worker or handler entering a treated area after a pesticide is applied to a location on the agricultural establishment and before the expiration of the restricted-entry interval.
9. "Farm labor contractor" means any person who hires or contracts for the services of workers for any type of compensation, to perform activities related to the production of agricultural plants, but does not own or is not responsible for, the management or condition of an agricultural establishment.
10. "Flagger" means a person who indicates an aircraft spray swath width from the ground.
11. "Gravity based penalty" means an unadjusted penalty calculated for each violation, or combined or grouped violations, by adding the gravity factor to the other penalty factors.
12. "Handler" means any person, including a self-employed person:
  - a. Who is employed for any type of compensation by an agricultural establishment or commercial pesticide handling establishment to which this Article applies and who does any of the following:
    - i. Mixing, loading, transferring, or applying pesticides;
    - ii. Disposing of pesticides, or non-triple rinsed or equivalent pesticide containers;
    - iii. Handling open containers of pesticides;
    - iv. Acting as a flagger;
    - v. Cleaning, adjusting, handling, or repairing any part of mixing, loading, or application equipment that may contain pesticide residue;
    - vi. Assisting with the application of pesticides;
    - vii. Entering a greenhouse or other enclosed area after the pesticide application and before either the inhalation exposure level listed in the labeling is reached or any of the ventilation criteria in R3-3-1002 or in the labeling has been met to operate ventilation equipment, adjust or remove coverings used in fumigation, or monitor air levels.
    - viii. Entering a treated area outdoors after pesticide application of any soil fumigant to adjust or remove soil coverings.
    - ix. Performing tasks as a pest control advisor during any pesticide application.
  - b. The term handler does not include:
    - i. Any person who handles only pesticide containers that are emptied or cleaned according to pesticide product labeling instructions or, in the absence of labeling instructions, are triple-rinsed or its equivalent;
    - ii. Any person who handles only pesticide containers that are unopened; or
    - iii. Any person who repairs, cleans, or adjusts the pesticide application equipment at an equipment maintenance facility, after the equipment is decontaminated, and is not an employee of the handler employer.
13. "Handler employer" means any person who is self-employed as a handler or who employs a handler, for any type of compensation.
14. "*Nonserious violation*" means a condition or practice in a place of employment which does not constitute a serious violation but which violates a standard or rule and has a direct or immediate relationship to safety or health, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the condition or practice (A.R.S. § 3-3101(6)).
15. "Personal protective equipment" means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respiratory protection devices, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.
16. "Pest control advisor" means a crop advisor, as defined in 40 CFR 170, who assesses pest numbers or damage, pesticide distributions, or the status or requirements to sustain the agricultural plants. The term does not include a person who performs hand-labor tasks or handling activities.
17. "*Pesticide*" means:
  - (a) any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.

- (b) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant (A.R.S. § 3-341(21)).
18. “Restricted-entry interval” means the time after the completion of a pesticide application during which entry into a treated area is restricted as indicated by the pesticide product label.
  19. “Restricted use pesticide” means a pesticide classified as such by the United States Environmental Protection Agency (A.R.S. § 3-361(8)).
  20. “Serious violation” means a condition or practice in a place of agricultural employment which violates a standard or rule or section 3-3104, subsection (A) and produces a substantial probability that death or serious physical harm could result, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of such condition or practice (A.R.S. § 3-3101(10)).
  21. “Substantial economic loss” means a loss in yield greater than expected based on the experience and fluctuations of crop yields in previous years. Only losses caused by an agricultural emergency specific to the affected site and geographic area are considered. The contribution of mismanagement is not considered in determining the loss.
  22. “Treated area” means any area to which a pesticide is being directed or has been directed.
  23. “Worker” means any person, including a self-employed person, who is employed for any type of compensation and who performs activities relating to the production of agricultural plants on an agricultural establishment. The requirements of this Article do not apply to any person employed by a commercial pesticide-handling establishment who performs tasks as a pest control advisor.
- a. Certified as an applicator of restricted use pesticides under R3-3-208,
  - b. Holds a current handler card under subsection (D)(4),
  - c. Certified as a trainer under this Section, or
  - d. Certified or licensed as a crop advisor by a program approved in writing by the EPA or the Department.
- B. Training verification.**
1. Handler. The handler employer shall verify, before the handler performs a handling task, that the handler:
    - a. Meets a condition listed in subsection (A)(1); or
    - b. Received pesticide safety training during the last three years, excluding the month in which the training was completed.
  2. Worker. The agricultural employer shall verify that a worker:
    - a. Meets a condition listed in subsection (A)(2); or
    - b. Received pesticide safety training during the last five years before allowing a worker entry into an area:
      - i. To which a pesticide was applied during the last 30 days, or
      - ii. For which a restricted-entry interval for a pesticide was in effect during the last 30 days.
  3. The agricultural employer and the handler employer, or designee, shall verify that a training exemption claimed in subsection (A)(1) or (A)(2) is valid by reviewing the appropriate certificate issued by the Department, the EPA, or an EPA-approved program.
  4. The agricultural employer and the handler employer, or designee, shall visually inspect the handler’s or worker’s EPA-approved Worker Protection Standard training verification card to verify that the training requirements prescribed in subsections (B)(1) or (B)(2) are met. If the employer believes that a worker or handler training verification card is valid, the verification requirement of subsection (B)(1) or (B)(2) is satisfied.
  5. An EPA-approved Worker Protection Standard training verification card is valid if issued:
    - a. As prescribed in this Section, or
    - b. By a program approved by the Department, and
    - c. Within the time-frames prescribed in subsection (B)(1) or (B)(2).
  6. The agricultural employer shall provide a worker who does not possess the training required in subsection (B)(2) with the pesticide safety information prescribed in subsection (C) and the pesticide safety training prescribed in subsection (D)(1) and (D)(2). The agricultural employer shall provide pesticide safety training to a worker before:
    - a. The worker enters a treated area on an agricultural establishment during a restricted-entry interval to perform early-entry activities; or
    - b. The sixth day that the worker enters an area on the agricultural establishment if a pesticide has been applied within the past 30 days, or a restricted-entry interval for the pesticide has been in effect within the past 30 days.

#### Historical Note

Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1001 renumbered from R3-8-201 (Supp. 91-4). Amended effective March 3, 1995 (Supp. 95-1). Amended effective October 8, 1998 (Supp. 98-4).

#### R3-3-1002. Worker Protection Standards

Worker protection regulations shall be as prescribed in 40 CFR 170, excluding 40 CFR 170.130 and 170.230, as amended July 1, 2002. This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.

#### Historical Note

Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1002 renumbered from R3-8-202 (Supp. 91-4). Section repealed, new Section adopted effective March 3, 1995 (Supp. 95-1). R3-3-1002 renumbered to R3-3-1003; new Section R3-3-1002 adopted effective October 8, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

#### R3-3-1003. Pesticide Safety Training

##### A. Training exemptions.

1. Handler. A handler who currently meets one of the following conditions is exempt from the requirements under subsection (D)(1) and (D)(3):
  - a. Certified as an applicator of restricted use pesticides under R3-3-208,
  - b. Certified as a trainer under this Section, or
  - c. Certified or licensed as a crop advisor by a program approved in writing by the EPA or the Department.
2. Worker. A worker who meets one of the following conditions is exempt from the requirements under subsections (C), (D)(1), and (D)(2):

##### C. Pesticide safety information.

1. The agricultural employer shall provide pesticide safety information to a worker who does not meet the training requirements of subsection (B) before the worker enters an area on an agricultural establishment if, within the last 30 days a pesticide has been applied or a restricted-entry interval for the pesticide has been in effect. The agricultural employer shall provide safety information in a man-

ner that the worker can understand. The safety information shall include the following:

- a. Pesticides may be on or in plants, soil, irrigation water, or drifting from nearby applications;
- b. Workers may prevent pesticides from entering their bodies by:
  - i. Following directions or signs, or both, about keeping out of a treated or restricted area;
  - ii. Washing before eating, drinking, chewing gum or using tobacco products, or using the toilet;
  - iii. Wearing work clothing that protects the body from pesticide residue;
  - iv. Washing or showering with soap and water, shampooing hair, and putting on clean clothing after work;
  - v. Washing work clothes separately from other clothes before wearing; and
  - vi. Washing immediately in the nearest clean water if pesticides are spilled or sprayed on the body, and as soon as possible, showering, shampooing, and changing into clean clothes.

2. The agricultural employer shall document compliance by obtaining the employee's signature or other verifiable means to acknowledge the employee's receipt of the information required in subsection (C)(1).

**D. Pesticide safety training.** The agricultural employer or handler employer shall ensure that pesticide safety training is provided before the sixth day of entry into a pesticide-treated area. The pesticide safety training program shall be in a language easily understood by a worker or handler, using a translator if necessary. The program shall relate solely to pesticide safety training. Information shall be presented either orally from written material or in an audiovisual manner and shall contain non-technical terms. The trainer shall respond to questions from attendees.

1. General pesticide safety training. The following pesticide safety training shall be presented to either a handler or a worker:
  - a. Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and increased sensitivity;
  - b. Routes by which pesticides can enter the body;
  - c. Signs and symptoms of common types of pesticide poisoning;
  - d. Emergency first aid for pesticide injuries or poisonings;
  - e. How to obtain emergency medical care;
  - f. Routine and emergency body decontamination procedures, including emergency eyeflushing techniques;
  - g. Warnings about taking pesticides or pesticide containers home; and
  - h. How to report violations to the Department, including providing the Department's toll-free pesticide hotline telephone number.
2. Worker training. In addition to the information in subsection (D)(1), a pesticide safety training program for a worker shall include the following:
  - a. Where and in what form pesticides may be encountered during work activities;
  - b. Hazards from chemigation and drift;
  - c. Hazards from pesticide residue on clothing; and
  - d. Requirements of this Article designed to reduce the risks of illness or injury resulting from workers' occupational exposure to pesticides, including:
    - i. Application and entry restrictions,

- ii. Posting of warning signs,
- iii. Oral warning,
- iv. The availability of specific information about applications,
- v. Protection against retaliatory acts, and
- vi. The design of the following warning sign:



3. Handler training. In addition to the information in subsection (D)(1), a pesticide safety training program for a handler shall include the following:
  - a. Format and meaning of information contained on pesticide labels and in labeling, including safety information such as precautionary statements about human health hazards;
  - b. Need for and appropriate use of personal protective equipment;
  - c. Prevention, recognition, and first aid treatment of heat-related illness;
  - d. Safety requirements of handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup;
  - e. Environmental concerns such as drift, runoff, and potential impact on wildlife; and
  - f. Requirements of this Article applicable to handler employers for the protection of handlers and other individuals, including:
    - i. The prohibition against applying pesticides in a manner that will cause contact with workers or other individuals,
    - ii. The requirement to use personal protective equipment,
    - iii. The provisions for training and decontamination, and
    - iv. Protection against retaliatory acts.
4. The trainer shall issue an EPA-approved Worker Protection Standard training verification card to each handler or worker who successfully completes training, and shall maintain a record in indelible ink containing the following information:
  - a. Name and signature of the trained worker or handler;
  - b. Training verification card number;
  - c. Issue and expiration date of the training verification card;
  - d. Social security number or a unique trainer-assigned identification number of the worker or handler;
  - e. Name and signature of the trainer; and
  - f. Address or location of where the training occurred, including city, county, and state.

**E. Trainer requirements.**

1. A person applying for pesticide safety trainer certification shall:

- a. Complete the Department pesticide safety training program established in subsection (D)(1) through (D)(3); or
  - b. Hold a current PCA license or restricted use certification, issued by the Department for a PCA or certified applicator, as prescribed under R3-3-207 or R3-3-208.
2. An applicant shall submit a signed and dated affidavit to the Department verifying that each worker or handler will be trained according to the requirements of subsection (D). The affidavit shall include the applicant's:
    - a. Name, address, e-mail address, and telephone and fax numbers, as applicable; and
    - b. Social security number.
  3. Trainer certification is:
    - a. Nontransferable; and
    - b. Is valid for three years from the date issued under subsection (E)(1)(a), excluding the month in which the trainer was certified, and is renewable upon completion of the Department pesticide safety training program established in subsection (D)(1) through (D)(3); or
    - c. Is valid initially for one year from the date issued under subsection (E)(1)(b) if the PCA license or restricted use certification remain current, and is renewable for three years upon completion of the pesticide safety training program established in subsection (D)(1) through (D)(3).
  4. A trainer shall maintain the records required in subsection (D)(4) for five years for workers, and three years for handlers, excluding the month in which the verification card was issued.
  5. Upon request by the Department, the trainer shall make available worker and handler records prescribed in subsection (D)(4) for inspection and copying by the Department.
- F.** A trainer shall permit the Assistant Director or designee to enter a place where worker safety training is being presented to observe and question trainers and attendees to determine compliance with the requirements of this Section.
- G.** The Department may suspend, revoke, or deny trainer certification if any of the following occur:
1. Failing to follow the worker and handler training requirements prescribed in subsections (D)(1) through (D)(3);
  2. Failing to issue training verification cards to workers and handlers as prescribed in subsection (D)(4);
  3. Failing to maintain the training information prescribed in subsection (E)(4);
  4. Failing to fulfill the requirements of the affidavit as prescribed in subsection (E)(2); or
  5. Having had a similar certification revoked, suspended, or denied in any jurisdiction within the last three years.

**Historical Note**

Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1003 renumbered from R3-8-203 (Supp. 91-4). R3-3-1003 repealed; new Section R3-3-1003 renumbered from R3-3-1002 and amended effective October 8, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-1004. Notification Requirements for Farm Labor Contractors**

- A.** The owner or operator of an agricultural establishment shall provide the farm labor contractor who performs work on that agricultural establishment with:

1. The location of the agricultural establishment's central posting site; and
  2. The restrictions on entering the treated area as specified in 40 CFR 170.120(d), if a treated area is within 1/4 mile of where workers will be working and the treated area is not posted as allowed or required in 40 CFR 170.120(a), (b) and (c).
- B.** The farm labor contractor shall:
1. Post or provide the worker in writing, with the information in 40 CFR 170.122, or shall post or provide the worker in writing, the specific location of the central posting site for each agricultural establishment on which the worker will be working;
  2. Provide the worker with restrictions on entering a treated area as specified in 40 CFR 170.120(d) if the treated area on the agricultural establishment where a worker will be working is within 1/4 mile of where the worker is working, and the treated area and is not posted as allowed or required in 40 CFR 170.120(a), (b) and (c).

**Historical Note**

Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1004 renumbered from R3-8-204 (Supp. 91-4). Amended effective October 8, 1998 (Supp. 98-4).

**R3-3-1005. Container Used For Mixing or Applying Pesticides**

- A.** All openings on containers used for applying pesticides shall be equipped with covers that prevent splashes and spills.
- B.** All containers shall:
1. Be translucent, or
  2. Have a means to indicate externally the internal liquid level in the container, or
  3. Have a filler hose nozzle that automatically stops the filling operation before the liquid pesticide mixture spills over the top of the container.
- C.** Any employer who mixes or applies any liquid pesticide mixture in a container with a capacity of more than 49 gallons shall have a handler present whenever pesticides are mixed or containers are filled to ensure that the liquid pesticide mixture does not spill over the top of the container.
- D.** Each handler, while mixing pesticides, shall protect the water supply from back-siphoning pesticide mixtures.

**Historical Note**

Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1005 renumbered from R3-8-205 (Supp. 91-4). Section repealed; new Section adopted effective October 8, 1998 (Supp. 98-4).

**R3-3-1006. Agricultural Emergency**

- A.** Any grower, a group of growers, or designee may request the Assistant Director for an agricultural emergency.
- B.** Possibility of agricultural emergency.
1. If during business hours information is obtained showing that a declaration of an agricultural emergency is necessary, the requesting party shall notify the Department immediately and provide the following information:
    - a. The cause of the emergency,
    - b. The area where the emergency may occur,
    - c. An explanation of why early entry is necessary,
    - d. Why other methods cannot be used to avoid the early entry, and
    - e. The justification that substantial economic loss will occur.
  2. The Assistant Director shall render a decision to the requesting party on whether an agricultural emergency exists within four hours of receiving the information.

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- 3. If a grower or requesting party does not submit the written documentation in subsection (B)(1) or if the Assistant Director questions the validity or adequacy of the written evidence of the emergency, the Assistant Director shall investigate a grower’s entry into the restricted-entry interval area and advise the requesting party of the reasons for the denial of the agricultural emergency.
- 4. If the information in subsection (B)(1) is given orally, the requesting party shall notify the Department immediately and provide the Assistant Director with written evidence of the emergency within five days. The Assistant Director shall, within 10 business days of receipt of the written evidence of the emergency or completion of the investigation, issue a letter to the requesting party confirming or denying the request for an agricultural emergency.

C. Occurrence of agricultural emergency.

- 1. If information is obtained after business hours, or during a weekend or holiday, showing that a declaration of agricultural emergency is necessary, the requesting party shall inform the Department, orally, the next business day following the emergency and provide the following information, in writing, within 72 hours of the emergency or notification:
  - a. The cause of the emergency,
  - b. The area where the emergency occurred,
  - c. A brief explanation of why early entry was necessary,
  - d. Why other methods could not be used to avoid the early entry, and
  - e. The justification that substantial economic loss would have occurred.
- 2. If a grower or requesting party does not submit the written evidence of the emergency in subsection (B)(1) or if the Assistant Director questions whether the written evidence of emergency could have occurred before the emergency, or the validity or adequacy of the written evidence of the emergency, the Assistant Director shall investigate a grower’s entry into the restricted-entry interval area and advise the requesting party of the reasons for the denial.
- 3. The Assistant Director shall within 10 business days of receipt of the evidence of emergency or completion of the investigation issue a letter to the requesting party confirming or denying the request for the agricultural emergency.

**Historical Note**

Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1006 renumbered from R3-8-206 (Supp. 91-4). Section repealed; new Section adopted effective October 8, 1998 (Supp. 98-4).

**R3-3-1007. Violations and Civil Penalties**

- A. Serious violations. The base penalty for any serious violation is \$500 and no adjustment shall be made for mitigating circumstances. The penalty for a violation in which a person is killed or permanently disabled shall be the maximum allowed in A.R.S. §§ 3-3113 and 3-3114.
- B. Nonserious violations. The Assistant Director shall calculate the base penalty for a nonserious violation and determine the civil penalty amount based on the factors prescribed in A.R.S. § 3-3113(I). If there are contributing or mitigating circumstances, the points may be adjusted, provided the adjustment is documented.

VIOLATION GRAVITY FACTOR  
(1 - lowest; 4 - highest)

VIOLATION GRAVITY

Central Posting	1 - 2
Training	1 - 4
Decontamination	1 - 4
Personal Protective Equipment	1 - 4
Pesticide Applications and Notice	1 - 4
Pesticide Application Restrictions	2 - 4
Other Requirements	1 - 4

C. Size-of-business. The Assistant Director shall use:

- 1. The maximum number of employees at any one time during the previous 12 months from the date of notice, including only the Arizona branch offices to determine the size business category; or
- 2. A site-specific employee count, if the violation does not endanger employees at other locations of the business; or
- 3. The number of persons trained by a trainer during the previous 12 months that violate the training provisions of this Section.

**SIZE-OF-BUSINESS**

Size Category	Number of Employees or Number of People Trained
I	1-10
II	11-75
III	76-150
IV	More than 150

- D. Base penalty. The Assistant Director shall calculate the base penalty for the alleged violation by using the violation gravity factor established in subsection (B) and applying the size-of-business category established in subsection (C).

**BASE PENALTY**

Gravity Factor	Size Category			
	I	II	III	IV
1	\$250	\$300	\$350	\$400
2	300	350	400	450
3	350	400	450	500
4	500	500	500	500

- E. Combined or group violations. The Assistant Director may combine or group violations.

- 1. Violations may be combined and assessed one penalty if the violation does not cause any immediate danger to public health or safety or damage to property. Example: Eight workers on a harvest crew have received no training and there is no evidence of exposure. This situation may result in only one training penalty being assessed against the employer.
- 2. Violations may be grouped if they have a common element and it is apparent which violation has the highest gravity. The penalty for a grouped violation is assessed on the violation with the highest gravity. The penalty for a grouped violation is assessed pursuant to the appropriate law or rule with the highest gravity. Example: Two crews from the same company are engaged in an improper handling activity and one crew is using a pesticide with a “danger” signal word, (skull and cross bones) while the other crew is using a pesticide with a “warning” signal word. This situation may result in the employer being assessed one penalty based on the penalty for the “danger” (skull and cross bones) violation.

- F. If a decision is not reached in a negotiated settlement, the Director may assess a penalty pursuant to A.R.S. § 3-3114.

**Historical Note**

Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1007 renumbered from R3-8-207 (Supp. 91-4). Section repealed; new Section adopted effective October 8, 1998 (Supp. 98-4).

**R3-3-1008. Penalty Adjustments**

- A. The Assistant Director shall assign an appropriate number of points for each of the following five factors to increase the base penalty for a serious violation, or increase or decrease the base penalty for a nonserious violation.
1. If the total adjustment points on a nonserious violation is less than 9, the base penalty is reduced; if it is more than 9, the base penalty is increased.
  2. If the total adjustment points on a serious violation is 3 or less, the base penalty shall be imposed; if it is more than 3, the base penalty is increased.
  3. If a violation is a repeated violation, as prescribed in R3-3-1011 for compliance history, a base penalty adjustment factor shall not be used in assessing a penalty.

**BASE ADJUSTMENT FACTORS**

**Pesticide**

Signal word danger with skull and crossbones	5
Signal word danger	4
Warning	3
Caution	2
Indirect relation to the violation	1

**Harm to Human Health**

Actual Injuries or temporary reversible illness resulting in hospitalization or a variable but limited period of disability. (hospital care greater than 8 hours)	9
Actual (doctor care required, less than 8 hours)	6
Minor supportive care only	2 - 4
Consequence potential	1 - 2
No relationship found	0

**Compliance History**

One or more violations in the previous 12 months	4
One or more violations in the previous 24 months	3
One or more violations in the previous 36 months	1
No violation history	0

**Culpability**

Knowing or should have known	4
Negligence	2
Neither	0

**Good Faith**

0 - -2

- B. The Assistant Director may reduce the base penalty for a non-serious violation, as determined in R3-3-1007(C), by as much as 80% depending upon the number of employees or trained persons, good faith, and history of previous violations.

**FINAL PENALTY CALCULATION**

Number of Points	Nonserious Violation	Serious Violation
	Penalty Adjustment	Penalty Adjustment
3 or below	Base -80%	Base Penalty
4	Base -65%	Base + 10%
5	Base -50%	Base + 20%
6	Base -35%	Base + 30%
7	Base -20%	Base + 40%
8	Base -5%	Base + 50%
9	Base Penalty	Base + 60%
10	Base + 20%	Base + 70%
11	Base + 35%	Base + 80%
12	Base + 50%	Base + 90%
13	Base + 65%	Base + 100%
14	Base + 80%	Base + 100%

15 or more Base + 100% Base + 100%

Example: A business employs 26 people in Town A and 14 people in Town B. In addition, 35 seasonal people are employed during the harvest. The total annual employee positions equal 75. The following violations are found during an inspection: (1) No training for 35 seasonal workers on the harvest crew; (2) No available decontamination supplies; (3) No safety poster at the central posting location; (4) No emergency telephone number posted, and no medical facility location posted at the central posting location; (5) No posted pesticide application information at the central posting location.

Step 1. Use the *Violation Gravity Factor* table to determine the gravity of the violation.

- (1) Training, 1-4 2 points, all 35 workers are combined;
- (2) Decontamination, 1-43 points, no supplies were available within the prescribed distance and it has been 25 days since the most recent application;
- (3) - (5) Central Posting, 1-2 1 point, since the violations concerns the same factor, they are combined.(There is evidence that the old poster blew away and the pesticide application information is kept available in the secretary's desk, but it is not 'readily' available.)

Step 2. Use the *Size of Business* table to determine the size category.

75 employees falls into the size category II;

Step 3. Use the *Base Penalty* table to determine the base penalty. Use column II based on the *Size of Business* determination from step 2.

Violation 1, with a gravity factor of 2, equals a base penalty of \$350;

Violation 2, with a gravity factor of 3, equals a base penalty of \$400;

Violations 3, 4, and 5, with a gravity factor of 1, equals 1 base penalty of \$300.

Step 4. Using the *Base Adjustment Factors* table to calculate the adjustments, if any. In this case, the base adjustments are uniform in all categories except #4, culpability.

Pesticide. It was a indirect relationship because of the timing of the application and when the workers were in the treated area. 1 point.

Harm to Human Health. There was no harm to health and the pesticide had not been applied recently. 1 point.

Compliance History. This farm has no previous violation history. 0 points.

Culpability. The supervisor attended a "train-the-trainer" course two years ago and should have been aware of the requirements of the



**ARTICLE 11. ARIZONA NATIVE PLANTS****R3-3-1101. Definitions**

In addition to the definitions in A.R.S. § 3-901, the following terms apply to this Article:

“Agent” means a person authorized to manage, represent, and act for a landowner.

“Certificate of inspection for interstate shipments” means a certificate to transport protected native plants out of the state.

“Conservation” means prevention of exploitation, destruction, or neglect of native plants while helping to ensure continued public use.

“Cord” means a specific type string or small rope issued by the Department for attaching tags and seals to protected native plants.

“Cord of wood” means a measurement of firewood equal to 128 cubic feet.

“Department” means the Arizona Department of Agriculture.

“Destroy” means to cause the death of any protected native plant.

“Harvest restricted native plant permit” means a permit required to remove the by-products, fibers, or wood from a native plant listed in Appendix A, subsection (D).

“Landowner” means a person who holds title to a parcel of land.

“Noncommercial salvage permit” means a permit required for the noncommercial salvage of a highly safeguarded native plant.

“Original growing site” means a place where a plant is growing wild and is rooted to the ground or any property owned by the same landowner where a protected native plant is relocated or transplanted without an original transportation permit.

“Permittee” means any person who is issued a permit by the Department for removing and transporting protected native plants.

“Protected native plant” means any living plant or plant part listed in Appendix A and growing wild in Arizona.

“Protected native plant tag” means a tag issued by the Department to identify the lawful removal of a protected native plant, other than a saguaro cactus, from its original growing site.

“Saguaro tag” means a tag issued by the Department to identify a saguaro cactus being lawfully moved.

“Salvage assessed native plant permit” means a permit required to remove a native plant listed in Appendix A, subsection (C).

“Salvage restricted native plant permit” means a permit required to remove a native plant listed in Appendix A, subsection (B).

“Scientific permit” means a permit required to remove a native plant for a controlled experimental project by a qualified person.

“Securely tie” means to fasten in a tight and secure manner to prevent the removal of tags, seals, or cord for reuse.

“Small Native Plant” means any protected plant eight inches in height or less.

“Survey” means the process by which a parcel of land is examined for the presence of protected native plants. A simple survey determines only whether protected native plants are present. A complete survey establishes the kind and number of each species present.

“Wood receipt” means a receipt issued by the Department to identify the lawful removal of a protected native plant

harvested for fuel, being removed from its original growing site.

**Historical Note**

New Section recodified from R3-4-601 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

**R3-3-1102. Protected Native Plant Destruction by a Private Landowner****A. Notice of intent.**

1. Before a protected native plant is destroyed, the private landowner shall provide the following information to the Department on a form obtained from the Department:
  - a. Name, address, and telephone number of the landowner;
  - b. Name, address, and telephone number of the landowner’s agent, if applicable;
  - c. Valid documentation indicating land ownership, including but not limited to a parcel identification number, tax assessment, or deed;
  - d. Legal description, map, address, or other description of the area, including the number of acres to be cleared, in which the protected native plants subject to the destruction are located;
  - e. Earliest date of plant destruction; and
  - f. Landowner’s intent for the disposal or salvage of protected native plants on the land.
2. A landowner intending to destroy protected native plants on an area of less than one acre may submit the information required in subsection (A)(1) to the Department verbally.

**B. A landowner shall not destroy a protected native plant until:**

1. The landowner receives a written confirmation notice from the Department, and
2. Notice is given to the Department within the following minimum time periods:
  - a. Twenty days before the plants are destroyed over an area of less than one acre.
  - b. Thirty days before the plants are destroyed over an area of one acre or more but less than 40 acres.
  - c. Sixty days before the plants are destroyed over an area of 40 acres or more.

**C. The Department shall provide a salvage operator or other interested person with a copy of a notice of intent submitted under this Section upon receipt of the private landowner’s name, address, telephone number, and payment of an annual \$25 nonrefundable fee.****Historical Note**

New Section recodified from R3-4-602 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

**R3-3-1103. Disposal and Salvage of Protected Native Plants by a State Agency****A. A state agency intending to remove or destroy protected native plants shall notify the Department, under A.R.S. § 3-905, and shall propose a method of disposal from the following list:**

1. The plants may be sold at a public auction;
2. The plants may be relocated or transported to a different location on the same property or to another property owned by the state, without obtaining a permit;
3. The plants may be donated to nonprofit organizations as provided in A.R.S. § 3-916;

4. The plants may be donated to another state agency or political subdivision, without obtaining a permit; or
  5. The plants may be salvaged or harvested by a member of the general public or a commercial dealer, if the person holds a permit as provided under A.R.S. § 3-906 or 3-907.
- B.** If the plants are highly safeguarded native plants, they shall first be made available to the holder of a scientific permit or a noncommercial salvage permit.

**Historical Note**

New Section recodified from R3-4-603 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

**R3-3-1104. Protected Native Plant Permits; Tags; Seals; Fees**

- A.** A person shall not collect, transport, possess, sell, offer for sale, dispose, or salvage protected native plants unless that person is 18 years of age or older and possesses an appropriate permit.
- B.** An applicant shall submit the following information to the Department on a form obtained from the Department, as applicable:
1. Name, business name, address, telephone number, Social Security number or tax identification number, and signature of the applicant;
  2. Name and number of plants to be removed;
  3. Purpose of the plant removal;
  4. Whether the applicant has a conviction for a violation of a state or federal statute regarding the protection of native plants within the previous five years;
  5. Except for salvage assessed native plants;
    - a. Name, address, telephone number, and signature of the landowner;
    - b. Location of the permitted site and size of acreage;
    - c. Destination address where the plants will be transplanted;
    - d. Legal and physical description of the location of the original growing site; and
    - e. Parcel identification number for the permitted site or other documents proving land ownership.
- C.** Permit fees.
1. A person removing and transporting protected native plants shall submit the following applicable fee to the Department with the permit application:
    - a. Salvage assessed native plant permit, annual use, \$35;
    - b. Harvest restricted native plant permit, annual use, \$35;
    - c. All other native plant permits, one-time use, \$7;
    - d. Certificate of inspection for interstate shipments, \$15.
  2. Exemptions. Protected native plants are exempt from fees if:
    - a. The protected native plants intended for personal use by a landowner are taken from one piece of land owned by the landowner to another piece of land also owned by the landowner, remain on the property of the landowner, and are not sold or offered for sale;
    - b. The protected native plants are collected for scientific purposes; or
    - c. A landowner donates the protected native plant to a scientific, educational, or charitable institution.
- D.** Tag and harvesting fees.

1. Any person obtaining a saguaro tag or other protected native plant tag or receipt shall submit the following applicable fee to the Department at the time a tag is obtained:
    - a. Saguaro, \$8 per plant;
    - b. Trees cut for firewood and listed in the harvest restricted category, \$6 per cord of wood;
    - c. Small native plant, \$.50 per plant;
    - d. Any other protected native plant referenced in A.R.S. § 3-903(B) and (C) and listed in Appendix A, \$6 per plant.
  2. The fee for harvesting *nolina* or *yucca* parts is \$6 per ton. Payment shall be made to the Department in the following manner:
    - a. Unprocessed *nolina* or *yucca* fiber shall be weighed on a state-certified bonded scale; and
    - b. The harvester shall submit payment and weight certificates to the Department no later than the tenth day of the month following each harvest.
- E.** Seal fees. A person obtaining a seal shall submit a \$.15 per plant fee to the Department at the time a seal is obtained.
- F.** Salvage assessed native plant permits and plant tags are valid for the calendar year in which they are issued. The tags expire at the end of the calendar year unless the permit is renewed.

**Historical Note**

New Section recodified from R3-4-604 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

**R3-3-1105. Scientific Permits; Noncommercial Salvage Permits**

- A.** Scientific Permit
1. A person shall not collect any highly safeguarded or other protected native plants for a research project unless that person holds a scientific permit.
  2. An applicant shall submit the following information to the Department on a form obtained from the Department:
    - a. Name, address, and telephone number of the company or research facility applying for the permit;
    - b. Name, title and experience of the person conducting the research project;
    - c. Purpose and intent of the research project;
    - d. Controls to be used;
    - e. Variables to be considered;
    - f. Time-frame for the project;
    - g. Anticipated results and plans for publication;
    - h. Reports and recordkeeping that will be used to monitor the project;
    - i. Project funding source;
    - j. Funding of the company or research facility;
    - k. Written authorization from the landowner for collection of the plants;
      1. Date of the application;
      2. Signed affirmation by the applicant that the plants collected will not be sold or used for personal interests; and
      3. Tax identification number, or if applicant is an individual, a Social Security number.
  3. A scientific permit shall be issued if the applicant provides documentation that demonstrates the following:
    - a. A plan, pre-approved by the landowner, to restore the removal site to a natural appearance;
    - b. The removal and movement of the native plants shall be accomplished by a person experienced in native plant removal and transplantation;

- c. The native plants used in the project shall remain accessible to the Department;
  - d. The ecology of the project site is beneficial to the growth of the specific plants in the project if practical;
  - e. Arrangements exist for a suitable permanent planting site for the surviving plants after the project's completion; and
  - f. Description of plant disposition and research hypothesis.
4. A scientific permit is valid for the calendar year in which it is issued.
- B. Noncommercial salvage permit:**
- 1. Highly safeguarded native plants may only be collected for conservation by a person holding a noncommercial salvage permit.
  - 2. An applicant shall submit the following information to the Department, on a form obtained from the Department:
    - a. Name, address, and telephone number of the applicant applying for the permit;
    - b. Proposed relocation site for the plants;
    - c. Written authorization from the landowner for collection of the plants;
    - d. Date of the application; and
    - e. Signed affirmation by the applicant that the plants collected will not be sold or used for personal interests.
  - 3. A noncommercial salvage permit shall be issued if all of the following conditions are met through documentation provided to the Department:
    - a. The native plants used in the project shall be accessible to the Department after transplant, and
    - b. The relocation site is beneficial to the growth of the specific plants in the project.
  - 4. A noncommercial salvage permit is valid only for the transportation and the transplantation of the particular native plant.

#### Historical Note

New Section recodified from R3-4-605 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

#### **R3-3-1106. Protected Native Plant Survey; Fee**

- A.** Upon request, the Department may conduct a native plant survey. Upon completion, the Department shall notify the individual who made the request of:
- 1. The date the survey was performed;
  - 2. The amount of the survey fee payable to the Department;
  - 3. The name of Department personnel performing the survey;
  - 4. Upon payment, the survey results including the names and numbers of protected native plants.
- B.** A person who requests a native plant survey shall pay the survey fee to the Department within 30 days from the date of the notification. The survey fee shall be based on time and travel expenses, except that no fee shall be charged for a determination of whether protected species exist on the land.

#### Historical Note

New Section recodified from R3-4-606 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

#### **R3-3-1107. Movement Permits; Tags, Seals, and Cord Use**

- A.** Any person moving a protected native plant, except a saguaro cactus, previously transplanted from its original growing site in Arizona and transplanting it to another location shall apply to the Department for a Movement Permit. The landowner from where the plant is being moved shall provide the following information on the permit application:
- 1. The name, telephone number, and signature of the landowner;
  - 2. The location of the plant;
  - 3. The name, address, and telephone number of the receiver;
  - 4. The name, address, and telephone number of the carrier;
  - 5. The number, species, and description of the plant being removed;
  - 6. The tax parcel identification number; and
  - 7. The date of the application.
- B.** Any person moving a saguaro cactus over four feet tall previously transplanted from its original growing site in Arizona and transplanting it to another location shall apply to the Department for a Movement Permit. The landowner from where the saguaro cactus is being moved shall provide the following information on the permit application, unless the applicant maintains a record of the original permit or verifies the Department has a record of a previous legal movement of the cactus by the applicant.
- 1. The name, telephone number, and signature of the landowner;
  - 2. The address where the saguaro cactus is located;
  - 3. The name, address, and telephone number of the receiver;
  - 4. The name, address, and telephone number of the carrier;
  - 5. The number, species, and description of the plant being removed;
  - 6. The tax parcel identification number of the property where the saguaro cactus is being moved; and
  - 7. The date of the application.
- C.** Movement of protected native plants obtained outside Arizona.
- 1. Any person moving a protected native plant obtained outside Arizona and transporting and planting it within the state shall declare the protected native plant at the agricultural inspection station nearest the port of entry. The Department shall place the protected native plant under "Warning Hold" to the nearest permitting office.
  - 2. If an agricultural station is not in operation at the port of entry, the person shall declare the protected native plant at the nearest permitting office during normal office hours.
  - 3. After the plants have been declared, the permitting office shall issue a Movement Permit and seal.
- D.** Any person moving protected native plants shall obtain the following seals from the Department and securely attach the appropriate seal to each protected native plant:
- 1. Protected native plant seals identify protected native plants, except saguaro cacti, that will be moved from locations that are not the original growing sites.
  - 2. Imported seals identify all imported protected native plants.
- E.** Tag, seal, and cord attachment.
- 1. A permittee shall attach a tag to each protected native plant taken from its original growing site, using cord provided by the Department, before transport. No other type of rope, string, twine, or wire is allowed.
  - 2. The cord shall be securely tied around the plant, and the tag attached so that it cannot be removed without breaking the seal or cutting the cord.

3. The tag shall be placed directly over the knot in the cord and the ends pressed firmly together sealing the knot so that it cannot be removed for reuse.
4. The protected native plant seal shall be placed directly over the knot and snapped firmly closed, sealing the knot.
5. The imported seal shall be attached directly to the plant.
6. Upon loading the plant, every effort shall be made to allow visibility of the tag during transport.

**Historical Note**

New Section recodified from R3-4-607 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

**R3-3-1108. Recordkeeping; Salvage Assessed and Harvest Restricted Native Plants**

- A. Salvage Assessed Native Plants.**
1. A permittee shall maintain a record of each protected native plant removed under an annual permit for two years from the date of each transaction and allow Department inspection of the records during normal business hours. The transaction record shall include the date salvage restricted protected native plants were removed and the permit and tag numbers.
  2. Annually, by January 31, a permittee shall submit to the Department a copy of each transaction record for the prior calendar year.
- B. Harvest Restricted Native Plants.** A permittee shall submit to the Department by the tenth day of each month the transaction records for the previous month, or a written statement that no transactions were conducted for that month.

**Historical Note**

New Section recodified from R3-4-608 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

**R3-3-1109. Arizona Native Plant Law Education**

- A.** The Department may schedule seminars and training courses on an as-needed basis.
- B.** In addition to the following fees, charges for printed materials or pamphlets shall be assessed based upon printing and mailing costs:
1. A person attending a seminar or training course on Arizona native plant law shall pay a nonrefundable fee of \$10 to the Department before attending the class.
  2. A person convicted of violating Arizona native plant laws and ordered by a court to attend a native plant educational class shall pay a nonrefundable fee of \$25 to the Department before attending the class. The Department shall provide written confirmation of satisfactory completion to a person ordered by a court to attend a class.

**Historical Note**

New Section recodified from R3-4-609 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

**R3-3-1110. Permit Denial**

Upon notice of denial of a permit, an applicant may request, in writing, that the Department provide an administrative hearing under A.R.S. Title 41, Chapter 6, Article 10, to appeal the denial.

**Historical Note**

New Section recodified from R3-4-610 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by

final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

**R3-3-1111. Repealed****Historical Note**

New Section recodified from R3-4-611 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Repealed by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

**Appendix A. Protected Native Plants by Category**

- A.** Highly safeguarded native plants as prescribed in A.R.S. § 3-903(B)(1), for which removal is not allowed except as provided in R3-3-1105:

**AGAVACEAE Agave Family**

*Agave arizonica* Gentry & Weber–Arizona agave  
*Agave delamateri* Hodgson & Slauson  
*Agave murpheyi* Gibson–Hohokam agave  
*Agave parviflora* Torr.–Santa Cruz striped agave, Small-flowered agave  
*Agave phillipsiana* Hodgson  
*Agave schottii* Engelm. var. *treleasei* (Toumey) Kearney & Peebles

**APIACEAE Parsley Family. [= Umbelliferae]**

*Lilaeopsis schaffneriana* (Schlecht.) Coult. & Rose ssp. *recurva* (A. W. Hill) Affolter–Cienega false rush, Huachuca water umbel.  
 Syn.: *Lilaeopsis recurva* A. W. Hill

**APOCYNACEAE Dogbane Family**

*Amsonia kearneyana* Woods.–Kearney’s bluestar  
*Cycladenia humilis* Benth. var. *jonesii* (Eastw.) Welsh & Atwood–Jones’ cycladenia

**ASCLEPIADACEAE Milkweed Family**

*Asclepias welschii* N. & P. Holmgren–Welsh’s milkweed

**ASTERACEAE Sunflower Family [= Compositae]**

*Erigeron lemmonii* Gray–Lemmon fleabane  
*Erigeron rhizomatus* Cronquist–Zuni fleabane  
*Senecio franciscanus* Greene–San Francisco Peaks groundsel  
*Senecio huachucanus* Gray–Huachuca groundsel

**BURSERACEAE Torch Wood Family**

*Bursera fagaroides* (H.B.K.) Engler–Fragrant bursera

**CACTACEAE Cactus Family**

*Carnegiea gigantea* (Engelm.) Britt. & Rose–Saguaro: ‘Crested’ or ‘Fan-top’ form  
 Syn.: *Cereus giganteus* Engelm.  
*Coryphantha recurvata* (Engelm.) Britt. & Rose–Golden-chested beehive cactus  
 Syn.: *Mammillaria recurvata* Engelm.  
*Coryphantha robbinsorum* (W. H. Earle) A. Zimmerman–Cochise pincushion cactus, Robbin’s cory cactus.  
 Syn.: *Cochiseia robbinsorum* W.H. Earle  
*Coryphantha scheeri* (Kuntze) L. Benson var. *robustispina* (Schott) L. Benson–Scheer’s strong-spined cory cactus.  
 Syn.: *Mammillaria robustispina* Schott

- Echinocactus horizontalonius* Lemaire var. *nicholii* L. Benson–Nichol’s Turk’s head cactus
- Echinocereus triglochidiatus* Engelm. var. *arizonicus* (Rose ex Orcutt) L. Benson–Arizona hedgehog cactus
- Echinomastus erectocentrus* (Coul.) Britt. & Rose var. *acunensis* (W.T. Marshall) L. Benson–Acuna cactus  
Syn.: *Neolloydia erectocentra* (Coul.) L. Benson var. *acunensis* (W. T. Marshall) L. Benson
- Pediocactus bradyi* L. Benson–Brady’s pincushion cactus
- Pediocactus paradinei* B. W. Benson–Paradine plains cactus
- Pediocactus peeblesianus* (Croizat) L. Benson var. *fickeiseniae* L. Benson
- Pediocactus peeblesianus* (Croizat) L. Benson var. *peeblesianus* Peebles’ Navajo cactus, Navajo plains cactus  
Syn.: *Navajoa peeblesiana* Croizat
- Pediocactus sileri* (Engelm.) L. Benson–Siler pincushion cactus  
Syn.: *Utahia sileri* (Engelm.) Britt. & Rose
- COCHLOSPERMACEAE Cochlospermum Family  
*Amoreuxia gonzalezii* Sprague & Riley
- CYPERACEAE Sedge Family  
*Carex specuicola* J. T. Howell–Navajo sedge
- FABACEAE Pea Family [=Leguminosae]  
*Astragalus cremnophylax* Barneby var. *cremnophylax* Sentry milk vetch  
*Astragalus holmgreniorum* Barneby–Holmgren milk-vetch  
*Dalea tentaculoides* Gentry–Gentry indigo bush
- LENNOACEAE Lennoa Family  
*Pholisma arenarium* Nutt.–Scaly-stemmed sand plant  
*Pholisma sonora* (Torr. ex Gray) Yatskievych–Sandfood, sandroot  
Syn.: *Ammobroma sonora* Torr. ex Gray
- LILIACEAE Lily Family  
*Allium gooddingii* Ownbey–Goodding’s onion
- ORCHIDACEAE Orchid Family  
*Cypripedium calceolus* L. var. *pubescens* (Willd.) Correll–Yellow lady’s slipper  
*Hexalectris warnockii* Ames & Correll–Texas purple spike  
*Spiranthes delitescens* C. Sheviak
- POACEAE Grass Family [=Gramineae]  
*Puccinellia parishii* A.S. Hitchc.–Parish alkali grass
- POLYGONACEAE Buckwheat Family  
*Rumex orthoneurus* Rech. f.
- PSILOTACEAE Psilotum Family  
*Psilotum nudum* (L.) Beauv. Bush Moss, Whisk Fern
- RANUNCULACEAE Buttercup Family  
*Cimicifuga arizonica* Wats.–Arizona bugbane
- Clematis hirsutissima* Pursh var. *arizonica* (Heller) Erickson–Arizona leatherflower
- ROSACEAE Rose Family  
*Purshia subintegra* (Kearney) J. Hendrickson–Arizona cliffrose, Burro Creek cliffrose  
Syn.: *Cowania subintegra* Kearney
- SALICACEAE Willow Family  
*Salix arizonica* Dorn–Arizona willow
- SCROPHULARIACEAE Figwort Family  
*Penstemon discolor* Keck–Variegated beardtongue
- B.** Salvage restricted native plants as prescribed in A.R.S. § 3-903(B)(2) that require a permit for removal. In addition to the plants listed under Agavaceae, Cactaceae, Liliaceae, and Orchidaceae, all other species in these families are salvage restricted protected native plants:
- AGAVACEAE Agave Family  
*Agave chrysantha* Peebles  
*Agave deserti* Engelm. ssp. *simplex* Gentry–Desert agave  
*Agave mckelveyana* Gentry  
*Agave palmeri* Engelm.  
*Agave parryi* Engelm. var. *couseii* (Engelm. ex Trel.) Kearney & Peebles  
*Agave parryi* Engelm. var. *huachucensis* (Baker) Little ex L. Benson  
Syn.: *Agave huachucensis* Baker  
*Agave parryi* Engelm. var. *parryi*  
*Agave schottii* Engelm. var. *schottii* – Shindigger  
*Agave toumeyana* Trel. ssp. *bella* (Breitung) Gentry  
*Agave toumeyana* Trel. ssp. *toumeyana*  
*Agave utahensis* Engelm. spp. *kaibabensis* (McKelvey) Gentry  
Syn.: *Agave kaibabensis* McKelvey  
*Agave utahensis* Engelm. var. *utahensis*  
*Yucca angustissima* Engelm. var. *angustissima*  
*Yucca angustissima* Engelm. var. *kanabensis* (McKelvey) Reveal  
Syn.: *Yucca kanabensis* McKelvey  
*Yucca arizonica* McKelvey  
*Yucca baccata* Torr. var. *baccata*–Banana yucca  
*Yucca baccata* Torr. var. *vespertina* McKelvey  
*Yucca baileyi* Woot. & Standl. var. *intermedia* (McKelvey) Reveal  
Syn.: *Yucca navajoa* Webber  
*Yucca brevifolia* Engelm. var. *brevifolia*–Joshua tree  
*Yucca brevifolia* Engelm. var. *jaegeriana* McKelvey  
*Yucca elata* Engelm. var. *elata*–Soaptree yucca, palmilla  
*Yucca elata* Engelm. var. *utahensis* (McKelvey) Reveal  
Syn.: *Yucca utahensis* McKelvey  
*Yucca elata* Engelm. var. *verdiensis* (McKelvey) Reveal  
Syn.: *Yucca verdiensis* McKelvey  
*Yucca harrimaniae* Trel.

- Yucca schidigera* Roetzl.–Mohave yucca, Spanish dagger  
*Yucca schottii* Engelm.–Hairy yucca  
*Yucca thornberi* McKelvey  
*Yucca whipplei* Torr. var. *whipplei*–Our Lord’s candle  
 Syn.: *Yucca newberryi* McKelvey
- AMARYLLIDACEAE Amaryllis Family  
*Zephyranthes longifolia* Hemsl.–Plains Rain Lily
- ANACARDIACEAE Sumac Family  
*Rhus kearneyi* Barkley–Kearney Sumac
- ARECACEAE Palm Family [=Palmae]  
*Washingtonia filifera* (Linden ex Andre) H. Wendl–California fan palm
- ASTERACEAE Sunflower Family [=Compositae]  
*Cirsium parryi* (Gray) Petrak ssp. *mogollonicum* Schaak  
*Cirsium virginensis* Welsh–Virgin thistle  
*Erigeron kuschei* Eastw.–Chiricahua fleabane  
*Erigeron piscaticus* Nesom–Fish Creek fleabane  
*Flaveria macdougallii* Theroux, Pinkava & Keil  
*Perityle ajoensis* Todson–Ajo rock daisy  
*Perityle cochisensis* (Niles) Powell–Chiricahua rock daisy  
*Senecio quaerens* Greene–Gila groundsel
- BURSERACEAE Torch-Wood Family  
*Bursera microphylla* Gray–Elephant tree, torote
- CACTACEAE Cactus Family  
*Carnegiea gigantea* (Engelm.) Britt. & Rose–Saguaro  
 Syn.: *Cereus giganteus* Engelm.  
*Coryphantha missouriensis* (Sweet) Britt. & Rose  
*Coryphantha missouriensis* (Sweet) Britt. & Rose var. *marstonii* (Clovier) L. Benson  
*Coryphantha scheeri* (Kuntze) L. Benson var. *valida* (Engelm.) L. Benson  
*Coryphantha strobiliformis* (Poselger) var. *orcuttii* (Rose) L. Benson  
*Coryphantha strobiliformis* (Poselger) var. *strobiliformis*  
*Coryphantha vivipara* (Nutt.) Britt. & Rose var. *alversonii* (Coul.) L. Benson  
*Coryphantha vivipara* (Nutt.) Britt. & Rose var. *arizonica* (Engelm.) W. T. Marshall  
 Syn.: *Mammillaria arizonica* Engelm.  
*Coryphantha vivipara* (Nutt.) Britt. & Rose var. *bisbeeana* (Orcutt) L. Benson  
*Coryphantha vivipara* (Nutt.) Britt. & Rose var. *deserti* (Engelm.) W. T. Marshall  
 Syn.: *Mammillaria chlorantha* Engelm.  
*Coryphantha vivipara* (Nutt.) Britt. & Rose var. *rosea* (Clokey) L. Benson  
*Echinocactus polycephalus* Engelm. & Bigel. var. *polycephalus*  
*Echinocactus polycephalus* Engelm. & Bigel. var. *xeranthemoides* Engelm. ex Coult.
- Syn.: *Echinocactus xeranthemoides* Engelm. ex Coult.  
*Echinocereus engelmannii* (Parry ex Engelm.) Lemaire var. *acicularis* L. Benson  
*Echinocereus engelmannii* (Parry ex Engelm.) Lemaire var. *armatus* L. Benson  
*Echinocereus engelmannii* (Parry ex Engelm.) Lemaire var. *chrysocentrus* L. Benson  
*Echinocereus engelmannii* (Parry ex Engelm.) Lemaire var. *engelmannii*  
*Echinocereus engelmannii* (Parry) Lemaire var. *variegatus* (Engelm.) Engelm. ex Rümpler  
*Echinocereus fasciculatus* (Engelm. ex B. D. Jackson) L. Benson var. *fasciculatus*  
 Syn.: *Echinocereus fendleri* (Engelm.) Rümpler var. *fasciculatus* (Engelm. ex B. D. Jackson) N. P. Taylor, *Echinocereus fendleri* (Engelm.) Rümpler var. *robusta* L. Benson; *Mammillaria fasciculata* Engelm.  
*Echinocereus fasciculatus* (Engelm. ex B. D. Jackson) L. Benson var. *bonkeriae* (Thornber & Bonker) L. Benson.  
 Syn.: *Echinocereus boyce-thompsonii* Orcutt var. *bonkeriae* Peebles; *Echinocereus fendleri* (Engelm.) Rümpler var. *bonkeriae* (Thornber & Bonker) L. Benson  
*Echinocereus fasciculatus* (Engelm. ex B. D. Jackson) L. Benson var. *boyce-thompsonii* (Orcutt) L. Benson  
 Syn.: *Echinocereus boyce-thompsonii* Orcutt  
*Echinocereus fendleri* (Engelm.) Rümpler var. *boyce-thompsonii* (Orcutt) L. Benson  
*Echinocereus fendleri* (Engelm.) Rümpler var. *fendleri*  
*Echinocereus fendleri* (Engelm.) Rümpler var. *rectispinus* (Peebles) L. Benson  
*Echinocereus ledingii* Peebles  
*Echinocereus nicholii* (L. Benson) Parfitt.  
 Syn.: *Echinocereus engelmannii* (Parry ex Engelm.) Lemaire var. *nicholii* L. Benson  
*Echinocereus pectinatus* (Scheidw.) Engelm. var. *dasyacanthus* (Engelm.) N. P. Taylor  
 Syn.: *Echinocereus pectinatus* (Scheidw.) Engelm. var. *neomexicanus* (Coul.) L. Benson  
*Echinocereus polyacanthus* Engelm. (1848) var. *polyacanthus*  
*Echinocereus pseudopectinatus* (N. P. Taylor) N. P. Taylor  
 Syn.: *Echinocereus bristolii* W. T. Marshall var. *pseudopectinatus* N. P. Taylor, *Echinocereus pectinatus* (Scheidw.) Engelm. var. *pectinatus sensu* Kearney and Peebles, Arizona Flora, and L. Benson, The Cacti of Arizona and The Cacti of the United States and Canada.  
*Echinocereus rigidissimus* (Engelm.) Hort. F. A. Haage.  
 Syn.: *Echinocereus pectinatus* (Scheidw.) Engelm. var. *rigidissimus* (Engelm.) Engelm. ex Rümpler–Rainbow cactus  
*Echinocereus triglochidiatus* Engelm. var. *gonacanthus* (Engelm. & Bigel.) Boiss.

- Echinocereus triglochidiatus* Engelm. var. *melanacanthus* (Engelm.) L. Benson  
Syn.: *Mammillaria aggregata* Engelm.
- Echinocereus triglochidiatus* Engelm. var. *mojavensis* (Engelm.) L. Benson
- Echinocereus triglochidiatus* Engelm. var. *neomexicanus* (Standl.) Standl. ex W. T. Marshall.  
Syn.: *Echinocereus triglochidiatus* Engelm. var. *polyacanthus* (Engelm. 1859 non 1848) L. Benson
- Echinocereus triglochidiatus* Engelm. var. *triglochidiatus*
- Echinomastus erectocentrus* (Coult.) Britt. & Rose var. *erectocentrus*  
Syn.: *Neolloydia erectocentra* (Coult.) L. Benson var. *erectocentra*
- Echinomastus intertextus* (Engelm.) Britt. & Rose  
Syn.: *Neolloydia intertexta* (Engelm.) L. Benson
- Echinomastus johnsonii* (Parry) Baxter–Beehive cactus  
Syn.: *Neolloydia johnsonii* (Parry) L. Benson
- Epithelantha micromeris* (Engelm.) Weber ex Britt. & Rose
- Ferocactus cylindraceus* (Engelm.) Orcutt var. *cylindraceus*–Barrel cactus  
Syn.: *Ferocactus acanthodes* (Lemaire) Britt. & Rose var. *acanthodes*
- Ferocactus cylindraceus* (Engelm.) Orcutt var. *eastwoodiae* (Engelm.) N. P. Taylor  
Syn.: *Ferocactus acanthodes* (Lemaire) Britt. & Rose var. *eastwoodiae* L. Benson; *Ferocactus eastwoodiae* (L. Benson) L. Benson
- Ferocactus cylindraceus* (Engelm.) Orcutt. var. *lecontei* (Engelm.) H. Bravo  
Syn.: *Ferocactus acanthodes* (Lemaire) Britt. & Rose var. *lecontii* (Engelm.) Lindsay; *Ferocactus lecontei* (Engelm.) Britt. & Rose
- Ferocactus emoryi* (Engelm.) Orcutt–Barrel cactus  
Syn.: *Ferocactus covillei* Britt. & Rose
- Ferocactus wislizenii* (Engelm.) Britt. & Rose–Barrel cactus
- Lophocereus schottii* (Engelm.) Britt. & Rose–Senita
- Mammillaria grahamii* Engelm. var. *grahamii*
- Mammillaria grahamii* Engelm. var. *oliviae* (Orcutt) L. Benson  
Syn.: *Mammillaria oliviae* Orcutt
- Mammillaria heyderi* Mühlenpf. var. *heyderi*  
Syn.: *Mammillaria gummifera* Engelm. var. *applanata* (Engelm.) L. Benson
- Mammillaria heyderi* Mühlenpf. var. *macdougalii* (Rose) L. Benson  
Syn.: *Mammillaria gummifera* Engelm. var. *macdougalii* (Rose) L. Benson; *Mammillaria macdougalii* Rose
- Mammillaria heyderi* Mühlenpf. var. *meiacantha* (Engelm.) L. Benson  
Syn.: *Mammillaria gummifera* Engelm. var. *meiacantha* (Engelm.) L. Benson
- Mammillaria lasiacantha* Engelm.
- Mammillaria mainiae* K. Brand.
- Mammillaria microcarpa* Engelm.
- Mammillaria tetrancistra* Engelm.
- Mammillaria thornberi* Orcutt
- Mammillaria viridiflora* (Britt. & Rose) Bödeker.  
Syn.: *Mammillaria oestra* L. Benson
- Mammillaria wrightii* Engelm. var. *wilcoxii* (Toumey ex K. Schumann) W. T. Marshall  
Syn.: *Mammillaria wilcoxii* Toumey
- Mammillaria wrightii* Engelm. var. *wrightii*
- Opuntia acanthocarpa* Engelm. & Bigel. var. *acanthocarpa*–Buckhorn cholla
- Opuntia acanthocarpa* Engelm. & Bigel. var. *coloradensis* L. Benson
- Opuntia acanthocarpa* Engelm. & Bigel. var. *major* L. Benson  
Syn.: *Opuntia acanthocarpa* Engelm. & Bigel. var. *ramosa* Peebles
- Opuntia acanthocarpa* Engelm. & Bigel. var. *thornberi* (Thornber & Bonker) L. Benson  
Syn.: *Opuntia thornberi* Thornber & Bonker
- Opuntia arbuscula* Engelm.–Pencil cholla
- Opuntia basilaris* Engelm. & Bigel. var. *aurea* (Baxter) W. T. Marshall–Yellow beavertail  
Syn.: *Opuntia aurea* Baxter
- Opuntia basilaris* Engelm. & Bigel. var. *basilaris*–Beavertail cactus
- Opuntia basilaris* Engelm. & Bigel. var. *longiareolata* (Clover & Jotter) L. Benson
- Opuntia basilaris* Engelm. & Bigel. var. *treleasei* (Coult.) Toumey
- Opuntia bigelovii* Engelm.–Teddy-bear cholla
- Opuntia campii* ined.
- Opuntia canada* Griffiths (*O. phaeacantha* Engelm. var. *laevis* X *major* and *O. gilvescens* Griffiths).
- Opuntia chlorotica* Engelm. & Bigel.–Pancake prickly-pear
- Opuntia clavata* Engelm.–Club cholla
- Opuntia curvospina* Griffiths
- Opuntia echinocarpa* Engelm. & Bigel–Silver cholla
- Opuntia emoryi* Engelm.–Devil cholla  
Syn.: *Opuntia stanlyi* Engelm. ex B. D. Jackson var. *stanlyi*
- Opuntia engelmannii* Salm-Dyck ex Engelm. var. *engelmannii*–Engelmann’s prickly-pear  
Syn.: *Opuntia phaeacantha* Engelm. var. *discata* (Griffiths) Benson & Walkington
- Opuntia engelmannii* Salm-Dyck ex Engelm. var. *flavospina* (L. Benson) Parfitt & Pinkava  
Syn.: *Opuntia phaeacantha* Engelm. var. *flavispina* L. Benson
- Opuntia erinacea* Engelm. & Bigel. var. *erinacea*–Mohave prickly-pear
- Opuntia erinacea* Engelm. & Bigel. var. *hystricina* (Engelm. & Bigel.) L. Benson  
Syn.: *Opuntia hystricina* Engelm. & Bigel.

- Opuntia erinacea* Engelm. & Bigel. var. *ursina* (Weber) Parish–Grizzly bear prickly-pear  
Syn.: *Opuntia ursina* Weber
- Opuntia erinacea* Engelm. & Bigel. var. *utahensis* (Engelm.) L. Benson  
Syn.: *Opuntia rhodantha* Schum.
- Opuntia fragilis* Nutt. var. *brachyarthra* (Engelm. & Bigel.) Coult.
- Opuntia fragilis* Nutt. var. *fragilis*–Little prickly-pear
- Opuntia fulgida* Engelm. var. *fulgida*–Jumping chain-fruit cholla
- Opuntia fulgida* Engelm. var. *mammillata* (Schott) Coult.
- Opuntia imbricata* (Haw.) DC.–Tree cholla
- Opuntia X kelvinensis* V. & K. Grant pro sp.  
Syn.: *Opuntia kelvinensis* V. & K. Grant
- Opuntia kleiniae* DC. var. *tetracantha* (Toumey) W. T. Marshall  
Syn.: *Opuntia tetrancistra* Toumey
- Opuntia kunzei* Rose.  
Syn.: *Opuntia stanlyi* Engelm. ex B. D. Jackson var. *kunzei* (Rose) L. Benson; *Opuntia kunzei* Rose var. *wrightiana* (E. M. Baxter) Peebles; *Opuntia wrightiana* E. M. Baxter
- Opuntia leptocaulis* DC.–Desert Christmas cactus, Pencil cholla
- Opuntia littoralis* (Engelm.) Cockl. var. *vaseyi* (Coult.) Benson & Walkington
- Opuntia macrocentra* Engelm.–Purple prickly-pear  
Syn.: *Opuntia violacea* Engelm. ex B. D. Jackson var. *macrocentra* (Engelm.) L. Benson; *Opuntia violacea* Engelm. ex B. D. Jackson var. *violacea*
- Opuntia macrorrhiza* Engelm. var. *macrorrhiza*–Plains prickly-pear  
Syn.: *Opuntia plumbea* Rose
- Opuntia macrorrhiza* Engelm. var. *pottsii* (Salm-Dyck) L. Benson
- Opuntia martiniana* (L. Benson) Parfitt  
Syn.: *Opuntia littoralis* (Engelm.) Cockerell var. *martiniana* (L. Benson) L. Benson; *Opuntia macrocentra* Engelm. var. *martiniana* L. Benson
- Opuntia nicholii* L. Benson–Navajo Bridge prickly-pear
- Opuntia parishii* Orcutt.  
Syn.: *Opuntia stanlyi* Engelm. ex B. D. Jackson var. *parishii* (Orcutt) L. Benson
- Opuntia phaeacantha* Engelm. var. *laevis* (Coult.) L. Benson  
Syn.: *Opuntia laevis* Coult.
- Opuntia phaeacantha* Engelm. var. *major* Engelm.
- Opuntia phaeacantha* Engelm. var. *phaeacantha*
- Opuntia phaeacantha* Engelm. var. *superbospina* (Griffiths) L. Benson
- Opuntia polyacantha* Haw. var. *juniperina* (Engelm.) L. Benson
- Opuntia polyacantha* Haw. var. *rufispina* (Engelm.) L. Benson
- Opuntia polyacantha* Haw. var. *trichophora* (Engelm. & Bigel.) L. Benson
- Opuntia pulchella* Engelm.–Sand cholla
- Opuntia ramosissima* Engelm.–Diamond cholla
- Opuntia santa-rita* (Griffiths & Hare) Rose–Santa Rita prickly-pear  
Syn.: *Opuntia violacea* Engelm. ex B. D. Jackson var. *santa-rita* (Griffiths & Hare) L. Benson
- Opuntia spinosior* (Engelm.) Toumey–Cane cholla
- Opuntia versicolor* Engelm.–Staghorn cholla
- Opuntia vivipara* Engelm
- Opuntia whipplei* Engelm. & Bigel. var. *multigeniculata* (Clokey) L. Benson
- Opuntia whipplei* Engelm. & Bigel. var. *whipplei*–Whipple cholla
- Opuntia wigginsii* L. Benson
- Pediocactus papyracanthus* (Engelm.) L. Benson  
Grama grass cactus  
Syn.: *Toumeyia papyracanthus* (Engelm.) Britt. & Rose
- Pediocactus simpsonii* (Engelm.) Britt & Rose var. *simpsonii*
- Peniocereus greggii* (Engelm.) Britt. & Rose var. *greggii*–Night-blooming cereus  
Syn.: *Cereus greggii* Engelm.
- Peniocereus greggii* (Engelm.) Britt & Rose var. *transmontanus*–Queen-of-the-Night
- Peniocereus striatus* (Brandege) Buxbaum.  
Syn.: *Neoevansia striata* (Brandege) Sanchez-Mejorada; *Cereus striatus* Brandege; *Wilcoxia diguetii* (Webber) Peebles
- Sclerocactus parviflorus* Clover & Jotter var. *intermedius* (Peebles) Woodruff & L. Benson  
Syn.: *Sclerocactus intermedius* Peebles
- Sclerocactus parviflorus* Clover & Jotter var. *parviflorus*  
Syn.: *Sclerocactus whipplei* (Engelm. & Bigel.) Britt. & Rose var. *roseus* (Clover) L. Benson
- Sclerocactus pubispinus* (Engelm.) L. Peebles
- Sclerocactus spinosior* (Engelm.) Woodruff & L. Benson  
Syn.: *Sclerocactus pubispinus* (Engelm.) L. Benson var. *sileri* L. Benson
- Sclerocactus whipplei* (Engelm. & Bigel.) Britt. & Rose
- Stenocereus thurberi* (Engelm.) F. Buxbaum–Organ pipe cactus  
Syn.: *Cereus thurberi* Engelm.; *Lemairocereus thurberi* (Engelm.) Britt. & Rose
- CAMPANULACEAE Bellflower Family
- Lobelia cardinalis* L. ssp. *graminea* (Lam.) McVaugh–Cardinal flower
- Lobelia fenestralis* Cav.–Leafy lobelia
- Lobelia laxiflora* H. B. K. var. *angustifolia* A. DC.
- CAPPARACEAE Cappar Family [=Capparidaceae]
- Cleome multicaulis* DC.–Playa spiderflower
- CHENOPODIACEAE Goosefoot Family
- Atriplex hymenelytra* (Torr.) Wats.

## CRASSULACEAE Stonecrop Family

- Dudleya arizonica* (Nutt.) Britt. & Rose  
Syn.: *Echeveria pulverulenta* Nutt. ssp. *arizonica* (Rose) Clokey
- Dudleya saxosa* (M.E. Jones) Britt. & Rose ssp. *colomiae* (Rose) Moran  
Syn.: *Echeveria collomiae* (Rose) Kearney & Peebles
- Graptopetalum bartramii* Rose  
Syn.: *Echeveria bartramii* (Rose) K. & P.
- Graptopetalum bartramii* Rose–Bartram’s stonecrop, Bartram’s live-forever  
Syn.: *Echeveria bartramii* (Rose) Kearney & Peebles
- Graptopetalum rusbyi* (Greene) Rose  
Syn.: *Echeveria rusbyi* (Greene) Nels. & Macbr.
- Sedum cockerellii* Britt.
- Sedum griffithsii* Rose
- Sedum lanceolatum* Torr.  
Syn.: *Sedum stenopetalum* Pursh
- Sedum rhodanthum* Gray
- Sedum stelliforme* Wats.

## CROSSOSOMATACEAE Crossosoma Family

- Apacheria chiricahuensis* C. T. Mason–Chiricahua rock flower

## CUCURBITACEAE Gourd Family

- Tumamoca macdougalii* Rose–Tumamoc globeberry

## EUPHORBIACEAE Spurge Family

- Euphorbia plummerae* Wats.–Woodland spurge
- Sapium biloculare* (Wats.) Pax–Mexican jumping-bean

## FABACEAE Pea Family [=Leguminosae]

- Astragalus corbrensis* Gray var. *maguirei* Kearney
- Astragalus cremnophylax* Barneby var. *myriorrhaphis* Barneby–Cliff milk-vetch
- Astragalus hypoxylus* Wats.–Huachuca milk-vetch
- Astragalus nutriosensis* Sanderson–Nutrioso milk-vetch
- Astragalus xiphoides* (Barneby) Barneby–Gladiator milk-vetch
- Cercis occidentalis* Torr.–California redbud
- Errazurizia rotundata* (Woot.) Barneby  
Syn.: *Parryella rotundata* Woot.
- Lysiloma microphylla* Benth. var. *thornberi* (Britt. & Rose) Isely–Feather bush  
Syn.: *Lysiloma thornberi* Britt. & Rose
- Phaseolus supinus* Wiggins & Rollins

## FOUQUIERIACEAE Ocotillo Family

- Fouquieria splendens* Engelm.–Ocotillo, coach-whip, monkey-tail

## GENTIANACEAE Gentian Family

- Gentianella wislizenii* (Engelm.) J. Gillett  
Syn.: *Gentiana wislizenii* Engelm.

## LAMIACEAE Mint Family

- Hedeoma diffusum* Green–Flagstaff pennyroyal
- Salvia dorrii* ssp. *mearnsii*

*Trichostema micranthum* Gray

## LILIACEAE Lily Family

- Allium acuminatum* Hook.
- Allium bigelovii* Wats.
- Allium biseptum* Wats. var. *palmeri* (Wats.) Cronq.  
Syn.: *Allium palmeri* Wats.
- Allium cernuum* Roth. var. *neomexicanum* (Rydb.) Macbr.–Nodding onion
- Allium cernuum* Roth. var. *obtusum* Ckll.
- Allium geyeri* Wats. var. *geyeri*
- Allium geyeri* Wats. var. *tenerum* Jones
- Allium kunthii* Don
- Allium macropetalum* Rydb.
- Allium nevadense* Wats. var. *cristatum* (Wats.) Ownbey
- Allium nevadense* Wats. var. *nevadense*
- Allium parishii* Wats.
- Allium plummerae* Wats.
- Allium rhizomatum* Woot. & Standl. Incl.: *Allium glandulosum* Link & Otto *sensu* Kearney & Peebles
- Androstephium breviflorum* Wats.–Funnel-lily
- Calochortus ambiguus* (Jones) Ownbey
- Calochortus aureus* Wats.  
Syn.: *Calochortus nuttallii* Torr. & Gray var. *aureus* (Wats.) Ownbey
- Calochortus flexuosus* Wats.–Stragglng mariposa
- Calochortus gunnisonii* Wats.
- Calochortus kennedyi* Porter var. *kennedyi*–Desert mariposa
- Calochortus kennedyi* Porter var. *munzii* Jeps.
- Dichelostemma pulchellum* (Salisbi) Heller var. *pauciflorum* (Torr.) Hoover
- Disporum trachycarpum* (Wats.) Benth. & Hook. var. *subglabrum* Kelso
- Disporum trachycarpum* (Wats.) Benth. & Hook. var. *trachycarpum*
- Echeandia flavescens* (Schultes & Schultes) Cruden  
Syn.: *Anthericum torreyi* Baker
- Eremocrinum albomarginatum* Jones
- Fritillaria atropurpurea* Nutt.
- Hesperocallis undulata* Gray–Ajo lily
- Lilium parryi* Wats.–Lemon lily
- Lilium umbellatum* Pursh
- Maianthemum racemosum* (L.) Link. ssp. *amplexicaule* (Nutt.) LaFrankie  
Syn.: *Smilacina racemosa* (L.) Desf. var. *amplexicaulis* (Nutt.) Wats.
- Maianthemum racemosum* (L.) Link ssp. *racemosum*–False Solomon’s seal  
Syn.: *Smilacina racemosa* (L.) Desf. var. *racemosa*; *Smilacina racemosa* (L.) Desf. var. *cylindrata* Fern.
- Maianthemum stellatum* (L.) Link  
Syn.: *Smilacina stellata* (L.) Desf.–Starflower
- Milla biflora* Cav.–Mexican star
- Nothoscordum texanum* Jones

- Polygonatum cobrense* (Woot. & Standl.) Gates  
*Streptopus amplexifolius* (L.) DC.–Twisted stalk  
*Triteleia lemmonae* (Wats.) Greene  
*Triteleopsis palmeri* (Wats.) Hoover  
*Veratrum californicum* Durand.–False hellebore  
*Zephyranthes longifolia* Hemsl.–Plains rain lily  
*Zigadenus elegans* Pursh–White camas, alkali-grass  
*Zigadenus paniculatus* (Nutt.) Wats.–Sand-corn  
*Zigadenus virescens* (H. B. K.) Macbr.
- MALVACEAE Mallow Family  
*Abutilon parishii* Wats.–Tucson Indian mallow  
*Abutilon thurberi* Gray–Baboquivari Indian mallow
- NOLINACEAE Nolina  
*Dasylirion wheeleri* Wats.–Sotol, desert spoon  
*Nolina bigelovii* (Torr.) Wats.–Bigelow’s nolina  
*Nolina microcarpa* Wats.–Beargrass, sacahuista  
*Nolina parryi* Wats.–Parry’s nolina  
*Nolina texana* Wats. var. *compacta* (Trel.) Johnst.–Bunchgrass
- ONAGRACEAE Evening Primrose Family  
*Camissonia exilis* (Raven) Raven
- ORCHIDACEAE Orchid Family  
*Calypso bulbosa* (L.) Oakes var. *americana* (R. Br.) Luer  
*Coeloglossum viride* (L.) Hartmann var. *virescens* (Muhl.) Luer  
Syn.: *Habenaria viridis* (L.) R. Br. var. *bracteata* (Muhl.) Gray  
*Corallorhiza maculata* Raf.–Spotted coral root  
*Corallorhiza striata* Lindl.–Striped coral root  
*Corallorhiza wisteriana* Conrad–Spring coral root  
*Epipactis gigantea* Douglas ex Hook.–Giant helleborine  
*Goodyera oblongifolia* Raf.  
*Goodyera repens* (L.) R. Br.  
*Hexalectris spicata* (Walt.) Barnhart–Crested coral root  
*Listera convallarioides* (Swartz) Nutt.–Broad-leaved twayblade  
*Malaxis corymbosa* (S. Wats.) Kuntze  
*Malaxis ehrenbergii* (Reichb. f.) Kuntze  
*Malaxis macrostachya* (Lexarza) Kuntze–Mountain malaxia  
Syn.: *Malaxis soulei* L. O. Williams  
*Malaxis tenuis* (S. Wats.) Ames  
*Platanthera hyperborea* (L.) Lindley var. *gracilis* (Lindley) Luer  
Syn.: *Habenaria sparsiflora* Wats. var. *laxiflora* (Rydb.) Correll  
*Platanthera hyperborea* (L.) Lindley var. *hyperborea*–Northern green orchid  
Syn.: *Habenaria hyperborea* (L.) R. Br.  
*Platanthera limosa* Lindl.–Thurber’s bog orchid  
Syn.: *Habenaria limosa* (Lindley) Hemsley  
*Platanthera sparsiflora* (Wats.) Schlechter var. *ensifolia* (Rydb.) Luer  
*Platanthera sparsiflora* (Wats.) var. *laxiflora* (Rydb.) Correll  
*Platanthera sparsiflora* (Wats.) Schlechter var. *sparsiflora*–Sparsely-flowered bog orchid  
Syn.: *Habenaria sparsiflora* Wats.  
*Platanthera stricta* Lindl.–Slender bog orchid  
Syn.: *Habenaria saccata* Greene; *Platanthera saccata* (Greene) Hulten  
*Platanthera viridis* (L.) R. Br. var. *bracteata* (Muhl.) Gray–Long-bracted habenaria  
*Spiranthes michauxiana* (La Llave & Lex.) Hemsl.  
*Spiranthes parasitica* A. Rich. & Gal.  
*Spiranthes romanzoffiana* Cham.–Hooded ladies tresses
- PAPAVERACEAE Poppy Family  
*Arctomecon californica* Torr. & Frém.–Golden-bear poppy, Yellow-flowered desert poppy
- PINACEAE Pine Family  
*Pinus aristata* Engelm.–Bristlecone pine
- POLYGONACEAE Buckwheat Family  
*Eriogonum apachense* Reveal  
*Eriogonum capillare* Small  
*Eriogonum mortonianum* Reveal–Morton’s buckwheat  
*Eriogonum ripleyi* J. T. Howell–Ripley’s wild buckwheat, Frazier’s Well buckwheat  
*Eriogonum thompsonae* Wats. var. *atwoodii* Reveal–Atwood’s buckwheat
- PORTULACACEAE Purslane Family  
*Talinum humile* Greene–Pinos Altos flame flower  
*Talinum marginatum* Greene  
*Talinum validulum* Greene–Tusayan flame flower
- PRIMULACEAE Primrose Family  
*Dodecatheon alpinum* (Gray) Greene ssp. *majus* H. J. Thompson  
*Dodecatheon dentatum* Hook. ssp. *ellisiae* (Standl.) H. J. Thompson  
*Dodecatheon pulchellum* (Raf.) Merrill  
*Primula hunnewellii* Fern.  
*Primula rusbyi* Greene  
*Primula specuicola* Rydb.
- RANUNCULACEAE Buttercup Family  
*Aquilegia caerulea* James ssp. *pinetorum* (Tidest.) Payson–Rocky Mountain Columbine  
*Aquilegia chrysantha* Gray  
*Aquilegia desertorum* (Jones) Ckll.–Desert columbine, Mogollon columbine  
*Aquilegia elegantula* Greene  
*Aquilegia longissima* Gray–Long Spur Columbine  
*Aquilegia micrantha* Eastw.  
*Aquilegia triternata* Payson
- ROSACEAE Rose Family

*Rosa stellata* Woot.–ssp. *abyssa* A. Phillips Grand Canyon rose  
*Vauquelinia californica* (Torr.) Sarg. ssp. *pauciflora* (Standl.) Hess & Henrickson–Few-flowered Arizona rosewood

## SCROPHULARIACEAE Figwort Family

*Castilleja mogollonica* Pennell  
*Penstemon albomarginatus* Jones  
*Penstemon bicolor* (Brandeg.) Clokey & Keck ssp. *roseus* Clokey & Keck  
*Penstemon clutei* A. Nels.  
*Penstemon distans* N. Holmgren–Mt. Trumbull beardtongue  
*Penstemon linarioides* spp. *maguirei*

## SIMAROUBACEAE Simarouba Family

*Castela emoryi* (Gray) Moran & Felger–Crucifixion thorn  
 Syn.: *Holacantha emoryi* Gray

## STERCULIACEAE Cacao Family

*Fremontodendron californicum* (Torr.) Coville–Flannel bush

- C. Salvage assessed native plants as prescribed in A.R.S. § 3-903(B)(3) that require a permit for removal:

## BIGNONIACEAE Bignonia Family

*Chilopsis linearis* (Cav.) Sweet var. *arcuata* Fosberg–Desert-willow  
*Chilopsis linearis* (Cav.) Sweet var. *glutinosa* (Engelm.) Fosberg

## FABACEAE Pea Family [=Leguminosae]

*Cercidium floridum* Benth.–Blue palo verde  
*Cercidium microphyllum* (Torr.) Rose & Johnst.–Foothill palo verde  
*Olneya tesota* Gray–Desert ironwood  
*Prosopis glandulosa* Torr. var. *glandulosa*–Honey mesquite  
 Syn.: *Prosopis juliflora* (Swartz) DC. var. *glandulosa* (Torr.) Ckll.  
*Prosopis glandulosa* Torr. var. *torreyana* (Benson) M. C. Johnst.–Western honey mesquite

Syn.: *Prosopis juliflora* (Swartz) DC. var. *torreyana* Benson

*Prosopis pubescens* Benth.–Screwbean mesquite

*Prosopis velutina* Woot.–Velvet mesquite

Syn.: *Prosopis juliflora* (Swartz) DC. var. *velutina* (Woot.) Sarg.

*Psoralea spinosa* (Gray) Barneby–Smoke tree.

Syn.: *Dalea spinosa* Gray

- D. Harvest restricted native plants as prescribed at A.R.S. § 3-903(B)(4) that require a permit to cut or remove the plants for their by-products, fibers, or wood:

## AGAVACEAE Agave Family (including Nolinaceae)

*Nolina bigelovii* (Torr.) Wats.–Bigelow's nolina

*Nolina microcarpa* Wats.–Beargrass, sacahuista

*Nolina parryi* Wats.–Parry's nolina

*Nolina texana* Wats. var. *compacta* (Trel.) Johnst.–Bunchgrass

*Yucca baccata* Torr. var. *baccata*–Banana yucca

*Yucca schidigera* Roezl.–Mohave yucca, Spanish dagger

## FABACEAE Pea Family [=Leguminosae]

*Olneya tesota* Gray–Desert ironwood

*Prosopis glandulosa* Torr. var. *glandulosa*–Honey mesquite

Syn.: *Prosopis juliflora* (Swartz) DC. var. *glandulosa* (Torr.) Ckll.

*Prosopis glandulosa* Torr. var. *torreyana* (Benson) M. C. Johnst.–Western honey mesquite

Syn.: *Prosopis juliflora* (Swartz) DC. var. *torreyana* Benson

*Prosopis pubescens* Benth.–Screwbean mesquite

*Prosopis velutina* Woot.–Velvet mesquite

Syn.: *Prosopis juliflora* (Swartz) DC. var. *velutina* (Woot.) Sarg.

**Historical Note**

New Section recodified from 3 A.A.C. 4, Article 6 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

### **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.

**Chapter 2, Regulatory Provisions.**  
**ARTICLE 6 – Pesticide Control**

**3-361. Definitions**

In this article, unless the context otherwise requires:

1. "Associate director" means the associate director of the division.
2. "De minimis violation" means a violation which, although undesirable, has no direct or immediate relationship to safety, health or property damage. Repeated de minimis violations constitute a nonserious violation.
3. "Division" means the environmental services division of the Arizona department of agriculture.
4. "Nonserious violation" means a violation that may have had a direct or immediate relationship to safety, health or property damage, but which does not constitute a de minimis violation or a serious violation, unless the violator did not, and could not with the exercise of reasonable diligence, know of such safety, health or property damage risk in which case the violation is de minimis.
5. "Paraquat" means the pesticide dimethyl-dipyridinium dichloride.
6. "Pesticide" means any substance or mixture of substances intended to be used for defoliating plants or for preventing, destroying, repelling or mitigating insects, fungi, bacteria, weeds, rodents, predatory animals or any form of plant or animal life which is, or which the director may declare to be, a pest which may infest or be detrimental to vegetation, humans, animals or households or which may be present in any environment.
7. "Pesticide use" means the sale, processing, storing, transporting, handling or applying of a pesticide and disposal of pesticide containers.
8. "Restricted use pesticide" means a pesticide classified as such by the United States environmental protection agency.
9. "Serious violation" means a violation of this article or a rule adopted under this article which produces a substantial probability that death or serious physical harm could result, unless the violator did not, and could not with the exercise of reasonable diligence, know of such safety or human health risk, in which case the violation is nonserious.

**3-362. Powers and duties**

A. The director is responsible for administering this article and shall:

1. Conduct investigations, on complaint and on his own initiative, regarding violations of this article and compile information necessary to administer this article.
2. Take timely action necessary to enforce this article against violators including seeking injunctive relief and other penalties and sanctions authorized by this article.
3. Publish a list of pesticides, by common and proprietary names, which the director determines to be highly toxic, odoriferous, such as profenofos, sulprofos, def and merphos and other pesticides with similar odoriferous characteristics, or otherwise appropriate for inclusion and shall include in that list paraquat and gramoxone.
4. Submit to the United States environmental protection agency a state plan for issuing, monitoring, and controlling experimental use permits pursuant to section 5 of the federal insecticide, fungicide, and rodenticide act (7 United States Code section 136c(f)).
5. Develop systems and procedures to encourage and ensure public contact with the department, which may include:
  - (a) A telephone hotline for pesticide complaints, which is operated and publicized by the department.
  - (b) Outreach and education programs to inform the general public and solicit input regarding pesticide use and public health, safety and the environment.

B. The director may enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3 if the agreement is necessary to more effectively administer the powers and duties described in this article.

### **3-363. Rules**

The director shall adopt rules to regulate pesticides that include provisions to:

1. Administer and implement this article.
2. Prescribe measures to control, monitor, inspect and govern pesticide use.
3. Prohibit or restrict pesticide use.
4. Restrict the areas in which pesticide use may occur.
5. Prescribe minimum qualifications for all persons who engage in pesticide use, including, as appropriate, requirements that the persons have valid licenses, permits or certificates, have adequate training, including continuing education requirements, and meet financial responsibility standards.
6. Prescribe appropriate recordkeeping and reporting requirements regarding pesticide use, except that the recordkeeping and reporting requirements for growers and certified private applicators who apply pesticides shall be equivalent to, but not more stringent than, the requirements prescribed under the federal insecticide, fungicide and rodenticide act (61 Stat. 163) and the food, agriculture, conservation and trade act of 1990 (P.L. 101-624; 104 Stat. 3359).
7. Prohibit pesticide use that is inconsistent with the pesticide label as required under the federal insecticide, fungicide and rodenticide act (61 Stat. 163).
8. Exempt from regulation under this article pesticide use that is regulated in chapter 20 of this title.
9. Issue licenses, permits and certificates for pesticide use, as appropriate, having terms of one or more years.
10. Charge and collect the following fees for each permit, license and certification under this article:
  - (a) Not more than twenty dollars per year for a grower permit.
  - (b) Not more than one hundred dollars per year for a seller permit.
  - (c) Not more than one hundred dollars per year for a custom applicator license.
  - (d) Not more than fifty dollars per year for a pilot license.
  - (e) Not more than fifty dollars per year for a pest control advisor license.
  - (f) Not more than twenty-five dollars per year for a piece of equipment used to apply pesticides by a custom applicator.
  - (g) Not more than fifty dollars per year for restricted use certification.
  - (h) Not more than the amount set by the director by rule for a license or certificate for pesticide use on golf courses.
11. Establish a nonexclusive list of acts and omissions that constitute serious, nonserious and de minimis violations of this article.
12. Establish a system of administrative penalties and fines for violations of this article and any rules adopted under this article. Under this system:
  - (a) Violators shall be assessed a number of points for each violation, depending on such factors as:
    - (i) Potential and actual consequences of the violation on public and worker health and safety and the environment.
    - (ii) The wrongfulness of the conduct.
    - (iii) The degree of culpability of the violator.
    - (iv) The duration of the violation.
    - (v) Prior violations or citations.
  - (b) Penalties shall be assessed depending on the number of points accrued by the violator.

#### **3-363.01. Reporting requirements; interagency agreement**

A. The director of the Arizona department of agriculture may enter into an interagency agreement with the department of environmental quality to allow the director to collect the pesticide reports required pursuant to section 49-305, subsection B.

B. Rules adopted by the director pursuant to section 3-363, paragraph 6 shall not prevent the director from collecting the pesticide reports required pursuant to section 49-305, subsection B as a part of any interagency agreement entered into with the department of environmental quality.

### **3-364. Inspection powers; notice**

A. The director may enter at reasonable times into or on or through any public or private property for the purpose of ascertaining compliance or noncompliance with any rules or orders adopted or issued under this article. If practicable, and if notice will not inhibit the director's ability to enforce this article, the director or the director's agent shall notify the owner, operator or lessee of the property when entering on the property.

B. Within five days after the inspection the director shall inform any alleged violator in writing if the director anticipates an enforcement action. The notice of a potential enforcement action shall indicate the nature of the alleged violation and the last possible date for issuing a citation under section 3-368, subsection F. If in the course of an investigation the department identifies any additional alleged violator, the director shall inform the additional alleged violator within five days of initiating the new investigation. The notice of a potential enforcement action against the additional alleged violator shall indicate the nature of the alleged violation and the last possible date for issuing a citation or notice of de minimis violation under section 3-368, subsection F. If the director does not issue a notice of a potential enforcement action, the director shall inform the alleged violator within fifteen days after the inspection that the director does not anticipate any enforcement action.

### **3-365. Buffer zones**

A. The odoriferous pesticides profenofos, sulprofos, def and merphos and other pesticides with similar odoriferous characteristics shall not be applied within one-fourth mile of a school, child care facility, a health care institution that meets the requirements of section 36-421, subsection D, a child care group home as defined by section 36-897 or at least twenty-five residences adjoining the field to be sprayed, except by soil injection.

B. Highly toxic pesticides or paraquat shall not be applied within four hundred feet of a health care institution that meets the requirements of section 36-421, subsection D, except by soil injection.

C. Highly toxic pesticides or paraquat shall not be applied in liquid form, except by soil injection, within one hundred feet by aircraft or within fifty feet by ground equipment of at least twenty-five residences adjoining the field to be sprayed. Highly toxic pesticides shall not be applied in dust form by aircraft within three hundred feet of at least twenty-five residences adjoining the field to be sprayed.

D. Highly toxic pesticides and paraquat may be applied within one-fourth mile of schools, child care group homes, and child care facilities only if authorized activities at the school, child care group home or child care facility are not scheduled to occur before the reentry time period assigned to the pesticide by provisions of the product label elapses. A responsible individual at a school, a child care group home or a child care facility shall be notified of the application of pesticides, other than highly toxic pesticides or paraquat, by aircraft during daylight hours.

E. Nothing in this section permits the application of pesticide in such a way as to cause drift within the grounds of a residence, school, health care institution, child care group home, or child care facility, but compliance with this section and the requirements of the pesticide label establishes a presumption of compliance with this subsection.

F. For the purposes of this section, distances shall be measured from the property boundary of a school, residence, child care facility, child care group home, or health care institution closest to the field to be sprayed to the area of the field that is to be sprayed.

### **3-366. Pesticide management areas**

A. The director shall designate pesticide management areas. Pesticide management areas may be urban areas that are adjacent to farmlands and have a history of concerns known by the department regarding nearby aerial pesticide applications. The director may adopt rules for designating pesticide management areas.

B. If possible at least twenty-four hours before applying a pesticide listed by the director under section 3-362, subsection A, paragraph 3 by aircraft in a pesticide management area the applicator shall notify the department. In any event, every reasonable attempt shall be made to notify the department before every application of pesticide in a pesticide management area.

### **3-367. Private right of action**

A. Except as provided in subsection B of this section, any person having an interest that is or may be

adversely affected may commence a civil action in superior court on the person's own behalf:

1. Against any person, including this state and any political subdivision of this state, who is alleged to be in violation of this article or of an order, permit or rule adopted or issued pursuant to this article other than a de minimis violation. The court shall have jurisdiction to enforce the provision, order, permit or rule and to apply any appropriate civil penalty under section 3-370.

2. Against the director where there is alleged a failure of the director to perform any act or duty under this article that is not discretionary with the director. The court shall have jurisdiction to order the director to perform such act or duty.

B. No action may be commenced in either of the following cases:

1. Before sixty days after the plaintiff has given notice of the alleged violation to the department and to any alleged violator or if, within the sixty days, the director begins and diligently performs the act or duty sought to be compelled.

2. If the attorney general has commenced and is diligently prosecuting an action before the department under section 3-368 or a civil action in the superior court of this state to require compliance with the permit, order, rule or provision of this article.

C. In any action under this section:

1. The director, if not a party, may intervene as a matter of right.

2. The plaintiff has the burden of proof.

D. The court, in issuing any final order in any action brought pursuant to this section, may:

1. Award costs of litigation, including reasonable attorney and expert witness fees, to any party whenever the court determines such award is appropriate and, in addition, to the defendant in the case of a frivolous action.

2. Provide for injunctive or other equitable relief or assess civil penalties that could have been administratively assessed. Any monies collected as civil penalties shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

E. This section shall not be construed to abrogate the provisions of chapter 1, article 2 of this title.

### **3-367.01. Report of loss, damage or nonperformance; effect of failure to file**

A. A person suffering loss, damage or nonperformance on any agricultural, ornamental or silvicultural crop resulting from the use or application by others of a pesticide or a method or device for applying pesticides shall file with the department and with the person or persons who are alleged to have caused the loss, damage or nonperformance a written report as prescribed by subsection B within the following times:

1. For a growing crop, within thirty days after the damage is noticed or before fifty per cent of the affected portion of the crop is harvested.

2. For a crop if damage is not visible during growing, within fifteen working days after the damage was visible at harvest.

3. For a crop if damage was not visible during growing or at harvest and the crop is sold by the farmer, within fifteen working days after the farmer is notified of the damage by the buyer.

B. The report shall include, so far as is known to the claimant:

1. The name and address of the claimant.

2. The type, kind and location of property allegedly injured or damaged.

3. The date the alleged loss, damage or nonperformance occurred.

4. The name of the person allegedly responsible for the loss, damage or nonperformance.

5. The suspected pesticide or action that caused the loss, damage or nonperformance.

6. The name of the owner or occupant of the property on which the loss, damage or nonperformance occurred.

C. The failure to report damage as required under this section is prima facie evidence that no loss occurred.

### **3-367.02. Notification by beekeepers of bees located in a commercial agricultural area**

A. Before locating bees on an apiary site, the owner of the bees shall obtain the landowner's or lessee's permission and notify in writing persons engaged in commercial agriculture on whose land the bees may forage. The notice shall include the beekeeper's address and telephone number, the location of the hives within a quarter section and the exact dates that the bees will be in the area.

B. After receiving the notice required by subsection A, the person who engages in commercial agriculture shall inform the beekeeper, before application, when a bee sensitive pesticide will be applied to the area in which the bees are foraging.

C. A failure by the beekeeper or the owner of the bees to notify the person or persons who engage in commercial agriculture as provided by subsection A constitutes prima facie evidence that no loss occurred due to a pesticide application and no pesticide violation related to bees has occurred.

**3-368. Enforcement; consultation with attorney general; citations and notices of violation**

A. The director is responsible for enforcing this article and shall receive and shall promptly and efficiently process all complaints regarding pesticide use. The director shall furnish to the attorney general a copy of each complaint filed under this article and copies of all investigative reports, citations, hearing notices and other action or pending action documents. Before a final disposition of a pesticide complaint the director and the attorney general shall jointly review the case to ensure that proper action is taken and to determine whether additional action or prosecution is required.

B. The director shall notify all persons who submit complaints alleging violations of this article or rules adopted pursuant to this article of the progress, status and disposition of their complaints.

C. If the director investigates an alleged violation under this article and rules adopted pursuant to this article and determines that the violation did not result in any adverse health effects or property damage, the director may issue a letter of warning. A letter of warning issued pursuant to this subsection is not subject to section 3-363, paragraph 12.

D. If the director following an inspection or investigation determines that a de minimis violation occurred, the director shall issue a notice of de minimis violation and maintain a record of the violation for three years. A person receiving a notice of de minimis violation may request a hearing pursuant to title 41, chapter 6, article 10.

E. If the director following an inspection or investigation determines that a nonserious or serious violation occurred, the director shall issue a written citation. The citation shall be issued within twenty days for a nonserious violation or within ten days for a serious violation. Each citation shall contain the following:

1. A particular description of the nature of the violation, including a reference to the provision of this article.

2. A reasonable time to abate the violation or take appropriate action.

3. A notice of the right to a hearing pursuant to title 41, chapter 6, article 10.

F. No citation or notice of de minimis violation may be issued after the expiration of six months from the date of the inspection which produced evidence of the violation. If in the course of an investigation the department identifies any additional alleged violator, the department may investigate the additional alleged violator. No citation or notice of de minimis violation may be issued after the expiration of six months from the date any additional alleged violator is identified by the department.

**3-370. Civil penalty; criminal violation; classification**

A. A person who, after a hearing, is found to have caused a nonserious violation of any provision of this article or any rule or order issued or adopted pursuant to this article is subject to probation or suspension, revocation, nonrenewal or denial of a permit, license or certification. Additionally, a person may be subject to a civil penalty of not to exceed five hundred dollars for each nonserious violation.

B. A person who, after a hearing, is found to have caused a serious violation of any provision of this article or any rule or order issued or adopted pursuant to this article is subject to probation or suspension, revocation, nonrenewal or denial of a permit, license or certification. Additionally, the person may be subject to a civil penalty of not more than ten thousand dollars for each serious violation.

C. In addition to civil penalties prescribed by this section, a person who knowingly commits:

1. A nonserious violation of this article is guilty of a class 1 misdemeanor.

2. A serious violation of this article is guilty of a class 6 felony.

D. Actions to recover penalties under subsection C shall be brought by the attorney general in the name of this state in the superior court in the county in which the violation occurred or in a county in which the department maintains an office.

### **3-371. Cease and desist order**

The director of the Arizona department of agriculture or the director of the department of health services may issue a cease and desist order for not to exceed twenty-four hours, or until an administrative hearing is held, to terminate the application of pesticides if either or both find that an imminent and serious hazard to the public health and safety exists. The order is immediately effective. The order shall also set a time, but not later than twenty-four hours after the date and time of the order, for the hearing on the order. If evidence produced at the hearing shows that the order was unreasonable and that public health and safety were not threatened or that conditions have changed making the order unnecessary, the order shall be revoked. Except as provided in section 41-1092.08, subsection H, a party to the final administrative decision on the cease and desist order may obtain judicial review pursuant to title 12, chapter 7, article 6.

### **3-372. Emergency use of pesticides**

During a time when a person's license, permit, certificate or registration is under suspension or revocation or an order has been issued, a person requiring the application of a pesticide may apply to the director for emergency relief. If the director determines that an emergency exists which requires an application of pesticide, the director may authorize an application of pesticide under supervision and under conditions prescribed by the director. The cost of such supervision shall be borne by the person whose permit or license is suspended or revoked or on whom an order has been issued. The director shall adopt guidelines on what constitutes an emergency.

### **3-373. Annual pesticide report**

The associate director shall submit an annual report to the director, the governor and the legislature on or before October 1 each year containing the following information for the preceding fiscal year relating to the division's activities under this article:

1. The number of full-time employee positions in the division that are authorized and filled for regulating pesticides as of June 30.
2. A brief summary of rules proposed or adopted during the reporting period.
3. The number of persons having each type of permit, certificate, license and registration issued as of June 30.
4. The number of persons whose permits, certificates, licenses or registrations were revoked, suspended or otherwise altered in status with brief statements of the reasons for the revocation, suspension or alteration.
5. The number of written complaints and other communications received by the division which allege a violation of this article or a rule adopted under this article.
6. A summary, by specific category, of the substance of the complaints and communications referred to in paragraph 5 of this section and, for each specific category, the responses or dispositions of those complaints.
7. A compilation, based upon reports filed in compliance with rules adopted pursuant to section 3-363, of the amount, frequency and type of pesticides used in this state by specific categories of acute toxicity and including but not limited to identification of pesticides which:
  - (a) Are known by the administrator of the federal environmental protection agency to require special application procedures to protect endangered species or which contain ingredients or produce degradation products that are carcinogenic, mutagenic or teratogenic.
  - (b) Are extremely hazardous substances listed pursuant to section 302 of the superfund amendments and reauthorization act or title III of the clean air act as amended.
  - (c) Have extended reentry intervals of greater than forty-eight hours for worker protection.
8. Based on reports received from pesticide users and reports prepared pursuant to paragraphs 4, 5 and 6 of this section, specific recommendations regarding statutory or administrative changes to improve pesticide regulation in this state considering environmental and public health and safety factors.
9. Any other information which the associate director believes is useful in reviewing the division's activities.

### **3-374. Availability of information to the public**

A. Any records, reports or information obtained from any person under this article, including records,

reports or information obtained or prepared by the department, shall be available to the public, except that the information, or a particular part of the information, shall be considered confidential on either:

1. A showing, satisfactory to the director, by any person that the information, or a particular part of the information, if made public, would divulge the trade secrets of the person.

2. A determination by the attorney general that disclosure of the information, or a particular part of the information, would be detrimental to an ongoing investigation by the director.

3. A determination by the attorney general that disclosure of the information or a particular part of the information would be detrimental to an ongoing criminal investigation or to an ongoing or contemplated civil enforcement action under this article in superior court.

B. Notwithstanding subsection A of this section, the following information shall be available to the public:

1. The name and address of any permit applicant or permittee.

2. Information contained in or derivable from the pesticide label or the relevant safety data sheet.

C. Notwithstanding subsection A of this section, the director may disclose any records, reports or information obtained from any person under this article, including records, reports or information obtained by the department, to:

1. Other state employees concerned with administering this article or if relevant to any administrative or judicial proceeding under this article.

2. Employees of the United States environmental protection agency if such information is necessary or required to administer and implement or comply with applicable federal law.

### **3-375. Preservation of rights**

This article shall not be construed to abridge or alter causes of action or remedies under the common law or statutory law, criminal or civil, nor shall any provision of this article, or any act done by virtue of this article, be construed so as to estop any person, this state or any political subdivision of this state, or owners of land having groundwater or surface water rights or otherwise, from exercising their rights or, under the common law or statutory law, from suppressing nuisances or preventing injury due to pesticide use.

#### **3-376. Discrimination prohibited**

A. No person may intimidate, threaten, restrain, coerce, blacklist, discharge or in any manner discriminate against any person because that person has filed a complaint or instituted, or caused to be instituted, a proceeding under this article or has testified or is about to testify in such a proceeding or has exercised, on behalf of himself or others, any right or protection afforded by this article.

B. A person who believes he has been discriminated against in violation of this section may, within one hundred eighty days after the violation, file a complaint with the attorney general. On receipt of the complaint, the attorney general may investigate as he deems appropriate. If, after investigation, the attorney general determines that this section has been violated, he may bring an action in superior court against any alleged violator.

C. In an action brought under this section, the court has jurisdiction to restrain a violation and order any appropriate relief, including rehiring or reinstatement of a person, with back pay and double damages.

### **3-377. Local regulation**

The provisions of this article and the rules which implement this article are of statewide concern and are not subject to further local regulation.